



Special/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 26, 2024 6:00 PM

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

AMENDED AGENDA - This agenda has been amended to include remote participation.

Council Member Yvonne Martinez Beltran will be participating remotely as follows:

Kumiai Inn, Benito Juarez 1451, Encanto Sur, 21440, Tecate, B.C., Mexico

Public comment shall be allowed from this location.

Morgan Hill City Council meetings are held in person with the option for the public to attend in-person or 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/CityCouncilZoomRegistration>. 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 who 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

CITY COUNCIL REPORTS

Council Member Martinez Beltran

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

1. **APPROVE A CONSULTANT AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC. FOR THE COMPLETION OF DESIGN AND ENGINEERING WORK FOR GRADE SEPARATIONS FOR DUNNE AND TENNANT AVENUE AND DOWNTOWN CALTRAIN STATION PEDESTRIAN CROSSING FOR THE NOT TO EXCEED AMOUNT OF \$2 MILLION, INCLUDING A CONTINGENCY OF \$200,000**

Recommendation:

1. Approve an agreement with Biggs Cardosa Associates, Inc. for design and engineering work for Phase 1 for grade separations for Dunne Avenue and the Downtown Caltrain Station Pedestrian crossing for an amount not to exceed \$1 million (\$900,000 with \$100,000 contingency);
2. Authorize the City Manager to increase the maximum compensation paid to Biggs Cardosa Associates, Inc. by \$1 million (\$900,000 with \$100,000 contingency) for design and engineering work for Phase 2 to include Tennant Avenue upon award and receipt of the Federal Railroad Administration grant; and
3. Authorize the City Manager to execute the Agreement with Biggs Cardosa Associates, Inc. and necessary amendments.

2. **APPROVE OBJECTIVE DEVELOPMENT STANDARD WAIVERS AND DENY CONCESSION REQUEST FOR THE BARNELL - HAREN PROPERTIES LLC RESIDENTIAL PROJECT AT BARNELL AVENUE AND DUNNE AVENUE (LJ COMMONS)**

Recommendation:

Adopt resolution approving the request for four waivers and denying the request for a concession to the City's Objective Development Standards for residential development.

3. **APPROVE REQUEST BY EDEN HOUSING, INC. (EHI) TO WAIVE THE 2023 ANNUAL SURPLUS PAYMENT TO CITY FOR VILLA CIOLINO AFFORDABLE APARTMENTS TO MAKE NECESSARY REPAIRS**

Recommendation:

Authorize the approval of a waiver for the receipt of the 2023 annual payment from Villa Ciolino's surplus cash in the amount of \$101,197 to support the property's urgent rehabilitation needs.

4. **APPROVE THIRD AMENDMENT TO AGREEMENT WITH CITY OF GILROY FOR PROVIDING STAFF SERVICES**

Recommendation:

Authorize the City Manager to execute the Third Amendment to the City of Gilroy Staff Services Agreement for Stormwater Permitting Requirements and Environmental Management Services.

5. **APPROVE THE CLOSEOUT ANALYSIS REPORT FOR THE REASSESSMENT DISTRICT 2015-1 (MORGAN HILL RANCH)**

Recommendation:

1. Adopt resolution declaring the remaining reassessment revenue fund balance to be surplus, ordering the disposition of such surplus; and
2. Approve the Closeout Analysis Report for the Reassessment District 2015-1 (Morgan Hill Ranch).

6. **APPROVE THE JUNE 19, 2024 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve minutes.

7. **AUTHORIZE EXECUTION OF COST SHARING AGREEMENT WITH VALLEY WATER FOR THE UPPER LLAGAS FLOOD CONTROL PROJECT PHASE 2B**

Recommendation:

1. Authorize the City Manager to execute and administer a cost-share agreement with Valley Water for the construction of improvements supporting the Upper Llagas Creek Flood Control Project for up to \$4.5 million; and
2. Authorize the City Manager to make minor modifications to the agreement as necessary with the approval of the City Attorney.

8. **AWARD THE EAST DUNNE HILLSIDE WATER RESERVOIR PROJECT TO AZUL WORKS, INC. IN THE AMOUNT OF \$8,296,000 AND APPROVE CONSULTANT AGREEMENT WITH KENNEDY/JENKS CONSULTANTS FOR CONSTRUCTION SUPPORT SERVICES FOR A NOT TO EXCEED AMOUNT OF \$300,000**

Recommendation:

1. Approve the East Dunne Hillside Water Reservoir Project plans and specifications;

2. Award contract to Azul Works, Inc. for the East Dunne Hillside Water Reservoir Project in the amount of \$8,296,000;
3. Authorize expenditures of construction contingency not to exceed \$829,600;
4. Approve consultant agreement with Kennedy/Jenks Consultants for Construction Support Services for a not to exceed amount of \$300,000; and
5. Authorize the City Manager to execute and administer the construction contract with Azul Works, Inc. and consultant agreement with Kennedy/Jenks Consultants.

9. RECEIVE MONTHLY BUDGET UPDATE AND MAY 2024 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

PUBLIC HEARINGS

10. AWARD THE ENERGY SERVICES CONTRACT TO SYSERCO ENERGY SOLUTIONS, INC. FOR DESIGN AND CONSTRUCTION OF SOLAR SYSTEMS AT MULTIPLE CITY FACILITIES IN THE AMOUNT OF \$7,583,500

Recommendation:

1. Open and close the Public Hearing;
2. Authorize the City Manager to execute and administer an energy service contract with Syserco Energy Services for \$7,583,500;
3. Authorize contingency funds of \$379,175; and
4. Adopt a resolution making findings in compliance with California Government Code Section 4217.12 on Energy Conservation Contracts.

OTHER BUSINESS

11. AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HOTEL MOHI BY APPELLATION FOR A TRANSIENT OCCUPANCY TAX AND SALES TAX SHARING AGREEMENT

Recommendation:

Authorize the City Manager to prepare and execute a Transient Occupancy Tax (TOT) and Sales Tax Sharing Agreement for the Hotel MOHI by Appellation project based on the Draft Deal Points as memorialized by KMA.

12. RECEIVE WASTEWATER RATE STUDY REPORT, ADOPT RESOLUTION DECLARING INTENT TO IMPLEMENT NEW WASTEWATER RATES AND

**COMMENCING PROPOSITION 218 NOTICES, AND SET AUGUST 28, 2024,
AS THE DATE FOR A PUBLIC HEARING**

Recommendation:

1. Receive Wastewater Rate Study report;
2. Consider implementing an alternative rate structure of a 100% fixed wastewater rate charge for residential customers and/or an additional wastewater meter account charge for those residential customers with detached Accessory Dwelling Units (ADU);
3. Adopt resolution declaring intent to adjust wastewater rates and authorizing the commencement of Proposition 218 noticing; and
4. Set August 28, 2024, as the date for the Public Hearing and adoption of new wastewater rates.

PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

**13. PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL
INITIATED AGENDA ITEM**

Recommendation:

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

Bring Viva Calle to Morgan Hill.

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

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Tiffany Brown, Associate Planner

APPROVED BY: City Manager

APPROVE A CONSULTANT AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC. FOR THE COMPLETION OF DESIGN AND ENGINEERING WORK FOR GRADE SEPARATIONS FOR DUNNE AND TENNANT AVENUE AND DOWNTOWN CALTRAIN STATION PEDESTRIAN CROSSING FOR THE NOT TO EXCEED AMOUNT OF \$2 MILLION, INCLUDING A CONTINGENCY OF \$200,000

RECOMMENDATION(S)

1. Approve an agreement with Biggs Cardosa Associates, Inc. for design and engineering work for Phase 1 for grade separations for Dunne Avenue and the Downtown Caltrain Station Pedestrian crossing for an amount not to exceed \$1 million (\$900,000 with \$100,000 contingency);
2. Authorize the City Manager to increase the maximum compensation paid to Biggs Cardosa Associates, Inc. by \$1 million (\$900,000 with \$100,000 contingency) for design and engineering work for Phase 2 to include Tennant Avenue upon award and receipt of the Federal Railroad Administration grant; and
3. Authorize the City Manager to execute the Agreement with Biggs Cardosa Associates, Inc. and necessary amendments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

Transportation

Guiding Documents

Morgan Hill 2035 General Plan

Downtown Specific Plan

REPORT NARRATIVE:

BACKGROUND

In January 2024, the City of Morgan Hill was awarded \$1 million by the California Department of Transportation (DOT) for grade separation design and engineering work at the railroad crossings and the pedestrian crossing at the Caltrain Station. In addition to the DOT grant, the City received earmarks from the Federal Railroad Administration (FRA) for an additional \$1 million for grade separations, \$500,000 for Quiet Zones, and \$500,000 for the widening of US Highway 101. The FRA funding requires a 20% match and can be satisfied by the time the City staff worked on the project. The DOT grant does not require a match and may also be used to meet the 20% match requirement from the FRA grant.

On February 21, 2024, the Council adopted a Resolution approving a Funds Transfer Agreement (FTA) with DOT for grade separations and directed the City Manager to negotiate a consultant agreement with Biggs Cardosa Associates, Inc. for design and engineering work for grade separations and the Caltrain Station pedestrian crossing.

Biggs Cardosa Associates, Inc. is a California corporation established in 1986 that specializes in the planning, design, and construction management of bridges, transportation structures, and supporting infrastructure facilities. Biggs Cardosa is an award-winning company that has completed over 50 grade separation projects in California, over 100 Heavy Rail Bridge projects, and over 20 signature pedestrian/Bicycle Facility projects in California. In 2022, the City issued a Request for Proposals to multiple engineering firms and received one proposal from a multidisciplinary team of engineering and land use consultants led by Biggs Cardosa. The staff has been working with Biggs Cardosa to develop a scope of work that allows design work for grade separations at Dunne Avenue, Tennant Avenue, and the Caltrain Station. The scope of work allows flexibility in expanding the design work services if the City successfully secures the second grant for a total amount not exceeding \$2 million.

[Biggs Cardosa Associates, Inc. Qualifications](#)

Biggs Cardosa will lead as the City's primary consultant and manage a sub-consultant team, including BKF Engineers, Perkins & Will, David J. Powers, Hexagon, JMA for Railroad Engineering, and PARIKH Consultants for Geological Engineering. The consulting team is familiar with Morgan Hill and the High-Speed Rail (HSR) project and has provided services to Morgan Hill for assistance in commenting on the HSR project EIR.

Scope of Work

The scope of work includes two phases. Phase 1 develops conceptual designs for the crossings at Dunne Avenue and the Caltrain Station. Phase 2 develops conceptual designs for the crossing at Tennant Avenue and brings conceptual designs for Dunne Avenue and the Caltrain Station to 30% designs. The agreement with Biggs Cardosa is for \$1.8 million. It disperses \$900,000 for Phase 1 and \$900,000 for Phase 2 - leaving \$200,000 (\$100,000 in each phase) for contingencies that may cover optional tasks for conceptual design cost estimates, landscaping plan, or completion of 30% design for Phase 2, or the contingency funds may cover City administrative work performed on the

project. More details on the scope, deliverables, and pricing are included in the contract. This work will require coordination with the California High-Speed Rail Authority, CalTrain, and VTA. Below is a summary of what tasks will be performed in each phase.

TASK	E. DUNNE AVE.	TENNANT AVE.	CALTRAIN STATION PUBLIC CROSSING
TASK 1: PROJECT MANAGEMENT	Phase 1	Phase 2	Phase 1
TASK 2: DATA COLLECTION	Phase 1	Phase 2	Phase 1
TASK 3: CEQA AND NEPA CONSULTATION AND CLEARANCE	Phase 1	Phase 2	Phase 1
TASK 4: GEOTECHNICAL CONSULTATION	Phase 1	Phase 2	Phase 1
TASK 5: TRAFFIC ENGINEERING SUPPORT	Phase 1	Phase 2	Phase 1
TASK 6: CONCEPTUAL DESIGN (RailPro Track Design)	Phase 1	Phase 2	Phase 1
TASK 7: DESIGN DEVELOPMENT - 30% DESIGN	Phase 2	Optional task in Phase 2	Phase 2

COMMUNITY ENGAGEMENT:

This report serves to inform the Community of the consultant agreement with Biggs Cardosa Associates Inc. for the advancement of design and engineering work for grade separations and the downtown Caltrain Station pedestrian crossing.

ALTERNATIVE ACTIONS:

The City Council could choose to not include Phase 2 in the proposed contract with Biggs Cardosa and limit the design and engineering work to \$1 million.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 21, 2024, the City Council adopted a resolution for a Funds Transfer Agreement to receive \$1 million in funding for the design and engineering work for grade separations and pedestrian crossing from the California Department of Transportation.

FISCAL AND RESOURCE IMPACT:

There is no financial impact for the City to advance design work for grade separations as it will be funded by the DOT grant which has been received by the City. If the City secures the second grant from the FRA, the 20% matching requirement will be met through the initial DOT grant.

CEQA (California Environmental Quality Act):

Environmental review is included in the scope of work of the contract. Approval of the grade separations is understood to be exempt from both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The consultant will prepare and file a CEQA Notice of Exemption. The consultant will also complete forms and documentation required by the Federal Railroad Administration (FRA) for approval of a Categorical Exclusion under NEPA.

For the Caltrain Station Pedestrian Undercrossing, as a baseline, the consultant will research the design of the proposed modifications to the Morgan Hill Caltrain Station that are described in the approved CHSR EIS/EIR. Changes to that design now being contemplated by the City will be reviewed and the environmental effects of those changes will be described in an Addendum to the CHSR EIS/EIR to be prepared as part of the contract.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS

Biggs Cardosa 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 Biggs Cardosa 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 the Effective Date of this Agreement until March 18, 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 engineering and consulting services design of a grade separation at E. Dunne Avenue, a grade separation at Tennant Avenue, and a pedestrian undercrossing at Caltrain station as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$900,000.00. \$900,000. Total compensation to CONSULTANT under this Agreement for Phase 1 shall not exceed Nine Hundred Thousand dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**.
 - 4.1.1. **Additional Compensation**. If the City is awarded the Federal Railroad Administration grant in the amount of \$1,000,000, and the City Council accepts the grant award and appropriates the funds, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during Phase 2. The City Manager shall have the authority to approve additional compensation in an amount not to exceed \$900,000 for Phase 2, for a combined total maximum compensation amount of \$1,800,000 and shall be billed based on the rate and basis set forth in **Exhibit B**.
 - 4.1.2. **Contingency**. Dependent on the availability of funds, the City Manager shall have the authority to approve up to \$200,000 for additional services as needed.
 - 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:

Biggs Cardosa Associates
Att. Mahvash Harms
865 The Alameda
San Jose CA
95126

Address of CITY is as follows:

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

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

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

16. **Maintenance of Records.**

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

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

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

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement.

Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

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

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

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

21. **Defense and Indemnification**.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Biggs Cardosa Associates, Inc.

 City Attorney

By: _____

 Donald A. Larkin

 Print Name

Date: _____

 Mahvash Harms / Executive Vice President
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 6/19/2024

By: _____

 Print Name and Title of Signer.

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

Date: _____

REVISED SCOPE OF WORK

SCOPE OF WORK

Revised June 11, 2024

Project Understanding:

The City of Morgan Hill (City) is requesting proposals from engineering firms to provide engineering and consulting services for the 30% design of a grade separation at E. Dunne Avenue, a grade separation at Tennant Avenue, and a pedestrian undercrossing at the Morgan Hill Caltrain Station (Station). These improvements would plan for additional future service and enhance the design for the San Jose to Merced California High Speed Rail (CHSR) Project, that was approved in 2022 by the California High Speed Rail Authority (CHSRA), while maintaining uninterrupted east-west access through the City's most vital corridor.

The City of Morgan Hill is prioritizing the grade separations at E. Dunne Avenue and Tennant Avenue since they have the highest daily traffic. The Morgan Hill Caltrain Station pedestrian undercrossing is included because the current access to the Station is at grade via the east side of the tracks. The CHSR Project introduces new tracks that require the Caltrain Station Access to be grade separated and accessed in the middle of the tracks. To ensure the Caltrain Station meets the City's needs, the station is also prioritized for design. These grade separations support future rail services and address the safety response and circulation concerns that result from the at-grade crossings identified within the CHSR Final EIR. As stated in the RFP, the City is seeking qualified consultant firms to advance these conceptual exhibits to the level needed for coordination with CHSRA and UPRR/Caltrain. Ultimately, the City would like to have 30% engineered design plans for all three crossings, and the City would like these preliminary design plans to become the basis for the incorporation of these additional improvements into CHSRA's Alternative 4.

Types of Services:

Biggs Cardosa Associates (Biggs Cardosa) will provide all the project management and structural engineering services for this project. We have also included subconsultants which will allow our team to provide the following services as required to deliver this project:

- Project Management
- Structural Engineering
- Civil Engineering
- Rail Engineering
- Architectural Design / Urban Planning
- Surveying
- Preliminary Right-of-way Evaluation
- Preliminary Utilities Evaluation
- Geotechnical Engineering
- Traffic Engineering
- Environmental Consultation

The Biggs Cardosa Team understands that the design of the CHSR project that was approved in 2022 by the CHSRA calls for at-grade crossings through the City, except for the pedestrian undercrossing at the station. The City is seeking to engage CHSRA regarding the at-grade crossings, and is requesting inclusion of grade separations at E. Dunne Avenue and Tennant Avenue. The City is also seeking refinements to the conceptual plans that CHSRA has produced for the Caltrain station pedestrian undercrossing, which do not sufficiently address the City's needs for the station, and leave several design requirements unsatisfied.

In its response letter for the EIR, the City developed conceptual refinements for the Caltrain station and the pedestrian undercrossing, which improve the experience of pedestrians and bicyclists, as well as preserving available parking to the maximum extent possible. The City also developed conceptual grade separation exhibits for E. Dunne Avenue, Tennant Avenue, and Tilton Avenue. Based on the City's RFP, we understand that the City of Morgan Hill is not pursuing the grade separation at Tilton Avenue at this time.

3. Project Understanding, Approach & Scope of Work

Scope of Work Summary:

The Biggs Cardosa Team proposes a scope of work that involves the following stages (see below). Further information is provided in the detailed Scope of Work beginning on page 3 of this document.

- **PHASE 1:**

Conceptual Design for E. Dunne Avenue Grade Separation and Caltrain Station PUC:

- Data Collection, Site Visits and Preliminary Investigations
- Aerial Topography, Supplemental Field Surveys and Base Mapping
- Preliminary Right of Way Mapping and Impacts Evaluation
- Preliminary Utility Impacts Evaluation
- CEQA and NEPA Consultation and Environmental Memoranda
- Preliminary Geotechnical and Hazardous Materials Evaluation
- Traffic Engineering Support
- Develop one (1) draft conceptual alternative for the grade separation at East Dunne Avenue
- Develop two (2) draft conceptual alternatives for the pedestrian undercrossing at the Caltrain Station
- Refine and advance conceptual alternatives based on City and HSR preferences
- Develop architectural 3D and plan and section exhibits for refined conceptual alternatives
- Support the City during stakeholder engagement

- **PHASE 2:**

Conceptual Design for Tennant Avenue Grade Separation

- Data Collection, Site Visits and Preliminary Investigations
- Aerial Topography, Supplemental Field Surveys and Base Mapping
- Preliminary Right of Way Mapping and Impacts Evaluation
- Preliminary Utility Impacts Evaluation
- CEQA and NEPA Consultation and Environmental Memoranda
- Preliminary Geotechnical and Hazardous Materials Evaluation
- Traffic Engineering Support
- Develop one (1) draft conceptual alternative for the grade separation at Tennant Avenue
- Refine and advance conceptual alternative based on City and HSR preferences
- Develop architectural 3D and plan and section exhibits for refined conceptual alternative
- Support the City during stakeholder engagement

30% Design for E. Dunne Avenue Grade Separation and Caltrain Station PUC:

- Upon approval by the City, advance the conceptual designs to 30%
- City to choose one design to develop for the pedestrian undercrossing at the Caltrain Station
- 30% Design Development services will include:
 - Preliminary Rail Design Plans
 - Preliminary Roadway Design Plans, to include:
 - Typical Section
 - Alignment and geometry information
 - Affected intersections
 - Affected access points
 - Roadway improvements
 - Proposed Striping
 - Drainage (Plan only)

3. Project Understanding, Approach & Scope of Work

3

- Stormwater treatment/ green infrastructure
- Pedestrian and bicycle improvements
- New and existing utilities
- Preliminary Structure Design Plans (Advanced Planning Study Level General Plans)
- Refinements to architectural exhibits as needed to coordinate with 30% plans

The above work will also include meetings with the City, HSR, VTA and Caltrain as needed for design coordination.

OPTIONAL SERVICES:

- 30% Design for the Tennant Avenue Grade Separation
- 30% Design for Landscaping and Lighting Design for E. Dunne Ave., Tennant Ave., and the Caltrain Station PUC
- Conceptual and 30% Opinion of Probable Construction Costs for the 3 Grade Separations

A detailed scope of work for the **PHASE 1** and **PHASE 2** Design noted above is provided below.

3. Project Understanding, Approach & Scope of Work

4

SCOPE OF WORK

TASK 1: PROJECT MANAGEMENT: [Biggs Cardosa and Design Team (meetings)]

**PHASE 1: PROVIDE PROJECT MANAGEMENT TASKS FOR:
CONCEPTUAL DESIGN FOR E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC**

**PHASE 2: PROVIDE PROJECT MANAGEMENT TASKS FOR:
CONCEPTUAL DESIGN FOR TENNANT AVENUE GRADE SEPARATION
30% DESIGN FOR E. DUNNE AVENUE AND CALTRAIN STATION PUC**

In general, project management will include the supervision and scheduling of project staff, review of work prepared by staff and subconsultants, project coordination, acting as the client liaison, monitoring the project schedule and budget, preparation of project reports and attendance at meetings with the City to receive input and discuss and review the project during its critical design periods. More specific responsibilities include:

Task 1.1 - Project Administration / Budgeting / Cost Accounting: Supervise, coordinate, and monitor design for conformance with Caltrans, UPRR, CHSRA and City standards and policies. Prepare monthly progress reports and invoices. Assist the City in obtaining permission to enter private property for environmental and engineering studies, as needed. Employ and monitor subconsultants.

Consultant will prepare budgets for each task for the project; budgets will be monitored and will be used as a basis for cost monitoring and control.

Consultant will prepare monthly reports of expenditures for the project by task. Expenditure reports will serve as the basis for the Consultant's monthly invoices. Consultant will also provide a summary of work completed that month and work anticipated the following month.

Task 1.2 - Coordination Meetings: To facilitate comprehensive input from the City and project stakeholders, the Consultant's Project Manager and selected Team Members will attend Project Development Team (PDT) coordination meetings with City staff members and other appropriate agency representatives at critical design junctures and key submittal milestones. These PDT meetings will include a project kickoff meeting, a conceptual design review meeting, and a 30% design review meeting with the City. Meetings will also include up to 8 check-in meetings with the City, HSR, Caltrain and VTA, as well as up to 4 in person meetings with the City Council, Planning Commission and the public. Agendas will be sent out to all participants prior to the meetings, and timely minutes will be produced and distributed after the meetings.

The purpose of the project kickoff meeting will be to review project intent, scope, approach, budget, schedule, regulatory items, City and other agency approval processes, and other administrative procedures with City staff. It will be important to have preliminary consensus with the City regarding project objectives, risks/opportunities, and priorities. The Design Team will meet with City staff to establish project expectations, review existing conditions, determine agency coordination, and review the preliminary schedule for the project.

Task 1.3 – Field Review Meetings: Consultant will attend up to two field visits at the three crossings with the City and Design Team, as needed during the design review process. It is assumed that each field visit would incorporate review of multiple crossing sites.

Task 1.4 - Project Schedule: Consultant will prepare and submit a Project Schedule in Microsoft Project to the City within 3 weeks of the project kickoff meeting. The schedule will indicate all tasks and project activities, deliverables, and will reflect necessary review time by affected agencies. Consultant will adjust and update the project schedule as necessary throughout the duration of the project.

Task 1.5 - General Project QA/QC: Consultant will perform quality assurance and quality control during the course of the design and submittals.

Task 1 Deliverables – PHASE 1 and PHASE 2:

- ✓ Invoices and Progress Reports
- ✓ PDT Meeting Agendas and Minutes
- ✓ Project Design Schedule and Updates

3. Project Understanding, Approach & Scope of Work

TASK 2: DATA COLLECTION: [Design Team]

PHASE 1: PROVIDE DATA COLLECTION TASKS FOR:

CONCEPTUAL DESIGN FOR E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC

PHASE 2: PROVIDE DATA COLLECTION TASKS FOR:

CONCEPTUAL DESIGN FOR TENNANT AVENUE GRADE SEPARATION

Task 2.1 – Data Collection and Review

Consultant will obtain and review relevant project information for the project limits and identify available and required documents. Consultant will review and assess any project material available from the City, including as-builts, base mapping, utility drawings, right-of-way record information, and geotechnical information. Additionally, the Design Team will review the updated Final California High Speed Rail Authority (CHSRA) San Jose to Merced Project Section EIR/EIS and communicate to the City relevant changes. As-builts, base mapping, right of way and utility information will be used to provide further detail and supplement base sheets and serve to document the need, purpose, constraints, and opportunities associated with the Project.

Task 2.2 - Site Investigation

Consultant will perform an initial reconnaissance-level investigation of the undercrossing sites at E. Dunne, Tennant and the Caltrain Station, to evaluate existing conditions, physical limitations and opportunities at the existing sites, to visualize and discuss specific access, circulation, traffic, bicycle and pedestrian circulation safety, utilities, groundwater levels and other pertinent coordination issues. In this manner notable features can be highlighted, and information obtained via data collection can be verified in the field for accuracy.

Existing utilities will be verified in conjunction with obtaining record utility/block maps from the City and utility companies under Task 2.1. This existing information includes railroad and roadway right of way, as-built mapping, utility maps and existing traffic information within the area. As the collected data is reviewed, information will be incorporated, as needed, to support other project tasks.

At the request of the City, Consultant can provide a separate scope and fee for utility potholing.

Key Assumption:

- ✓ If encroachment permits are required by the City to allow for site investigations and studies to be performed, it is assumed that the cost of the permits will be waived.
- ✓ Utility potholing is not included in this scope.

Task 2.3 – Aerial Topo and Supplemental Ground Survey:

Consultant will obtain aerial topographic survey for the Project limits for each grade separation location. The aerial topo will be used as base mapping to develop drawings and will provide existing information such as lane configurations, curb lines, buildings, poles and above ground facilities. Field surveyors will provide control points for the aerial photogrammetry.

Surveyors will perform supplemental field surveying to locate key existing site improvements within the project limits, as needed along E. Dunne Avenue and at E. Dunne intersections.

Surveyors will perform supplemental field surveying to locate key existing site improvements within the project limits as needed along Tennant Avenue and at Tennant Avenue intersections.

Task 2.4 – Right of Way Mapping from Record Information

Consultant will provide right of way mapping from record information for the grade separations at E. Dunne and Tennant, and the Caltrain station pedestrian undercrossing. This added level of detail will be used to establish right of way impacts, particularly along the depressed grade separations and at intersections where the City's right of way may be constrained. It is essential to identify additional right of way for the City's ultimate roadway section for the grade separations and the pedestrian undercrossing.

Task 2 Deliverables – PHASE 1:

- ✓ Utility Block Maps for E. Dunne Avenue and the Caltrain Station PUC (PDF)
- ✓ Utility Base Mapping for E. Dunne Avenue and the Caltrain Station PUC (CAD)
- ✓ Aerial Topo Base for E. Dunne Avenue and the Caltrain Station PUC (CAD)
- ✓ Right of Way Mapping for E. Dunne Avenue and the Caltrain Station PUC (CAD)

3. Project Understanding, Approach & Scope of Work

Task 2 Deliverables – PHASE 2:

- ✓ Utility Block Maps for Tennant Avenue (PDF)
- ✓ Utility Base Mapping for Tennant Avenue (CAD)
- ✓ Aerial Topo Base for Tennant Avenue (CAD)
- ✓ Right of Way Mapping for Tennant Avenue (CAD)

TASK 3: CEQA AND NEPA CONSULTATION AND CLEARANCE: [DJPA]

PHASE 1: PROVIDE ENVIRONMENTAL CONSULTATION AND CLEARANCE FOR: E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC

PHASE 2: PROVIDE ENVIRONMENTAL CONSULTATION AND CLEARANCE FOR: TENNANT AVENUE GRADE SEPARATION

E. Dunne Avenue and Tennant Avenue Grade Separations

Environmental input and consultation will be provided for issues associated with the undercrossing design concepts to be developed for the grade separations at E. Dunne and Tennant Avenues. Approval of the grade separations are assumed to be exempt from both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). On behalf of the City, Consultant will prepare and file a CEQA Notice of Exemption with the Santa Clara County Clerk-Recorder. Consultant will also complete forms and documentation required by the Federal Railroad Administration (FRA) for approval of a Categorical Exclusion under NEPA.

Caltrain Station Pedestrian Undercrossing

As a baseline, Consultant will research the design of the proposed modifications to the Morgan Hill Caltrain Station that are described in the approved CHSR EIS/EIR. Changes to that design now being contemplated by the City will be reviewed and the environmental effects of those changes will be described in an Addendum to the CHSR EIS/EIR to be prepared as part of this task.

Task 3 Deliverables – PHASE 1:

- ✓ Notice of Exemption Memorandum for E. Dunne Avenue (PDF)
- ✓ CHSR EIS/EIR Addendum for Caltrain Station PUC

Task 3 Deliverables – Phase 2:

- ✓ Notice of Exemption Memorandum for Tennant Avenue (PDF)

TASK 4: GEOTECHNICAL CONSULTATION: [Parikh]

PHASE 1: PROVIDE GEOTECHNICAL CONSULTATION FOR: CONCEPTUAL DESIGN FOR E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC

PHASE 2: PROVIDE GEOTECHNICAL CONSULTATION FOR: CONCEPTUAL DESIGN FOR TENNANT AVENUE GRADE SEPARATION 30% DESIGN FOR E. DUNNE AVENUE AND CALTRAIN STATION PUC

Geotechnical input and consultation will be provided for the development of the E. Dunne, Tennant and Caltrain station undercrossing designs, based on available geotechnical data and previous geotechnical investigations performed for the Caltrain Double-Tracking project for the Coyote and Morgan Hill Extension, as well as previous investigations performed at E. Dunne Avenue OC at Route 101.

The subsoils in the area generally consist of stiff to hard low-plasticity clays at shallow depth, overlying primarily medium-dense to dense clayey sand/silty sand with gravel. Groundwater levels are an important consideration for the design of undercrossings, and although groundwater levels vary over time, the available data indicates that the highest groundwater level could possibly be above or very close to the planned depressed grades, which will impact both design and construction.

Recommendations on foundation support for undercrossing structures and the Caltrain station pedestrian tunnel will be provided, as well as for the retaining wall type, and groundwater and construction dewatering issues. Recommendations will be based on qualitative review of the available geotechnical data.

As part of the geotechnical review, available borings and hazardous materials information will be reviewed to evaluate whether existing hazardous materials may have an impact on the project.

3. Project Understanding, Approach & Scope of Work

Key Assumption:

- ✓ No geotechnical borings or engineering analysis is included in the scope but may be provided as an additional service upon City request.
- ✓ Hazardous materials borings and/or testing are not included.

Task 4 Deliverables – PHASE 1:

- ✓ Preliminary Geotechnical Memo for E. Dunne Avenue and the Caltrain Station PUC (PDF)

Task 4 Deliverables – PHASE 2:

- ✓ Preliminary Geotechnical Memo for Tennant Avenue (PDF)

TASK 5: TRAFFIC ENGINEERING SUPPORT: [Hexagon]

PHASE 1: PROVIDE TRAFFIC ENGINEERING SUPPORT FOR:

CONCEPTUAL DESIGN FOR E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC

PHASE 2: PROVIDE TRAFFIC ENGINEERING SUPPORT FOR:

CONCEPTUAL DESIGN FOR TENNANT AVENUE GRADE SEPARATION 30% DESIGN FOR E. DUNNE AVENUE AND CALTRAIN STATION PUC

Traffic engineering support will be provided to the design team for the proposed improvements at E. Dunne Avenue, Tennant Avenue and the Caltrain Station.

Support will include answering questions and providing recommendations based on available traffic information, reports, and analyses with respect to intersection and roadway lane configurations and intersection geometrics. This task will also include identifying the potential effects of construction on the transportation network, such as vehicular circulation, parking, pedestrians, bicycles, and existing transit services. Available traffic data will be utilized to provide recommendations for construction, such as limitations on work hours and limitations on allowable lane closures and/or road closures.

The project site plan for the Caltrain station work will also be reviewed to determine the overall adequacy of the site access and on-site circulation in accordance with generally accepted traffic engineering standards and to identify any access or circulation issues that should be improved.

TASK 6: CONCEPTUAL DESIGN: [Design Team]

Consultant will conduct an initial assessment of the grade separation locations as noted below, and develop one (1) conceptual alternative for each location, for City review. Consultant will also conduct an initial assessment of the Caltrain station pedestrian undercrossing and develop two (2) conceptual alternatives for City review. Concept alternatives will consider temporary shoofly track requirements, roadway alignment and geometry options, affected intersections and access points, urban design and pedestrian and bicycle access and user experience, ADA requirements, roadway approaches to the bridge, roadway improvements, drainage, stormwater treatment, new and existing utilities, lighting, landscaping, bridge and retaining wall structure types, and environmental issues.

PHASE 1: PROVIDE CONCEPTUAL DESIGN FOR:

E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC

- E. Dunne Avenue Grade Separation

E. Dunne Avenue is a primary connection from the freeway and surrounding road network to Downtown Morgan Hill, and an integral part of the City's proposed Bikeway, Trails, Parks and Recreation System. The grade separated undercrossing will minimize disruption to vehicular, pedestrian and bicycle flow. The undercrossing will be evaluated with the following design alternatives/ characteristics:

- One conceptual alternative will be provided for the for the grade separation.
- Keep tracks at Main Street at grade.
- Slight elevation of the railroad tracks south of Main Street to East Dunne, with tracks coming back down to grade by San Pedro Avenue.
- Minimization of bridge structure depth to reduce required depth of roadway.

3. Project Understanding, Approach & Scope of Work

8

- Reduction of grade separation impacts to properties along East Dunne and ensuring intersection access is still viable at the East Dunne and Church Street intersection and the Butterfield Boulevard and East Dunne intersection.
- Identify whether Butterfield Boulevard, Church Street, and the Community and Cultural Center (CCC) parking lot entrance off East Dunne will need to be depressed slightly to continue through vehicular access.
- Depression amount will be identified in feet and percentage slope.
- Evaluation of impacts to traffic, intersections and traffic signal facilities, as well as the realignment of Depot Street with Church Street.
- Consideration of separated pedestrian access and bicycle lanes, to meet ADA requirements and provide additional safety/separation from vehicular traffic and minimization of disruptions to pedestrian and bicycle flow.

Sketches that lay out and define the major roadway features, structural elements, track alignment and architectural/urban planning features will be provided for review and discussion of the conceptual design with the City.

One rendering/3D exhibit is planned for the E. Dunne Avenue undercrossing and will be developed upon completion of concept discussions with the City. An exhibit style plan and section will also be developed, and precedent images showing proposed or similar features will be included as applicable.

The Consultant will work with the City in establishing the design alternatives/features that will be advanced to 30% design.

Stormwater Treatment: Consultant will prepare preliminary stormwater treatment calculations to identify the stormwater treatment area required for the E. Dunne Avenue grade separation and work with the City to identify a location(s) for Low Impact Development (LID) treatment in the form of bioretention areas.

- Caltrain Station Pedestrian Undercrossing

The Caltrain Station is a critical alternative transportation connection located at the core of the City and is within walking distance of the nearby downtown area, which hosts restaurants and bars, parks, and civic services. The pedestrian undercrossing will be evaluated with the following design alternatives/ characteristics:

- Two conceptual alignment options will be provided for the access ramps and tunnel.
- The location of the undercrossing will be considered with the planning and design of the pedestrian paths, access way, pick-up/drop-off, parking, and potential for future development on the adjacent properties. Emphasis will be placed on creating a welcoming, generously landscaped, safe and well-lit connection between the two sides of the station.
- The degree to which the design of the ramps can be compacted will be explored, in order to allow for future flexibility in the use of the public properties adjacent to the station.
- The tunnel will be a minimum of 20-feet wide and 10-feet tall, and its length beneath the tracks will be minimized. Ramps will be a minimum of 16-feet wide. A staircase will be provided at each end of the tunnel. The location for an elevator to serve the underpass and the central portion of the station platform will be explored.
- Use of natural light will be maximized and enhanced with additional lighting to improve user experience and enhance safety.
- Integration of landscape features, art, sculpture and wayfinding signage, as well as inclusion of typical station infrastructure such as telecommunications, seating, and charging stations will also be considered.

Sketches that lay out the geometric alternatives for the undercrossing and define the major features, structural elements, track alignment and architectural/urban design features will be provided for review and discussion of the conceptual alternatives with the City. An initial cursory assessment of impacts and feasibility will be conducted for each alternative. Given the site constraints at this location, the Consultant will work with the City in establishing the design alternatives/features that will be refined to a final concept for the undercrossing.

Two renderings/3D exhibits are planned for the Caltrain station undercrossing. 3D sketches or precedent images showing proposed or similar landscape/art/lighting features for the station will also be provided.

Stormwater Treatment: Consultant will prepare preliminary stormwater treatment calculations to identify the stormwater treatment area required for the Caltrain Station PUC and work with the City to identify a location(s) for Low Impact Development (LID) treatment in the form of bioretention areas.

3. Project Understanding, Approach & Scope of Work

Key Assumption:

- ✓ The City will select one alternative for the Caltrain Station PUC, to be advanced to 30% Design.

Task 6 Deliverables – PHASE 1:

- ✓ Stormwater Treatment Calculations for E. Dunne Avenue and the Caltrain Station PUC (PDF)
- ✓ Draft Concept Alternative Sketches for E. Dunne Avenue and the Caltrain Station PUC (PDF)
- ✓ Pro and Cons Matrix for Evaluation of Alternatives for the Caltrain Station PUC (PDF)

PHASE 2: PROVIDE CONCEPTUAL DESIGN FOR: TENNANT AVENUE GRADE SEPARATION

• Tennant Avenue Grade Separation

Tennant Avenue is a primary connection from the freeway and surrounding road network to the commercial and residential areas south of Downtown Morgan Hill. The grade separated undercrossing will minimize disruption to vehicular, pedestrian and bicycle flow. The undercrossing will be evaluated with the following design alternatives/characteristics:

- One conceptual alternative will be provided for the for the grade separation.
- Rerouting Railroad Avenue vs depressing Railroad Avenue, with clarification of impacts
- Minimization of bridge structure depth to reduce required depth of roadway and minimize impacts.
- Verification of connection to Vineyard Boulevard.
- Evaluation of impacts to traffic, intersections and traffic signal facilities, including the potential realignment or lowering of Railroad Avenue.
- Consideration of separated pedestrian access and bicycle lanes, to meet ADA requirements and provide additional safety/separation from vehicular traffic.
- Options will also be explored for creating a public pedestrian path at grade to preserve existing building access to the homes along the north face of the Larkspur Loop block.

Sketches that lay out and define the major roadway features, structural elements, track alignment and architectural/urban planning features will be provided for review and discussion of the conceptual design with the City.

One rendering/3D exhibit is planned for the Tennant Avenue undercrossing and will be developed upon completion of concept discussions with the City. An exhibit style plan and section will also be developed, and precedent images showing proposed or similar features will be included as applicable.

If the optional scope for 30% Design of the Tennant Avenue undercrossing is authorized, the Consultant will work with the City in establishing the design alternatives/features that will be advanced to 30% design.

Stormwater Treatment: Consultant will prepare preliminary stormwater treatment calculations to identify the stormwater treatment area required for the Tennant Avenue grade separation and work with the City to identify a location(s) for Low Impact Development (LID) treatment in the form of bioretention areas.

Task 6 Deliverables – PHASE 2:

- ✓ Stormwater Treatment Calculations for Tennant Avenue (PDF)
- ✓ Draft Concept Alternative Sketches for Tennant Avenue (PDF)

TASK 7: DESIGN DEVELOPMENT - 30% DESIGN: [Design Team]

PHASE 2: PROVIDE 30% DESIGN FOR: E. DUNNE AVENUE GRADE SEPARATION AND CALTRAIN STATION PUC

30% Plans

After the City has identified and vetted the alternatives from the Conceptual Design Task, Consultant will develop the 30% Design for the E. Dunne Avenue and Caltrain station undercrossings, to include the following:

Cover Sheet: A cover sheet will be prepared for the project using City standard title block.

3. Project Understanding, Approach & Scope of Work

10

General Civil Notes: General civil notes will include standard City construction notes, project notes, erosion and sediment control notes, and applicable utility notes.

Project Control and Key Map: The horizontal control, vertical control and key map drawing will contain the alignment information for the project, cut sheets, right of way information, found monument information, street names and basis of bearing with applicable survey notes.

Typical Cross Sections: Typical cross sections will be developed for the proposed grade separation improvements outlining the limits of proposed curb and gutter, and width of proposed improvements including sidewalks, bike lanes, and vehicle lanes.

Demolition / Existing Conditions Plan: The Demolition Plan will identify work to be removed or demolished within the project limits, including demolition of existing curb and gutter, sidewalk, driveway, curb ramps and other existing items in conflict with the proposed improvements. Protection of existing facilities will also be identified on this plan.

Roadway Layout Plans: Layout plans will be prepared showing the limits and scope of proposed improvements. Plan sheets will include basic horizontal information and identify all major construction features including areas of reconstruction for the grade separations and limits of conform. The plan will also identify the location of new curb ramps and intersection improvements with respect to new or relocated facilities. Right of way lines will also be shown on this plan.

Roadway Profile: The roadway profile will be prepared to show existing grades and the vertical alignment of the roadway and separate pedestrian access. Profile will also show intersecting streets and driveways to be adjusted to grade and/or to remain.

Drainage Plan: A drainage plan will show modifications to the existing drainage system such as inlets to be relocated, modified or added as part of the proposed improvements. Manholes in conflict with proposed improvements will also be relocated, modified, or adjusted to grade.

Draft/preliminary underdrain plans will also be prepared as part of the drainage plans. However, not having a full geotechnical investigation, Consultant will use an assumed typical section for the roadway based on available geotechnical data and prior grade separation experience. Consultant will cite a potential location for the pump station, however, no design for the pump station will be provided at the 30% design level.

Utility Impacts Plan: Consultant will map all existing utilities within the project limits and identify potential conflicts with proposed improvements. Evaluation of locations for future lift stations will be included, as well as consideration of rerouting of sewer lines to eliminate the need for lift stations. Utility impacts and adjustments to grade will be shown on these plans. Any utility boxes, telecom manholes, water valves or sanitary sewer manholes in conflict with the work will be shown as impacted by the project or as adjusted to grade. Consultant will also work with the fire department to confirm location and access to existing fire hydrants.

Traffic Signal Modification Plan: Traffic signal modification plans will be prepared for the following intersections:

- E. Dunne/Church Street - Existing Signalized Intersection
- E. Dunne/Butterfield Boulevard - Existing Signalized Intersection

Site Plan and Cross Sections: A site plan will be developed for each undercrossing. Cross sections depicting key pedestrian, bicycle and public realm features will also be developed. Please note that 30% Landscape Plans have been detailed under "Optional Additional Scope" to be included if budget permits.

Bridge General Plan: A general plan will be developed for the undercrossings and will include retaining walls.

Rail/Shoofly Plans: Temporary track/shoofly plans will be developed for the undercrossings.

Updated Architectural Renderings

Architectural renderings and exhibits developed during Conceptual Design will be refined as needed to incorporate any notable updates from the 30% design process.

3. Project Understanding, Approach & Scope of Work

11

30% Design Review

As part of the 30% design process and plan development, the Consultant will perform a conceptual design review of the proposed alignment, approach roadways, intersections, bridge types, retaining wall types and impacts to local features by experienced senior staff, to verify constructability and cost effectiveness.

Task 7 Deliverables – PHASE 2:

- ✓ 30% Civil and Roadway Plans for E. Dunne Avenue and the Caltrain Station PUC (PDF)
- ✓ Temporary track/shoofly plans for E. Dunne Avenue and the Caltrain Station PUC (PDF)
- ✓ Structure Plans for E. Dunne Avenue and the Caltrain Station PUC (APS level) (PDF)
- ✓ Updated Architectural Renderings and Exhibits for E. Dunne Avenue and the Caltrain Station PUC (PDF)

Key Assumptions:

- ✓ At the start of the work, the project schedule will be discussed with the City, to confirm the project timeline and the required steps for coordination with HSR and other stakeholders.
- ✓ The designs for the grade separations will assume that the railroad remains at (or near) its current elevation and that E. Dunne Avenue and Tennant Avenue will be depressed under the railroad.
- ✓ It is assumed that meetings will be held online, except for the 4 meetings noted as in person under Task 1.2.
- ✓ Grade separation designs will be based on work completed by BKF and Perkins & Will for the HSR PEPD 15% design.
- ✓ Hydraulic analysis is not included. High groundwater levels will be assumed for 30% design of the undercrossings.
- ✓ Geotechnical borings are not included.
- ✓ Hazardous materials borings, sampling and testing are not included.
- ✓ A Bridge Type Selection Report is not included.
- ✓ Traffic studies are not included.
- ✓ Detailed traffic handling plans are not included
- ✓ Railroad coordination and the required documents are not included.
- ✓ If encroachment permits are required by the City to allow for site investigations and studies to be performed, it is assumed that the cost of the permits will be waived.
- ✓ PHASE 1 and PHASE 2 scope are separate phases that will be funded by two separate funding sources. PHASE 2 scope will be provided upon authorization of PHASE 2 funding.
- ✓ Landscape Plans have been detailed under "Optional Additional Scope", to be included if budget permits.
- ✓ 30% Design for the Tennant Avenue Undercrossing has been detailed under "Optional Additional Scope", to be included if budget permits.
- ✓ Opinion of Probable Construction Costs (Estimate) for the Concept Design and 30% Design at each undercrossing have been detailed under "Optional Additional Scope", to be included if budget permits.
- ✓ The BCA team has prepared the above scope of work and fee proposal based on our understanding of the City's needs for this preliminary engineering effort.

PHASE 2 OPTIONAL ADDITIONAL SCOPE

30% Design to Include Landscape Drawings [Perkins & Will]

This task would be to prepare landscape plans for the 30% Design Package. The goal would be to illustrate human comfort, safety and the richness of experience desired for the pedestrian and bicyclists along the E. Dunne, Tenant, and Caltrain Undercrossings. The task would document landscaping (planting design), lighting, irrigation, and improvements to promote community ownership, placemaking, and health and safety.

Irrigation and lighting consultants would need to be engaged and brought on board if this optional task is approved. This effort would be done in conjunction with Civil and Structural consultants to ensure a wholistic 30% Design Package and a more true cost estimate.

3. Project Understanding, Approach & Scope of Work

12

Deliverables:

- ✓ 30% Landscape Plans (PDF)

30% Design for the Tennant Avenue Undercrossing [Design Team]

This task would be for development of the 30% Design for the Tennant Avenue undercrossing. Work involved and deliverables would be similar to those provided for the E. Dunne Avenue undercrossing under Task 7.

Deliverables:

- ✓ 30% Civil and Roadway Plans for Tennant Avenue Undercrossing (PDF)
- ✓ Temporary track/shoofly plans for Tennant Avenue Undercrossing (PDF)
- ✓ Structure Plans for Tennant Avenue Undercrossing (APS level) (PDF)
- ✓ Updated Architectural Renderings and Exhibits for Tennant Avenue Undercrossing (PDF)

Conceptual Level and 30% Level Opinion of Probable Construction Costs [Design Team]

An opinion of probable construction costs will be provided for each undercrossing at the Conceptual Design stage and at the 30% design stage. Estimates of unit costs will be based on current Caltrans construction cost data, as well as current bid data for similar projects in the area, if available. It should be noted that the Consultant cannot guarantee the actual cost of work to be performed by others due to issues like market and bidding conditions at the time of project advertisement, contractor means and methods, profit margins, etc. which may affect the project costs.

Deliverables:

- ✓ Conceptual Design Level Opinion of Probable Construction Costs for E. Dunne Avenue, Tennant Avenue and Caltrain Station Undercrossings (PDF)
- ✓ 30% Design Level Opinion of Probable Construction Costs for E. Dunne Avenue, Tennant Avenue and Caltrain Station Undercrossings (PDF)

SCHEDULE OF COMPENSATION RATES**PHASE 1 AND PHASE 2*****PHASE 1: MORGAN HILL GRADE SEPARATIONS PROJECT***

<i>Engineering and Design services summary – Phase 1</i>				
TASK	E. Dunne Ave	Tennant Ave.	CalTrain Station PUC	Total
<i>TASK 1: Project Management – Phase 1</i>	<i>\$69,646</i>		<i>\$50,000</i>	<i>\$119,646</i>
<i>Task 1 Deliverables – Phase 1</i> ✓ <i>Invoices and Progress Reports</i> ✓ <i>PDT Meeting Agendas and Minutes</i> ✓ <i>Project Design Schedule and Updates</i>	<i>\$20,897</i>		<i>\$17,132</i>	<i>\$38,209</i>
<i>TASK 2: Data Collection (Fee included in Task 6)</i> <i>Task 2 Deliverables – Phase 1</i> ✓ <i>Utility Block Maps for E. Dunne and Caltrain Station PUC (PDF)</i> ✓ <i>Utility Base Mapping for E. Dunne and Caltrain Station PUC (CAD)</i> ✓ <i>Aerial Topo Base for E. Dunne and Caltrain Station PUC (CAD)</i> ✓ <i>Right of Way Mapping for E. Dunne and Caltrain Station PUC (CAD)</i>				
<i>TASK 3: CEQA and NEPA Consultation and Clearance</i> <i>Task 3 Deliverables – Phase 1</i> ✓ <i>Notice of Exemption Memorandum for E. Dunne (PDF)</i> ✓ <i>CHSR EIS/EIR addendum or exemption for Caltrain Station PUC (PDF)</i>	<i>\$6,881</i>		<i>\$9,295</i>	<i>\$16,176</i>
<i>TASK 4: Geotechnical Consultation</i> <i>Task 4 Deliverables – Phase 1</i> ✓ <i>Preliminary Geotechnical Memorandum for E. Dunne and Caltrain Station PUC (PDF)</i>	<i>\$26,939</i>		<i>\$20,626</i>	<i>\$47,566</i>

EXHIBIT B

<i>TASK 5: Traffic Engineering Support</i>	\$15,124	\$11,761	\$26,885
<i>TASK 6: Conceptual Design</i>	\$269,931	\$280,880	\$550,811
Task 6 Deliverables – Phase 1			
✓ <i>Stormwater Treatment Calculations for E. Dunne and Caltrain Station PUC (PDF)</i>			
✓ <i>Draft Concept Alternative Sketches for E. Dunne and Caltrain Station PUC (PDF)</i>			
✓ <i>Pro and Cons Matrix for Evaluation of Alternatives for the Caltrain Station PUC (PDF)</i>			
✓ <i>RailPro Track Design</i>	\$51,473	\$49,414	\$100,887
<i>TOTAL</i>	\$460,891	\$439,109	\$900,000

PHASE 2: MORGAN HILL GRADE SEPARATIONS PROJECT

Engineering and Design services summary – Phase 2				
TASK	E. Dunne Ave	Tennant Ave.	CalTrain Station PUC	Total
TASK 1: Project Management – Phase 2	\$42,688	\$82,275	\$19,304	\$143,997
<i>Task 1 Deliverables – Phase 2</i> ✓ Invoices and Progress Reports ✓ PDT Meeting Agendas and Minutes ✓ Project Design Schedule and Updates ✓ Reimb. and Direct Costs		\$18,441		\$18,441
TASK 2: Data Collection (Fee included in Task 6) <i>Task 2 Deliverables – Phase 2</i> ✓ Utility Block Maps for Tennant Ave. (PDF) ✓ Utility Base Mapping Tennant Ave. (CAD) ✓ Aerial Topo Base for Tennant Ave.(CAD) ✓ Right of Way Mapping for Tennant Ave (CAD)				
TASK 3: CEQA and NEPA Consultation and Clearance <i>Task 3 Deliverables – Phase 2</i> ✓ Notice of Exemption Memorandum for Tennant Ave. (PDF)		\$6,881		\$6,881
TASK 4: Geotechnical Consultation <i>Task 4 Deliverables – Phase 2</i> ✓ Preliminary Geotechnical Memorandum for Tennant Ave (PDF)		\$26,939		\$26,939
TASK 5: Traffic Engineering Support		\$13,637		\$13,637
TASK 6: Conceptual Design <i>Task 6 Deliverables – Phase 2</i> ✓ Stormwater Treatment Calculations for Tennant Ave (PDF) ✓ Draft Concept Alternative Sketches for Tennant Ave (PDF)		\$253,571		\$253,571
✓ RailPro Track Design		\$79,756		\$79,756

EXHIBIT B

<i>TASK 7: Design Development – 30% Design (Does not include landscaping) Deliverables – Phase 2</i>	\$181,638		\$126,272	\$307,910
✓ 30% Civil and Roadway Plans for E. Dunne Avenue and Caltrain Station PUC (PDF)				
✓ Temporary track/shoofly plans for E. Dunne Avenue and Caltrain Station PUC (PDF)				
✓ Structure Plans for E. Dunne Avenue and Caltrain Station PUC APS Level (PDF)				
✓ Updated Architectural Renderings and Exhibits for E. Dunne Avenue and the Caltrain Station PUC (PDF)				
✓ RailPro Track Design	\$28,283		\$20,585	\$48,868
TOTAL	\$252,609	\$481,500	\$165,891	\$900,000
Optional Items for Phase 1 or Phase 2				
E. Dunne Ave and Caltrain Station PUC conceptual Design Cost Estimates				\$90,000
Landscaping				\$197,200
Task 7: 30% Design for Tennant Ave + PM				\$186,500
Conceptual Design cost Estimate for Tennant Ave + 30% Design Cost Estimate for all 3 crossings				\$120,000

3. Project Understanding, Approach & Scope of Work

13

Project Schedule of Performance

TASK	DURATION	TIME ELAPSED
PHASE 1		
Conceptual Design for E. Dunne Avenue Grade Separation and Caltrain Station PUC		
1. Kickoff Meeting with City	1 day	
2. Kickoff Meeting with City and HSR – Grade Separation Design Criteria	1 day	
3. Kickoff Meeting with City, HSR, VTA, Caltrain – PUC Design Criteria	1 day	
4. Data Collection, Site Investigations, Surveying, Utilities, Right of Way, Preliminary Geotechnical and Hazardous Materials Evaluation, Traffic Engineering	8 weeks	8 weeks
5. Field Review Meeting with City (Both Sites)	1 day	
6. Develop Conceptual Designs	25 weeks	33 weeks
7. City Review of Conceptual Designs	2 weeks	
8. Update Conceptual Designs per City Comments	3 weeks	40 weeks
9. Develop CEQA and NEPA Memoranda	6 weeks	
10. Meet with City and HSR to Review Grade Sep. Conceptual Design	1 day	
11. Meet with City, HSR, VTA, Caltrain to Review PUC Conceptual Design	1 day	
12. Finalize Conceptual Designs per City and Other Stakeholder Comments	2 weeks	
13. Develop 3D Exhibits for Approved Conceptual Designs	4 weeks	
14. Meet with Planning Commission, City Council – Conceptual Designs	1 day	46 weeks
PHASE 2		
Conceptual Design for Tennant Ave GS and 30% Design for E. Dunne Ave GS & Caltrain Station PUC		
Tennant Avenue Conceptual Design		
1. Data Collection, Site Investigations, Surveying, Utilities, Right of Way, Preliminary Geotechnical and Hazardous Materials Evaluation, Traffic Engineering	4 weeks	
2. Field Review Meeting with City (Tennant Avenue Site)	1 day	
3. Develop Conceptual Design	12 weeks	
4. City Review of Conceptual Design	2 weeks	
5. Update Conceptual Design per City Comments	2 weeks	
6. Develop CEQA and NEPA Memorandum	3 weeks	
7. Meet with City and HSR to Review Grade Sep. Conceptual Design	1 day	
8. Finalize Conceptual Design per City and Other Stakeholder Comments	2 weeks	
9. Develop 3D Exhibits for Approved Conceptual Design	2 weeks	
10. Meet with Planning Commission, City Council – Conceptual Design	1 day	
30% Design for E Dunne Avenue and Caltrain Station PUC		
11. Development of 30% Designs	25 weeks	75 weeks
12. City Review of 30% Designs	4 weeks	
13. Update 30% Designs per City Comments	3 weeks	82 weeks
14. Meet with City and HSR to Review Grade Sep. 30% Designs	1 day	
15. Meet with City, HSR, VTA, Caltrain to Review PUC 30% Design	1 day	
16. Finalize 30% Designs per City and Other Stakeholder Comments	3 weeks	
17. Update 3D and Other Exhibits per Approved 30% Designs	3 weeks	
18. Meet with Planning Commission, City Council – 30% Designs	1 day	
19. Meet with Public – 30% Designs	1 day	*90 weeks

*Schedule is assuming Tennant conceptual design is concurrent with the 30% Design for Dunne and Station PUC. If not at same time, could take up to 110 weeks.

1 FIRM QUALIFICATIONS



Tustin Ave / Rose Dr Railroad Grade Separation, Placentia / Anaheim, CA

Cover Letter

THE TEAM: Biggs Cardosa brings our Team's extensive experience as well as the relationships we have established with key stakeholders including CHSR, Caltrain, and UPRR. Biggs Cardosa brings our expertise in leading dozens of complex grade separation projects throughout California. Biggs Cardosa has worked on two segments of High-Speed Rail project in California, and has a deep understanding of HSR's goals, requirements, and constraints.

Biggs Cardosa will lead this project as the Prime Consultant and will provide project management, structural engineering and QA/QC services. Biggs Cardosa has worked on California High Speed Rail San Francisco to San Jose Segment and CP 2-3 (Fresno to Kern/Tulare Counties Segment). Biggs Cardosa is also a powerhouse grade separation firm. In our 36 years in business, we have delivered over 100 grade separation and rail-related projects throughout California. We have served as the Prime Consultant for numerous grade separation projects, including several in the Bay Area. Several of these projects have received industry awards.

We have included on our team BKF Engineers, Perkins& Will, David J Powers and Hexagon, who have been already working on this project and have provided concept alternatives included in the Draft EIR/EIS Technical/Engineering Review Support. BKF is our "sister" firm and we have worked on hundreds of projects with them. Our team also includes JMA for Railroad Engineering, PARIKH Consultants for Geotechnical Engineering.

The Biggs Cardosa Team is proficient at collaborative conceptual design, seamless project execution, and the timely production and delivery of contract documents. Our project team members have a history of working together on multi-disciplinary projects and have developed excellent working relationships. Our team members have extensive experience in complex grade separation projects in California, hazardous materials and environmental remediation, and have worked with Biggs Cardosa on transportation-related projects.

Exceptions Statement: We have no exceptions to this RFP.

Our team is capable of providing comprehensive, all-inclusive services for this project. We welcome this opportunity and hope that you will select Biggs Cardosa to deliver this critical project for the City of Morgan Hill.

Sincerely,

Biggs Cardosa Associates, Inc.



Mahvash Harms, PE, SE
Principal-in-Charge

PRIMARY PROPOSAL CONTACT

Mahvash Harms, PE, SE
Principal-in-Charge
Biggs Cardosa Associates, Inc.
865 The Alameda
San Jose, CA 95126
408.550.8528 direct
408.839.8878 cell
mharms@biggscardosa.com

Wage Theft Prevention Bid Certification

(To be executed by Consultant and submitted with proposal)

All Consultants are expected to have read and understand the "Wage Theft Prevention Policy" adopted on July 26, 2017, which can be found at <http://www.morgan-hill.ca.gov/DocumentCenter/View/22921/CP-17-01-Wage-Theft-Prevention>

The undersigned Consultant hereby certifies that Consultant and its principals have ☐ , have

not ☒ been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, State, or local wage and hour laws within the past five years from the date of the submitted bid or proposal. For each disclosed violation, the Consultant shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Consultant's efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the Consultant to the City as a part of its bid or proposal. The City, at its sole discretion, may disqualify a Consultant based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct, and that this certification is executed on 2/7/2022 [date], at

San Jose [city], CA [state].



Signature

Mahvash Harms, PE, SE, Principal

Print Name and Title

Biggs Cardosa Associates, Inc.

Company

1

FIRM QUALIFICATIONS

Biggs Cardosa Qualifications Summary

Biggs Cardosa is a California corporation established in 1986 that specializes in the planning, design, construction management and inspections of bridges, transportation structures, and supporting infrastructure facilities. Biggs Cardosa has focused its engineering practice on leading complex multi-disciplinary transportation projects, for which bridges are a central component and has grown into one of the largest bridge-focused engineering firms in California.

Biggs Cardosa manages all phases of transportation projects for local agencies and Caltrans. We place special emphasis on grade separations and railroad bridges, and we have delivered more than 100 bridge projects over or under heavy rail lines. We have extensive experience with California High Speed Rail Authority (CAHSRA), Caltrain and Union Pacific Railroad (UPRR) and understand what it takes to get projects approved by the railroads.

Biggs Cardosa's capabilities are well matched to the needs of the City. We have all the required technical resources, expertise and capabilities to efficiently deliver this project.

Key aspects of our qualifications include:

- Design of railroad grade separations (Overpass and Underpass) throughout the State - from conception through final design and construction.
- Project Management of multidisciplinary teams on complex transportation projects.
- Coordination with pertinent stakeholders including High Speed Rail, Caltrain, UPRR, CPUC, and others.
- Street and Roadway Improvements, Intersection Improvements, Bridge Overpasses/Underpasses, Freeway Interchanges and Roundabouts.
- Pedestrian/bicycle access solutions improving access, connectivity and safety for pedestrian and bicyclists at railroad stations including UPRR, Caltrain and BART.
- Stations improvements and modifications
- Schedule-driven projects with significant right of way and utility coordination elements.
- Technical visualizations and rendering ability.
- Previous successful partnering with the City of Morgan Hill.

36

years of bridge
design experience

>11k

projects delivered
since 1986

112

employees in
6 California offices

58

registered Civil and
Structural engineers

50+

Grade Separation Projects in
California

>100

Heavy Rail
Bridge Projects

9

Grade Separation projects
with industry awards

>20

Signature Pedestrian/Bicycle
Facilities in California



Bradley Moody Memorial Underpass, Richmond

GRADE SEPARATION EXPERIENCE

Biggs Cardosa’s experience includes over 50 grade separation projects in California, including over 20 with UPRR. Our projects have received multiple **ACEC**, **APWA**, **CMAA**, **ASCE** and **CTF** awards. Biggs Cardosa has worked with **HSR**, **UPRR**, **Metrolink/SCRR**, **BNSF**, **Amtrak**, **Caltrain**, **RPRC**, **PCJPB**, and **BART**. The map below summarizes and illustrates this experience.



EXPERIENCE WITH THE CITY OF MORGAN HILL & OTHER PUBLIC AGENCIES

Biggs Cardosa has been working with the City of Morgan Hill for over 25 years, and has completed nearly 30 projects for the City. In 2021 we performed structural assessment of **Monterey Road (old highway 101) UPRR Underpass** upon the request of the City to address a public concern of the visibly deteriorating condition of this bridge. The project consisted of a site structural assessment inspection and a report summarizing the findings of the assessment. Per the last available Caltrans Bridge Inspection Report dated October 3, 2001, the Union Pacific Rail Road (UPRR) is responsible for maintenance and inspection of superstructure of the bridge and the City of Morgan Hill is responsible for maintenance and inspection of the substructure, including abutments, footings, and retaining walls since Monterey Road was no longer part of the State highway system with the realignment of US 101.



During our 36 years in business, **Biggs Cardosa has provided professional design, consulting and construction management services to over 100 California Public Agencies** including 24 counties, 60 cities and over 20 other agencies (towns, redevelopment agencies, water districts, and transportation agencies). In addition to the City of Morgan Hill, Biggs Cardosa has worked with the City of Gilroy, City of San Jose, City of Sunnyvale, City of Watsonville, Santa Clara Valley Transportation Authority (VTA), Santa Clara County, Monterey County, San Benito County, as well as and Caltrans Districts 1, 3, 4, 5, 6, 7, 8, 10 and 12.

Biggs Cardosa has assisted numerous cities across California with designing and constructing Capital Improvement Projects (CIP) and Public Works (PW) projects. Having an accurate picture of anticipated expenditures over the next five years is critical to allocating funds appropriately. Our resource-loaded schedule provides a month-to-month prediction of planned expenditures and, along with helping the City plan for design expenditures, allows us to track and demonstrate adherence to our approved budget. Extensive local experience and experience with pedestrian undercrossings allows us to correctly estimate construction costs at the start of the project. Our in-house Construction Management group can provide input on the construction schedule so that dollars can be allocated to the appropriate fiscal years.

Coupled with design/construction budgets, our knowledge and experience with various city procedures will help streamline the project. We constantly work with City Staff to make presentations to City Council, Commissions, and we have hosted and participated in Study Sessions that drive crucial project decisions. The Design Services Agreement and Construction & Maintenance Agreement will likely require the review/approval of the City Attorney and City Council. Biggs Cardosa has executed these types of agreements with railroads operating in California, and we can help the City expedite the review/approval process.

CPUC COORDINATION

The California Public Utilities Commission’s Rail Crossing Engineering Section ensures that all rail crossings are designed, constructed, and properly maintained to ensure public safety. Biggs Cardosa has worked on numerous projects that require CPUC coordination and approvals including South Bayfront Pedestrian Bridge over UPRR in Emeryville, Santa Clara Caltrain Station Pedestrian Undercrossing Extension, and numerous grade separation projects throughout the State.

3-D VISUALIZATIONS & RENDERING CAPABILITIES

Biggs Cardosa has successfully used 3-D visualization on a variety of projects to communicate the project’s features to key stakeholders. Our visualizations are delivered using methods ranging from photosimulations and technical illustrations. These graphics have been extremely beneficial for design coordination meetings, public outreach meetings, and City Council presentations. Unlike traditional 2-D graphics, 3-D graphics allow the project to be visualized in a real-world setting, and improve the public’s comprehension of the project.

Our visualizations are more than just pretty pictures. We are able to create the 3-D visualizations in-house and are therefore developed by practicing engineers, instead of artists. The result is a physically accurate 3-D model which can be used for conflict mitigation (e.g. addressing potential conflicts between structures and utilities) and constructability review, among other uses. By using accurate 3-D models, we are able to detect and address issues during design, minimizing RFIs and change orders during construction.



SUBCONSULTANT QUALIFICATIONS SUMMARY

Biggs Cardosa has selected a team of highly qualified, experienced and dedicated subconsultants for this project.



Since 1915, BKF Engineers has earned a reputation for its ability to successfully plan, design, survey, and implement complex projects - delivering inspired infrastructure for over 100 years. They draw upon and utilize their experience, diligently guiding projects from the initial due diligence and feasibility stages, progressing project designs and permitting approvals, and concluding with construction and implementation. This proven approach recognizes that developing dynamic projects is informed by focused team collaboration, mitigating physical constraints and potential risks, and balancing design goals with value engineering solutions. BKF provides civil engineering, land surveying, and land planning services for government and transportation agencies, institutions, developers, design professionals, contractors, school districts, and corporations. They offer a number of specialty services, including agency permit expediting, sustainable infrastructure, complete street design, site accessibility consulting, hydrology/hydraulics, traffic signal and traffic handling designs, utility locating services, automated construction surveying monitoring, and 3D laser scanning.

As one of the largest engineering firms in Silicon Valley, BKF has notable resources with extensive depth of expertise and ability to draw upon diverse services and staff. BKF has successfully managed, designed, and processed complex highway, roadway, and rail projects through their strong blend of civil engineers, transportation engineers, traffic engineers, hydrologists, utility designers, right of way engineers and surveyors who have worked on several notable and award winning rail grade separation feasibility and construction projects throughout the San Francisco Bay Area, including the Kato Road, Warren Avenue and Mission Blvd projects in Fremont; the Navy Drive project in Stockton; the Sunnyvale Avenue and Mary Avenue Grade Separations in Sunnyvale, the City Place Parkway and 2nd Street Grade Separations in Santa Clara, and the Marina Bay Parkway Grade Separation in Richmond.

Biggs Cardosa and BKF have worked on hundreds of successful projects together over the last 36 years. This type of long-running history has proven to be a key element to our success streamlining design efforts and delivering projects on-schedule, on-budget and meeting or exceeding project goals and objectives. We clearly understand each other's roles and expectations and we are often thought of as "sister" companies.

Perkins&Will Founded in 1935, Perkins & Will is an architecture firm with 26 studios and over 2,000 staff members. They believe that design has the power to make the world a better, more beautiful place. That's why clients and communities on nearly every continent partner with them to design healthy, happy places in which to live, learn, work, play, and heal. They are passionate about human-centered design and are committed to creating a positive impact in people's lives through sustainability, resilience, wellbeing, diversity, inclusion, and research. In fact, Fast Company named them one of the World's Most Innovative Companies in Architecture. Their global team of creatives and critical thinkers provides integrated services in architecture, interior design, landscape architecture, and more. Their San Francisco studio uses design to craft the human experience. They believe in a research-based, interdisciplinary approach that creates sites and buildings focused on the people who inhabit them. Located along San Francisco's waterfront, they are more than 70 professionals strong with deep Bay Area roots and the resources of a global firm. A community-focused team, they thrive on projects which contribute to the greater good, and help make a lasting, positive change. For the past four years, they were ranked as one of the top three transit architecture firms by Building Design + Construction Giants 300. They have a great deal of experience in landscape architecture, transportation, and urban design.



JMA Civil, Inc. is a Civil Engineering and Rail Design and Consulting Firm that specializes in Railroad and Transit projects, especially mainline track, at-grade crossing and grade separation projects. Jon Marshall, PE, founded the firm in 2011 to focus on serving public agencies and industrial clients with high quality and innovative design solutions. Previously, he was an Assistant Vice President and project manager for a national transportation AEP firm where he completed over 200 rail-involved projects for freight railroads (primarily Union Pacific Railroad), transit operators, public agencies and rail-served customers. JMA is well-qualified to lead many aspects of rail planning and conceptual and final design, including: shoofly design, separation studies and design, at-grade crossing modifications, grade culvert design and bridge hydraulic analyses,

protection and relocation of utility crossings, maintenance, CPUC coordination, rail operations and alternatives analyses, cost estimating, construction phase services, and feasibility studies. JMA has advised and designed rail improvements for many California transit operators, including: the California High-Speed Rail Authority, ACE, Caltrain, VTA, BART, SMART and Valley Link, both directly and as a subconsultant under the prime designer or design-build contractor. JMA is a California S Corporation with offices in Oakland, CA and Boston, MA. JMA currently has a staff of 17 including 7 licensed civil engineers licensed in California. JMA is certified by Cal DGS as an SBE.



Hexagon Transportation Consultants, Inc. was founded in 1998 in San Jose, California with the goal of providing quality, professional transportation consulting services to private and public entities. Hexagon provides services in all major aspects of transportation planning and traffic engineering. They have built their firm around three fundamental principles. First, they deliver the highest quality work with findings that are double-checked and presented clearly and concisely. Second, they deliver work results when promised. Among their top priorities is delivering their services in a way that ensures the overall scheduling needs of their clients are met. Lastly, they are accessible and responsive. They understand their clients are pressed for time and often faced with the challenge of managing complex projects, so anything they can do to keep the transportation aspects of those projects moving along smoothly is a valued service. Hexagon has 29 employees within its three offices. Hexagon’s professional staff has a broad range of transportation expertise and is experienced in all technical aspects of transportation consulting. This gives them the ability to plan and design a transportation project that will operate as intended when construction is complete and the improvements are brought online. Their traffic engineers and transportation planners are experts in the preparation of traffic impact studies for CEQA analysis, traffic operations studies, queueing studies, long-range travel demand forecasting, traffic simulation studies, signal coordination studies, bike and pedestrian studies, parking studies, accident analyses, and much more. Their design staff has extensive experience in the design of intersection geometrics, traffic signal improvements, traffic signing, and pavement delineation.



PARIKH Consultants, Inc. (PARIKH), established in 1993, is a California Corporation specializing in geotechnical engineering services for public agencies, (self-help measure counties, Caltrans), cities, and local municipalities. PARIKH employs around twenty highly skilled and dedicated engineers, geologists, technicians, and administrative personnel. PARIKH has successfully delivered more than 1,400 projects throughout

California, with both local and federal funding sources, including services for transit, transportation, and public works projects. Typical projects include public works and associated infrastructure elements. PARIKH’s projects have received more than 40 engineering excellence awards from local and state agencies, including American Council of Engineering Companies (ACEC), American Public Works Association (APWA) and California Transportation Foundation (CTF). PARIKH offers a laboratory testing facility in Milpitas, CA to perform tests according to ASTM and CTM guidelines. The lab is accredited under the AASHTO Materials Reference Laboratory (AMRL) program and is certified by Caltrans. PARIKH’s principals are experienced in design build, rail, public works and infrastructure projects, with an excellent reputation for high-quality services and an ability to maintain cost-effective operations. Cross-functional expertise coupled with years of dedication to geotechnical services have made PARIKH’s knowledge unparalleled within the industry. The PARIKH team excels in client services by consistently meeting schedules, budgets, and project requirements.



DJP&A has been preparing environmental documents in California, and particularly, the Bay Area since 1972. DJP&A has extensive experience completing State and Federal environmental review for complex and controversial public sector infrastructure projects that require coordination with numerous regulatory agencies and conformance with CEQA and NEPA requirements. DJP&A’s clients have included

local City, County, and State agencies, numerous private developers, and school districts. The firm has offices in San Jose and Oakland. DJP&A is a CUCP-certified woman-owned UDBE and DBE. DJP&A has worked on projects with jurisdictions throughout San Mateo County on both public and private sector clients. Their recent CEQA/NEPA work with local Lead Agencies include projects in Daly City, South San Francisco, San Bruno, Half Moon Bay, Burlingame, San Mateo, Redwood City, and East Palo Alto. Notable infrastructure projects include the Main Street Bridge Rehabilitation in Half Moon Bay, Coastal Trail Crossing at Pilarcitos Creek in Half Moon Bay, Bermuda Drive Bridge Replacement in San Mateo, and Grand Boulevard Improvements Phase 3 in South San Francisco. DJP&A has worked with Biggs Cardosa on over 35 projects.

HIGH SPEED RAIL PROJECT, SAN JOSE TO SAN FRANCISCO

SAN FRANCISCO TO SAN JOSE, CA



PROJECT DESCRIPTION

Biggs Cardosa provided structural engineering design services for one of the nine segments that extends from the new Transbay Terminal in San Francisco to the redeveloped station at Diridon in San Jose. While this segment is the shortest at around 50 miles, it is recognized as one of the most challenging due to the existing infrastructure and developments along the narrow corridor. The new High Speed Rail alignment will follow the existing Caltrain alignment, and as part of the project, all of the existing at-grade crossings will be grade separated and the existing lines will be electrified.

Biggs Cardosa was responsible for the structural design of the replacement and new grade separations for the southern 17 mile portion that extends through Sunnyvale, Santa Clara and San Jose. **The alignment and structural design were developed to a 30% level** so that the Environmental Impact Report can be completed. Three alternatives of the vertical and horizontal rail alignments were developed to study the relative merits of the new tracks being at-grade, below grade or above grade at various locations. Structures designed by Biggs Cardosa included:

1. Redevelopment of Diridon Station, which will consist of the new High Speed Rail platforms and tracks approximately 60 feet above the existing Caltrain tracks and the historic platforms. There will be a mezzanine level between the two platform levels to provide passenger circulation.
2. Replacing three existing road bridges and two existing pedestrian bridges over the existing rail corridor to provide increased vertical and horizontal clearance.
3. Widening or replacing four existing rail bridges.
4. Replacing two existing road bridges with underpasses below new rail bridges.
5. Designing three new viaducts for two and four new High Speed Rail tracks, at up to 60 feet above grade and extending over 8.5 miles.

We have also completed evaluations into the preliminary design of a new four track trench within a narrow corridor. Preliminary construction sequencing was developed that would maintain two of the four tracks active during construction.

Firms Involved:

- Biggs Cardosa: structural engineering design to 30%

Relevance:

- Grade Separations
- Bay Area Location
- Pedestrian Facilities

Cost

Transbay Terminal:
\$3,000,000,000

Subsections 8 to 9:
\$827 Million

HIGH SPEED RAIL PROJECT, CENTRAL VALLEY SEG D/B (CP2-3)

FRESNO, CA TO TULARE/KERN COUNTY, CA



PROJECT DESCRIPTION

The California High Speed Rail project is the largest infrastructure project in the nation and is planned to operate trains at more than 200 miles an hour over 800 miles of new tracks. The project will be the first high speed rail project in the Country, and will transport passengers more efficiently, safely and with less environmental impact than other forms of transportation. Biggs Cardosa has been involved in several segments of the project, including the Central Valley Segment.

For this segment, Biggs Cardosa is the Independent Checking Engineer (ICE)/ Independent Site Engineer (ISE) for Construction Package 2-3 (CP 2-3). This contract stretches over 60 miles through the Central Valley from just south of Fresno to just north of the Tulare/Kern county line.

To address a recurring quality issue on many California D/B projects, which is believed to be caused at least in part by lax quality control and assurance by what is traditionally a Contractor-procured Quality Team (classic conundrum of fox guarding the chicken coup), the Authority deviated from the standard D/B model for this contract, and extricated the independent check function from the Design/Builder and moved it to the PCM's.

Biggs Cardosa was contracted by the PCM explicitly to fulfill this function on the Project. Biggs Cardosa's responsibilities as the Project's ICE including reviewing and recommending the disposition for all Technical Design Submittals, performing full independent structural design calculations for over 50 high-speed rail and roadway bridge structures along or over/under the alignment, and identifying, checking, and tracking that each structure will be in compliance with the project's design criteria.

Many of the submittals in this segment also required Caltrans oversight, or approval by BNSF and/or the jurisdictions in which the bridges are located.

Firms Involved:

- Biggs Cardosa: Independent Check, Independent Site Engineer

Relevance:

- Grade Separations
- Bay Area Location
- Feasibility/Alternative Studies

Year Completed

2022 (est.)

Cost

\$2,200,000,000

BRADLEY A. MOODY MEMORIAL UNDERPASS (RPRC/BNSF)

RICHMOND, CA



PROJECT DESCRIPTION

This project consisted of a feasibility study, final design and construction support services to separate railroad traffic from vehicular traffic in the City of Richmond. Due to growing business development and train traffic along this railroad segment, which is used by Richmond Pacific Railroad Corporation (RPRC) and BNSF Railway Company, a grade separation was needed to relieve congestion and delays at the existing railroad crossing.

BKF Engineers (BKF) was appointed by the City of Richmond to provide the Feasibility Report and PS&E for the Marina Bay Parkway Grade Separation Project which included the civil engineering design, right of way engineering and surveying. Biggs Cardosa performed structural feasibility studies on six undercrossing and overcrossing alternatives at various site locations in the area. An undercrossing alternative along Marina Bay Parkway was selected for final design. The project was completed and opened to traffic in 2015.

The grade separation consisted of lowering a 900-foot long by 80-foot wide roadway under a RPRC/BNSF track. The lowered roadway, with excavation depths reaching approximately 30 feet, is supported by retaining walls on both sides. The wall system includes cement deep soil mix (CDSM) walls reinforced with steel soldier piles and tiebacks, and cast-in-place concrete cantilever walls. The wall system also includes underground concrete compression struts between the walls. Rail traffic crosses over the lowered portion of Marina Bay Parkway via a 103-foot long by 34-foot wide, two-span steel beam bridge. The new bridge was designed to accommodate the existing track and a future track. Due to railroad and vehicular traffic operation requirements, the lowered roadway had to be constructed in stages, from the top down. Since the site is located in close proximity to a 9-track railroad switch yard with heavy train volume, maintaining railroad operations to the fullest extent was a key priority. With close coordination with RPRC/BNSF, the railroad bridge including all bridge supports were effectively installed over four weekend closures. Biggs Cardosa provided railroad coordination support and structural engineering services.

This project received an Honorable Mention Award from CMAA in the Category of Transportation for projects with a construction cost greater than \$10M.

Firms Involved:

- BKF: Prime Consultant, Civil
- Biggs Cardosa: Structural Engineering

Relevance:

- Grade Separations
- Bay Area Location
- Feasibility/Alternative Studies

Year Completed
2015

Cost
\$35,000,000

Reference

Chadrick Smalley
City of Richmond
440 Civic Center Plaza,
Richmond, CA 94804
510.307.8140
chadrick_smalley@
ci.richmond.ca.us

KATO ROAD, DIXON LANDING ROAD, WARREN AVENUE & MISSION BLVD GRADE SEPARATIONS

FREMONT AND MILPITAS, CA



PROJECT DESCRIPTION

As a part of the BART extension to San Jose, Biggs Cardosa performed as the Structural Design Lead for the SVBX Northern Area Guideway project. Among other structural tasks, SVBX included four major Grade Separation in the cities of Fremont and Milpitas at Mission Blvd, Warren Ave, Kato Road, and Dixon Landing Road, and the relocation of over six miles of UPRR tracks.

The grade separations and the UPRR track relocation were needed to extend the BART tracks into San Jose along the west side of the UPRR corridor. Each of these four grade separation projects initially consisted of depressing the roadways beneath the UPRR/BART tracks and constructing at least two underpass structures for each of the UPRR and BART tracks.

At Mission Blvd, the existing UPRR Underpass was replaced and the depressed roadway widened with new soil nailed retaining walls. At Warren Ave, Kato Road and Dixon Landing Road, the projects depressed the roadway with Deep Soil Mix (DSM) walls, and also included a third bridge structure for UPRR access vehicles.

All structures required close coordination with UPRR in order to minimize track closures. Kato Road and Warren Avenue were closed during construction. Both projects required the tracks to be raised 8". All four projects also required extensive stage construction.

The bridges at Kato and Warren were supported on DSM abutments and pier walls, which utilized steel soldier pile deep foundations that enabled top-down construction, reducing shoring costs and impacts to UPRR. All BART bridges and UPRR access bridges consisted of cast-in-place prestressed concrete box girders.

The Mission/Warren/Freight Railroad Relocation Program received the APWA Silicon Valley project of the year award and the 2016 ASCE (San Francisco Section) Transportation Project of the Year award.

Firms Involved:

- Biggs Cardosa: Structural Engineering
- BKF

Relevance:

- Grade Separations
- Bay Area Location
- UPRR/BART

Year Completed
2013

Cost
>\$75,000,000 (combined)



BROADWAY BURLINGAME GRADE SEPARATION

BURLINGAME, CA



PROJECT DESCRIPTION

Biggs Cardosa is providing structural engineering services for the design of the Broadway Burlingame Grade Separation. The existing at-grade crossing at Broadway has documented safety and mobility issues. Since 2015 there have been more than 10 collisions involving trains and vehicles or pedestrians. The crossing also experiences high volumes of vehicles and trains at the crossing resulting in significant down time and congestion. This new grade separation will benefit Caltrain, the City, transit riders and residents.

The project includes raising the Caltrain tracks approximately 18 ½ feet and lowering Broadway approximately 6 feet to accommodate a grade separation. The project will include a new raised station platform with connections from the street level to the center of the platform, a new parking structure on the east side on Carolan Avenue and new grade-separated pedestrian overcrossing.

To accommodate construction, natural drainage channels will need to be relocated; the existing tracks will need a shoofly with a temporary at-grade crossing at Broadway; right of way will need to be acquired, with retaining walls constructed to minimize impacts; and major utilities in the roadway will need to be lowered or relocated.

Firms Involved:

- Biggs Cardosa: Structural Engineering

Relevance:

- Grade Separation
- Bay Area Location
- Caltrain
- Pedestrian design elements

Year to be Completed
2023 (est.)

CALTRAIN SANTA CLARA STATION PUC EXTENSION

SANTA CLARA, CA



PROJECT DESCRIPTION

The Santa Clara Valley Transportation Authority (VTA) proposed to construct a pedestrian undercrossing extension at the Santa Clara Caltrain Station. The structure serves as a connection to the new Caltrain station platform and extends the undercrossing that is currently being constructed by Caltrain. The structure extends the Caltrain undercrossing to the east and below the existing Union Pacific Railroad (UPRR) tracks, and provides access to the Santa Clara Caltrain Station from Brokaw Road. Biggs Cardosa Associates was the prime consultant responsible for the project management, structural design and the coordination of a team of subconsultants in providing the VTA with concepts, preliminary design, engineering reports, construction schedule, full PS&E package, construction support services and support services in coordination with UPRR.

The project involved the design and construction of two integral components to be able to provide the desired access: an undercrossing extension and a ramp walkway that connects the undercrossing to Brokaw Road, east of the UPRR tracks.

Numerous concepts were developed to study various alignments and construction types. They included PUCs, overpasses, DSM walls with precast roof slabs and concrete lining, CIP tunnels and ramps, and precast tunnel segments.

The undercrossing was constructed using precast concrete tunnel segments, and cast-in-place (CIP) concrete wall lining with architectural finishes to match existing tunnel in addition to topping slab and closure rings at the tunnel ends. The undercrossing extension is approximately 83 feet long with interior dimensions of 16 feet wide and varying vertical clearances. The ramp is approximately 250 feet long with varying width and stem wall heights. The ramp was constructed with CIP concrete and features architectural planters along a reverse-curved alignment.

Firms Involved:

- Biggs Cardosa: Prime Consultant,
- PARIKH

Relevance:

- Pedestrian Undercrossing at Caltrain/UPRR Tracks
- Biggs Cardosa - Prime
- Rail Coordination
- Station Improvements/Modifications
- Utility Coordination
- Multi-agency Coordination

Year Completed
2017

Cost
\$13,800,000

Reference
Mohamed Basma
VTA
408.546.7939

Numerous factors had to be taken into consideration with respect to the construction of both of these structures that includes, but were not limited to, railway operations and limitations, geologic conditions, future proposed BART station to the northeast of the existing UPRR tracks, the current Caltrain undercrossing project parameters, constructability aspects, code compliance, client safety concerns, existing and proposed utilities, architectural/aesthetic issues, and project cost and schedule.

Construction schedule included a four-day shutdown (over Thanksgiving weekend 2016) of all tracks for the installation of precast concrete tunnels segments.

During the 4 day rail shutdown over Thanksgiving 2016, a portion of three rail tracks were removed while a precast concrete underpass was installed in an open trench. The Biggs Cardosa Project Manager was on site for most of the period from the end of the initial excavation until the underpass had been installed and waterproofed and backfilling had commenced. He was able to provide technical input and assist in resolving issues as they arose to keep critical activities on schedule during the shutdown. One example was the placement of the first of the fourteen precast concrete segments. Since all tunnel segments would be aligned with the first segment that was set, the alignment of that first segment was critical. Weighing more than 95,000 pounds and at the extreme reach of the crane, the precise location and alignment of first 5-feet long segment was adjusted numerous times over a six hour period, significantly longer than planned. With knowledge of the project constraints including minimum ramp lengths, our Project Manager was able to review impacts and determine that changes could be made to the ramp layout to accommodate the projected misalignment. The alignment of the first concrete segment was approved without further adjustment allowing construction to proceed and the tracks to be re-installed and restored to service on schedule.

This project has received the following awards:

2019 APWA National: American Public Works Association Project of the Year for 2019 in the category of Transportation \$5 million but less than \$25 million

2018 ACEC California Golden State Award

2018 ACEC California Honor Award in the Structural Systems Category

2018 APWA California Project of the Year Award

2018 CTF Transportation Award in the Pedestrian/Bicycle Category

Silicon Valley Business Journal: Silicon Valley Structures 2017: Public/Civic Project of the Year

Funding Sources: The \$13.8M project cost will draw from



Measures A and B, The City of San Jose, State and Federal Sources, Safe Routes to Transit (funded by Bay Area Bridge Tolls), the Transportation Fund for Clean Air (State Fund), and Hunter Properties.

WARM SPRINGS BART PEDESTRIAN ACCESS BRIDGE & ENTRY PLAZA, FREMONT, CA



PROJECT DESCRIPTION

This new pedestrian and bicycle bridge crosses over the five sets of Union Pacific railroad tracks and connects the Warm Springs BART station to a new public plaza and the growing Fremont Innovation District. In 2013, Biggs Cardosa was the prime consultant responsible for the feasibility study and conceptual design of the Warm Springs BART West Access Bridge and Plaza. Subsequently in 2015, the Biggs Cardosa team was selected by the City of Fremont to provide final design services for the project.

The project consists of an iconic pedestrian bridge spanning the UPRR mainline west of the new Warm Springs BART station, an entry plaza that connects the bridge to planned transit-oriented development, a UPRR spur track relocation, utility relocations, and preliminary design studies that will outline infrastructure improvements to the new development area.

The Warm Springs BART pedestrian bridge and plaza are an integral part of the City of Fremont's vision to enhance the pedestrian environment and create an urban neighborhood. This signature bridge and plaza project will provide a vital pedestrian/bicycle link which will demonstrate the City of Fremont's commitment to creating a transit-oriented, connected urban environment, enhancing pedestrian experience and accounting for the new demographic.

Remaining work to open the bridge includes integrating BART station infrastructure related to safety, security, electrical, and mechanical systems. Following which the project coordinator and BART will conduct inspection, testing, and training.

The total project cost is \$41 million. Preconstruction, planning, design, and utility relocation work was funded by the City of Fremont (\$11 million). The construction cost of \$30 million is funded by the Alameda County Transportation Commission.

Firms Involved:

- Biggs Cardosa: prime consultant
- BKF
- PARIKH

Relevance:

- Pedestrian Bridge and Plaza
- Bay Area Project
- Facility over BART and UPRR Tracks
- Railroad Coordination
- ADA Compliance
- Extensive Renderings during design phase

Year Completed

January 2022

Cost

\$41,000,000

SOUTH BAYFRONT PEDESTRIAN BICYCLE BRIDGE

EMERYVILLE, CA



PROJECT DESCRIPTION

The centerpiece of the South Bayfront Pedestrian Bridge Project is a bicycle and pedestrian bridge over the Union Pacific Railroad tracks in the City of Emeryville. The project includes design of the main bridge structure, access ramps, stairs, and landscaping, as well as community outreach, stakeholder coordination and permitting for all elements of the project.

The bridge and ramps accommodate bicycles and pedestrians, and will be ADA-compliant. The 230-foot long main bridge is a tied single arch structure that will span across nine UPRR tracks. This bridge is designed for construction over UPRR tracks within a very limited track closure window. Over 1000 feet of ramps will be required for the bridge approaches. The west ramp is a switch-back ramp that connects to the Bay Street shopping center. The west ramp is adjacent to the mall's parking structure within a 30-foot setback from the UPRR property line. The east ramp will connect to the proposed Horton Landing Park. Both ramp structures are cast-in-place concrete structures. The project also includes access stair structures on each side of the railroad corridor for pedestrian access to the main bridge.

Public Outreach: Biggs Cardosa, along with our lead architect, led participatory public workshops, or "charrettes", during all phases of planning and design. During type selection and preliminary design, Biggs Cardosa's team developed comparative exhibits and simulations of a range of signature bridge types including single and double tied arches, trusses, and single and twin-tower cable-stayed spans. These exhibits and simulations were critical elements in the participatory type selection and conceptual design process.

Union Pacific Railroad Coordination and Permits and Utility Relocation Design/Coordination: Biggs Cardosa team performed all the services to obtain the required permit, including UPRR and CPUC. Our team also performed the design coordination effort services for many impacted utilities within and outside the UPRR and City right-of-way.

Firms Involved:

- Biggs Cardosa: prime consultant, structural engineering
- PARIKH - Geotechnical
- David J. Powers - Environmental

Relevance:

- Pedestrian Bridge and Plaza
- Bay Area Project
- Facility over BART and UPRR Tracks
- CPUC Coordination
- Railroad Coordination
- ADA Compliance
- Public Outreach
- Extensive Renderings during design phase

Year Completed
2021

Cost
\$31,000,000

Reference
Todd Teachout,
City Engineer
City of Emeryville
510.596.4334
tteachout@emeryville.org



17TH STREET GRADE SEPARATION (SCRRA)

SANTA ANA, CA



PROJECT DESCRIPTION

The Orange County Transportation Authority (OCTA) and the City of Santa Ana, in coordination with Caltrans District 12, proposes to grade separate the existing at-grade crossing of 17th Street with the Metrolink Southern California Regional Rail Authority (SCRRA) double tracks in the City of Santa Ana. The project proposes to construct a railroad underpass to carry the SCRRA double tracks over 17th Street, lowering the existing grade of the roadway by approximately 20.5 feet and raising the railroad profile by approximately 2 feet.

Biggs Cardosa was responsible for developing the structural concepts and cost estimates for inclusion in the Project Report Equivalent (PRE). Close coordination with the City of Santa Ana and SCRRA was required. Biggs Cardosa’s structural concepts met SCRRA’s requirements, and included aesthetic features to satisfy City requirements. Rolled steel beams with precast concrete fascia panels are specified for the railroad bridge over the lowered portion of 17th Street. The use of steel beams satisfies SCRRA’s requirements, and the precast concrete fascia panels are used to improve the aesthetics of the Underpass structure. A series of secant pile walls and cantilevered cast-in-place walls are used along the lowered portion of 17th Street. Retaining walls will also include aesthetic treatment.

The PRE and associated conceptual plans and cost estimates, along with obtaining environmental clearance, will setup OCTA to prepare final design documents.

Firms Involved:

- Biggs Cardosa:
Structural Engineering

Relevance:

- Grade Separation
- PSRE

Year to be Completed

2016

Cost

\$55,000,000 (est.)

ACE FULLERTON ROAD GRADE SEPARATION (UPRR)

CITY OF INDUSTRY, CA



PROJECT DESCRIPTION

Biggs Cardosa is the Prime Consultant on the \$204.1 million Fullerton Road Grade Separation Project, the largest and most complex of ACE’s Phase II grade separations. To minimize impacts to adjacent properties, the mainline UPRR will be raised by 8.5 feet using T-Walls, and Fullerton Road will be lowered 16 feet under the existing tracks. The project includes the grade separation of Railroad Street, which runs parallel to the UPRR tracks on the north, from Fullerton Road.

Plans call for constructing a six-lane roadway underpass on Fullerton Road with retaining walls, a new railroad bridge, a new roadway bridge and a new pedestrian bridge, which was an innovative solution to address ADA concerns. This complex project also includes addressing impacts to the adjacent properties and numerous utilities.

Biggs Cardosa’s services included the management of all design components, including structures, railroad and shoofly, staging, civil and roadway, drainage, utility relocations, signal, geotechnical, surveying, pump station, constructability and right-of-way engineering. The design will reduce right-of-way acquisitions. Biggs Cardosa spearheaded difficult approvals through the rail agency to support the raising of the railroad tracks, and to obtain approval of complex but effective construction staging, that included shooflies and impacts to industry lead tracks.

To address the numerous utilities involved in the project, Biggs Cardosa produced 3D models of all structures and utilities to show where they conflicted. Biggs Cardosa provided successful public outreach support with renderings of each location to show how each property would be affected by the project. These renderings were instrumental in gaining support for the project from many of the impacted properties.

Firms Involved:

- Biggs Cardosa: Prime Consultant, Project Management, Structural Engineering

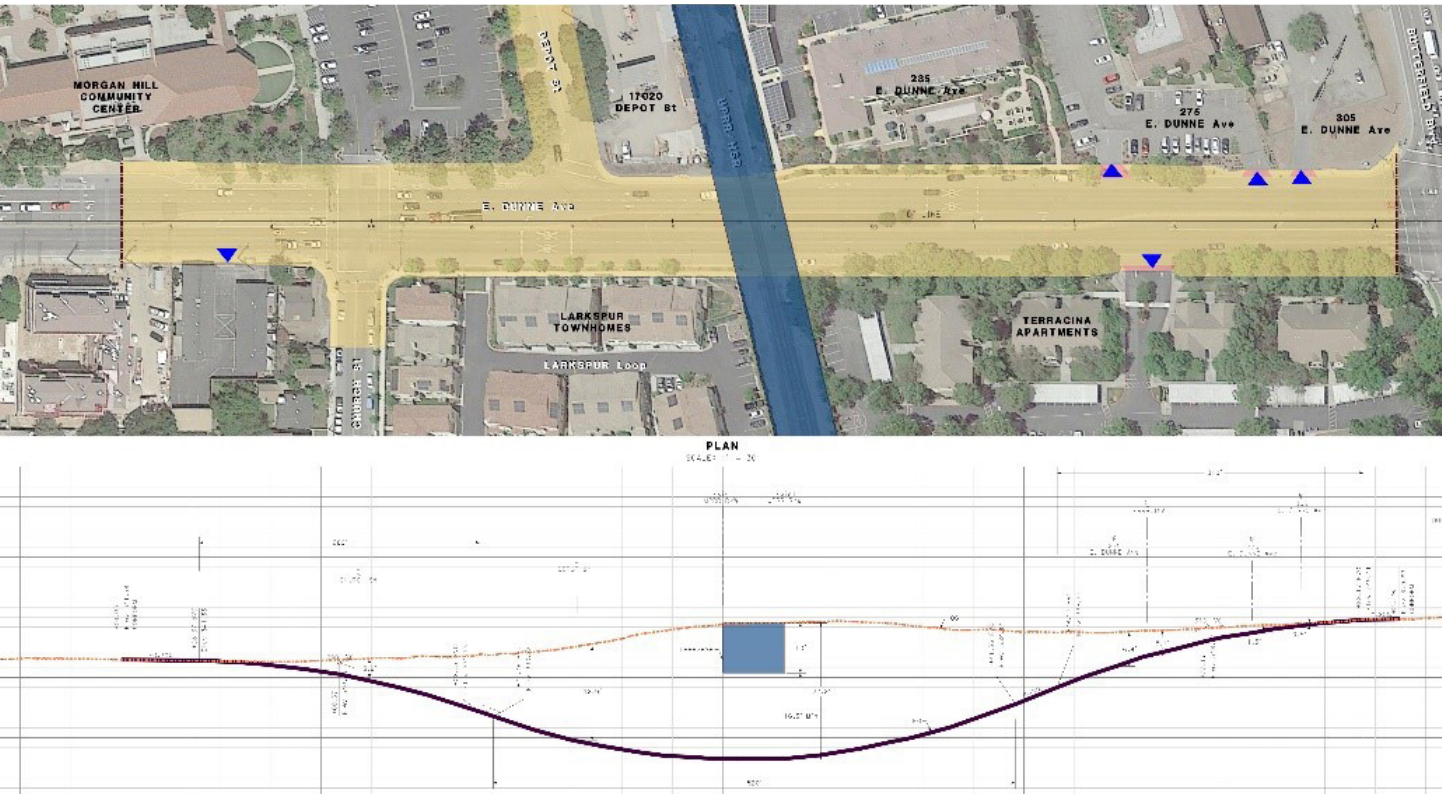
Relevance:

- Grade Separation
- Biggs Cardosa - Prime
- Rail Coordination
- Utility Coordination
- Multi-agency Coordination
- Extensive Renderings during design phase

Year to be Completed
2023 (est.)

Cost
\$204.1 M

MORGAN HILL/SAN JOSE - MERCED HSR DRAFT EIR/EIS SUPPORT
CITY OF MORGAN HILL, CA



PROJECT DESCRIPTION

BKF provided civil engineering support services to assist the City of Morgan Hill (City) to evaluate the California High Speed Rail (HSR) alignments proposed in the Draft Environmental Impact Report (EIR) for the San Jose-Merced segment. BKF’s responsibilities included the review of the UPRR rail crossings at E. Dunne Avenue and Tennant Avenue that crosses the proposed HSR alignment in Downtown Morgan Hill. Additionally, BKF assisted Perkins & Will and David J. Powers & Associates with the review of the HSR alternative alignments, especially at the rail crossings at City street intersections, to ensure that refinements suggested for City’s consideration to forward to the HSR Authority would be peer reviewed and thus were based on a solid engineering foundation. BKF prepared grade separation exhibits for the HSR crossings at E. Dunne Avenue and Tennant Avenue as well as performed civil engineering review of the pedestrian undercrossing for the Morgan Hill Caltrain Station. BKF attended team meetings and contributed to various topics including safety, emergency response time, pedestrian, bicycle and vehicular access, drainage, utilities, and right of way impacts. BKF worked with the City’s team in making recommendations to the HSR Authority on potential refinements that would improve the alignments and provide a safer facility to the community from the City’s perspective.

Hexagon provided review the High-Speed Rail EIR. The EIR includes 4 alternatives for the rail tracks. It was determined that some of the alternatives would create impacts to the transportation system in Morgan Hill. All alternatives would create impacts during construction. Hexagon evaluated AM and PM peak-hour intersection levels of service at key intersections for projected long-range traffic conditions with and without the HSR project under all project alternatives. Projected maximum peak-hour vehicle queues for proposed at-grade crossings were also evaluated. Impacts on property access and on bicycle, pedestrian, and transit circulation were evaluated for each of the project alternatives, as well as potential short-term traffic impacts due to the construction of the various alternatives.

Firms Involved:

- BKF
- Perkins & Will
- Hexagon
- David J. Powers

Relevance:

- City of Morgan Hill Project
- Studies & Reports for this project location

Year Completed

2020

Cost

\$10,000 Contract

Reference

Tiffany Brown
City of Morgan Hill
408.310.4655

CALTRAIN GRADE SEPARATIONS FEASIBILITY STUDY
CITY OF SUNNYVALE, CA



PROJECT DESCRIPTION

The VTA Measure B program included the funding of 8 grade separation projects along the Caltrain corridor in the cities of Sunnyvale, Mountain View and Palo Alto with the intent to separate the Caltrain tracks from roadways to provide increased safety benefits for drivers, bicyclists and pedestrians; to reduce traffic congestion at the adjacent intersections; and to incorporate Complete Streets design features.

BKF Engineers (BKF) assisted the City of Sunnyvale (City) with developing detailed grade separation alternative designs and an assessment of impacts and requirements for 2 new grade separation locations at major east-west arterials: Sunnyvale Avenue and Mary Avenue. The new grade separations are vital to the City objectives of increasing the attractiveness of the downtown area for businesses and residents. The current situation with at-grade crossings essentially blocks east-west traffic flow, creates an offensive noise disturbance when passing trains sound horns and crossing gate bells ring, and presents a continual risk of dangerous accidents when vehicles or pedestrians are crossing the tracks.

The grade separation design alternatives were configured as either roadway overpasses or underpasses, permitting safe and efficient flow of multimodal traffic in and out of the downtown area to other key City locations and to US 101. The design of the grade separations additionally took into consideration future track improvements such as the electrification of the Caltrain system and the High Speed Rail running along the Caltrain tracks. The two grade separations locations had site-specific features that affected the design configurations and impacts, such as their relative adjacency to Evelyn Avenue and the Sunnyvale Caltrain Station, maintaining accessibility to local businesses and residences, the relocation of major utilities and the right of way needs. At the conclusion of the design work, assessment of impacts and public outreach, the results were presented to the City Council and a feasibility study drafted identifying the preferred alternatives so that the project can proceed to the environmental and PS&E phases of work.

Firms Involved:

- BKF
- Biggs Cardosa

Relevance:

- Rail Coordination

Year to be Completed

2022

Cost

\$432,000,000

Reference

Angela Obeso
Principal Transportation
Engineer
City of Sunnyvale
408.730.7557

ANALYSIS OF CA HIGH SPEED RAIL ALIGNMENT OPTIONS

CITY OF MORGAN HILL, CA



PROJECT DESCRIPTION

Perkins & Will provided urban design and placemaking expertise in order to support the City of Morgan Hill’s efforts to review and comment upon proposed alignments for California High Speed Rail.

The team assessed all proposed alignments by how well they aligned with the City’s planning vision and goals, evaluated their impacts on the downtown environment and future economic vitality, and identified mitigation measures focusing on the preferred alignment recommended by the California High Speed Rail Authority.

A conceptual design study was conducted on impacted areas near Morgan Hill’s downtown. This study focused on safe grade-separated crossings and public-realm improvements designed to provide continuous access to pedestrians, cyclists, cars, and emergency vehicles across the High Speed Rail corridor.

Firms Involved:

- Perkins & Will

Relevance:

- CA High Speed Rail project
- Rail Alignment Options Study

ATLANTA BELTLINE CORRIDOR DESIGN AND TRAILS

CITY OF ATLANTA, GA



PROJECT DESCRIPTION

Perkins & Will co-designed the popular Atlanta Beltline Corridor and Trails, transforming an abandoned industrial railway with uncooperative old land with unmarked utilities and buried objects into a thriving hub for pedestrian and bicycle traffic. The Beltline provides a 22 mile path that connects housing units, business units, and train stations.

Perkins & Will guided the Corridor Design, Eastside Trail, and Westside Trail from initial guidelines to real-world execution under extremely tight deadlines.

Today, more than a million people use the Eastside Trail alone. From large civic events like the Lantern Parade that pumps more than 10,000 enthusiastic people through its arteries to informal art strolls by individuals, the BeltLine is host to a true cross section of the city—a society on its way to work, shop, school, and social events—happily enjoying the company of each other. Best of all, no one entity can control it. It belongs to everybody.

Since 2005, more than 50 projects representing more than \$2.4 billion in private investment have taken shape around the Atlanta BeltLine, with \$638 million in new development along the Eastside Trail alone. Ponce City Market, once an empty hull, stands as a marquee example for reuse, while bordering neighborhood businesses and restaurants have reoriented themselves toward the trail to take advantage of the heavy foot traffic.

The project received numerous awards, including:

Building Healthy Places Award, Urban Land Institute, Atlanta, 2015

Honor Award, Tri-State ASLA, 2014

Award of Excellence, Georgia ASLA, 2014

Overall Excellence in Smart Growth Award, US Environmental Protection Agency, 2014

Firms Involved:

- Perkins & Will

Relevance:

- Pedestrian/bicycle corridor

CA HIGH-SPEED RAIL AUTHORITY CP1 UPRR SHOOFLY

CITY OF FRESNO, CA



PROJECT DESCRIPTION

Construction Package 1, a 32-mile stretch between Madera to Fresno, was the first significant construction contract executed for the high-speed rail program. This package includes 12 grade separations, two viaducts, one tunnel, a major river crossing, and the realignment of State Route 99.

Jon Marshall was the Rail Design Manager for the Tutor/Perini/Zachry/ Parsons joint venture for the design of the three shooflies of the Union Pacific Railroad (UPRR) mainline in Fresno, including at Downtown, Westside Wye and Herndon. These 3 shooflies, totaling over 14,000 feet of new track, enable the construction of four underpasses of UPRR required for establishing the high-speed train alignment adjacent to UPRR through Fresno. The work has involved substantial interface with UPRR design criteria and standards and engagement with UPRR staff and consultants to identify the specific constraints at each crossing and develop effective solutions to these constraints that meet UPRR criteria and construction phasing, staging and methods that minimize impacts to UPRR to the greatest extent possible.

Due to very significant UPRR concerns with the preliminary design for the Westside Wye shoofly presented in the environmental document, Jon led an alternatives analysis including significant engagement with UPRR that resulted in a consensus for a feasible approach for the final design that simplified the construction phasing of the highly spaced constrained site. The JMA team was also engaged by TPZP to prepare other elements of the design related to UPRR, including modifications to 2 temporary at-grade crossings and 1 permanent reconfigured crossing. JMA also designed and coordinated numerous utility relocations and special protections required by the shooflies, for Kinder Morgan and PG&E facilities.

Firms Involved:

- JMA Civil

Relevance:

- Rail Coordination

Year to be Completed
2022, ongoing construction

Cost
 \$50 M

Reference

James Labanowski, PE,
 Railroad/Utility Manager
 California High-Speed Rail
 Authority
 James.labanowski@hsr.
 ca.gov
 916.669.6634

CA HIGH-SPEED RAIL AUTHORITY CP4 BNSF SHOOFLY

CITY OF WASCO, CA



PROJECT DESCRIPTION

Supporting the design-build contractor, California Rail Builders, JMA has led the design of two adjacent shooflies of BNSF mainline for Construction Package 4 in Wasco. JMA developed the at-grade alternative technical concept during tender phase that avoided the expensive and impactful BNSF viaduct structure through Wasco shown in the environmental and base bid documents. Working closely with BNSF, a single long shoofly was modified to two shorter shooflies, eliminating impacts to the BNSF Wasco yard and adjacent Amtrak station, significantly reducing overall costs, enabling a more flexible construction plan and gaining BNSF's consensus for the project.

In addition to designing over 23,000 feet of new mainline and shoofly tracks, JMA has coordinated all utility relocation submittals with BNSF (45 applications approved or pending), designed 10 miles of access roads within BNSF ROW, designed a long, deep bore relocation of Level 3/Century Link fiber line through Wasco, and led the CPUC applications for 14 new and modified crossings. JMA additionally performed independent technical review of the HST and associated project drainage for a 3+-mile segment through Wasco. BNSF approved the 100% submittals in early 2019 and substantial construction is underway with completion of the Poso shoofly expected in 2022.

At the 2019 general session of the American Railway Engineering and Maintenance of Way Association (AREMA), Jon Marshall co-presented with Michael Keating of BNSF and Antonio Canete of California Rail Builders the strategy the team developed for addressing the challenging technical considerations associated with the shooflies, and the team's collaborative approach that achieved BNSF approvals in under 24 months, from alternatives analysis to structure and shoofly 100% approvals.

Firms Involved:

- JMA Civil

Relevance:

- Railroad Coordination

Year to be Completed

2022, ongoing construction

Cost

\$20 M

Reference

Michael Keating, Manager of Engineering
BNSF Railway
4006 E. Vine Ave.
Fresno, CA 93725
michael.keating@bnsf.com

ADDITIONAL RELEVANT PROJECTS

To better illustrate our team's depth of experience with grade separation projects, as well as our previous successful experience working together, we have included examples of a few additional recent projects:



Mount Vernon Viaduct at BNSF Intermodal Yard, SBCTA

Firms: Biggs Cardosa | **Services:** Program and Construction Management (PCM)

The scope of the Biggs Cardosa-led team consists of supporting SBCTA in managing all phases of the D/B contract to replace an aging 1,000-foot-long bridge spanning over 22 BNSF and Metrolink tracks across the San Bernardino BNSF Intermodal Yard. The cost of the project is estimated at \$140M and it is currently under construction.



G Street / BNSF Underpass, Merced

Firm: Biggs Cardosa | **Services:** Full Design and CM

Biggs Cardosa led the design team of the G Street Underpass. The project provided the City of Merced with its first grade separation of this heavily used rail corridor, improving safety, reducing noise and travel details, and providing reliable route for the City's emergency services. *This project received the 2012 ACEC California Honor Award in Engineering Excellence in the Transportation category.*



Hamilton Station Pedestrian Overcrossing, Campbell

Firm: Biggs Cardosa | **Services:** Structural Engineering

Part of VTA's Vasona Light Rail Project, this signature arch structure spans the UPRR line to connect the Hamilton Station Plaza with the elevated station platform. *This project received the ACEC 2007 Merit Award for Engineering Excellence.*



Tustin Ave / Rose Dr / BNSF Grade Sep., OCTA

Firms: Biggs Cardosa | **Services:** Full Design

Biggs Cardosa managed and designed one of five grade separation projects for OCTA's Bridge Program. The project included an overhead structure over BNSF along with multiple concrete, masonry and MSE retaining walls totaling over 4,500 feet in length. *This project received the 2017 ACEC California Honor Award in the Transportation Category.*



Central Ave Bridge over UPRR/Amtrak/Metrolink, Montclair

Firms: Biggs Cardosa **Services:** Full Design

Biggs Cardosa is the prime consultant leading a multidisciplinary team on this bridge design project. The project includes the replacement of a bridge that spans seven UPRR tracks, a flood control channel, and local streets. This project showcases the team's recent and relevant experience working together with UPRR.

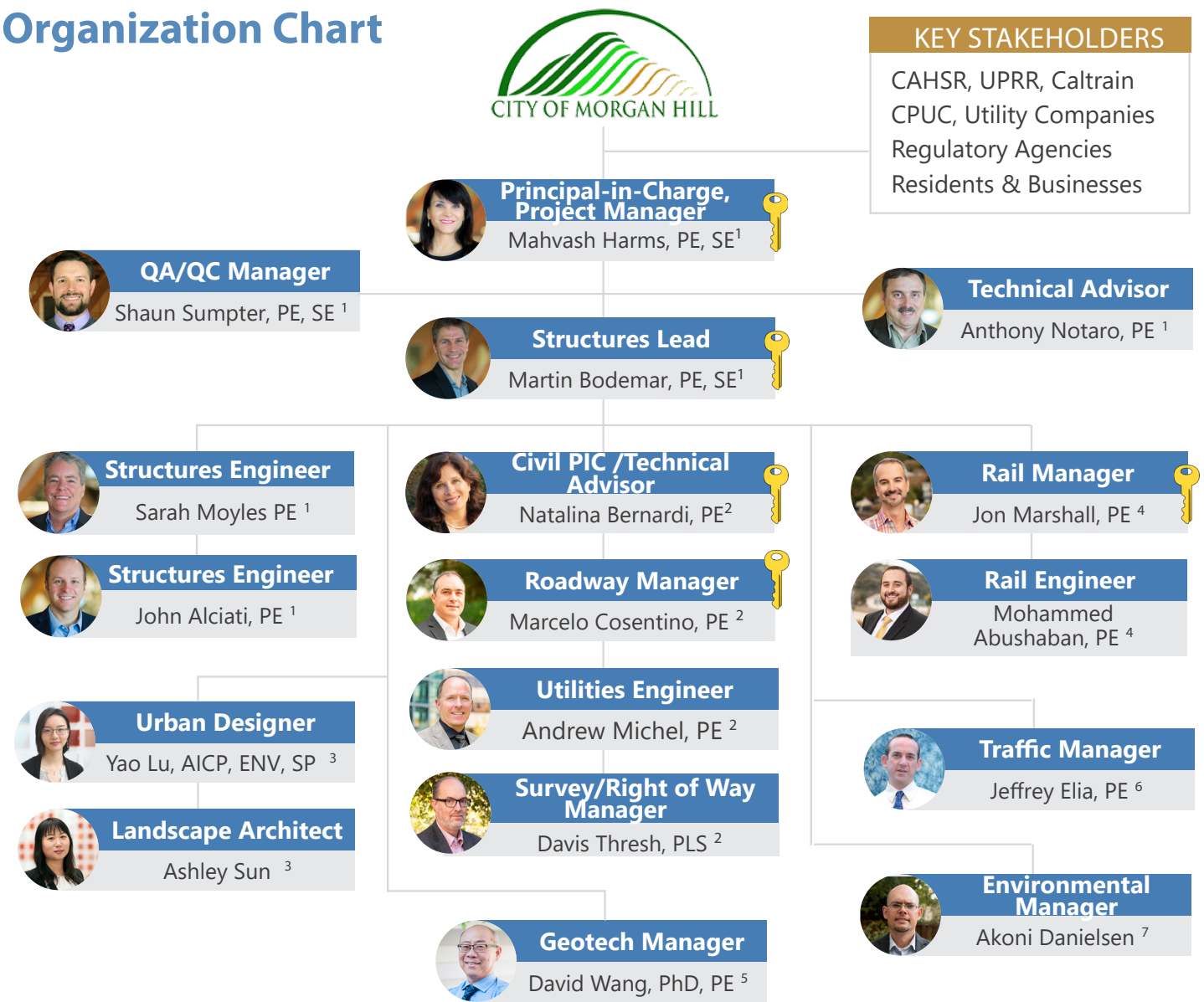
2 STAFF QUALIFICATIONS



Bradley Moody Memorial Underpass, Richmond

2 STAFF QUALIFICATIONS

Organization Chart

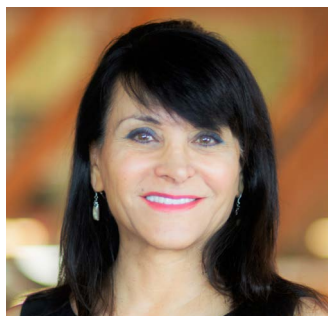


- FIRMS**
- 1. **Biggs Cardosa:** Project Management, Structural Engineering
 - 2. **BKF:** Civil, Roadway, Utility Coordination
 - 3. **Perkins & Will:** Architectural Renderings, Landscape Concepts, Urban Design
 - 4. **JMA:** Railroad Coordination, Track Design
 - 5. **PARIKH:** Geotechnical, Hazardous Waste
 - 6. **Hexagon:** Traffic (if needed)
 - 7. **DJP:** Environmental (if needed)

 Key Personnel

As with all our clients, Biggs Cardosa will be committed to the City of Morgan Hill with maximum efficiency and professional integrity. If selected, **our Key Personnel will be committed to the entire duration of the project from start to completion, and will not be replaced without the City’s prior approval.** Our team has the depth of staff to deliver this project in an effective and timely manner. The availability of human and financial resources, the depth and breadth of our successful engineering experience for bridge projects, and the leading-edge technical expertise of our personnel give us maximum levels of capability and flexibility to provide the professional services required to complete this project on time and within budget. Our staffing plan assures availability of sufficient qualified staffing resources throughout the duration of the contract.

Key Personnel



REGISTRATION

Professional Engineer
(Civil) CA C31736

Structural Engineer
CA S2639

EDUCATION

B.S. Civil Engineering
San Jose State University

M.S. Civil Engineering
San Jose State University

MAHVASH HARMS, PE, SE

Principal-in-Charge, Project Manager

30+ years of experience in project management and structural engineering. leading multi-disciplinary design teams on multi-million dollar public transportation and infrastructure projects. 25 years with Biggs Cardosa

20+ multi-million dollar pedestrian/bicycle bridge and tunnel projects in California, including 6 rail crossings

15+ heavy rail and lightrail projects including UPRR, Amtrak, Caltrain, BART and SMART

99% of projects are for Public Sector clients including cities, counties and transportation agencies

5 award-winning pedestrian/bicycle projects in the last 5 years

SELECT RELEVANT PROJECT EXPERIENCE

Santa Clara Caltrain Station Pedestrian Undercrossing Extension at UPRR/Caltrain/Amtrack, Santa Clara, CA

Bernardo Pedestrian Undercrossing at Central Expressway and Caltrain ROW, Mountain View, CA

SVBX Montague Expressway Pedestrian Overcrossing, Milpitas, CA

Warm Springs BART West Access Ped. Bridge and Plaza, Fremont, CA

Campbell Avenue Portals Project at Highway 17, Campbell, CA

South Bayfront Pedestrian Bicycle Bridge over UPRR Right-of-Way, Emeryville, CA



REGISTRATION

Professional Engineer
(Civil) CA C57856

Structural Engineer
CA S4869

EDUCATION

B.S. Civil Engineering
Santa Clara University

MARTIN BODEMAR, PE, SE

Structures Lead

28 years of experience in project management and structural engineering, leading multi-disciplinary design teams on various public transportation and infrastructure projects. 25 years with Biggs Cardosa

99% of projects are for Public Sector clients

10+ multi-million dollar signature pedestrian/bicycle bridge and tunnel projects in California, including a recent award-winning PUC

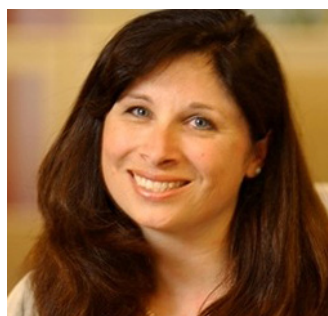
15+ heavy rail and lightrail projects including UPRR, Amtrak, Caltrain, and BART

SELECT RELEVANT PROJECT EXPERIENCE

Santa Clara Caltrain Station Pedestrian Undercrossing Extension at UPRR/Caltrain/Amtrack, Santa Clara, CA

California High Speed Rail, Construction Package 2-3, Fresno to Bakersfield, CA

Jefferson Avenue Underpass, Redwood City, CA



REGISTRATION
Professional Engineer
(Civil) CA C45407

EDUCATION
B.S. Civil Engineering
University of California,
Berkeley

NATALINA BERNARDI, PE

Civil Principal-in-Charge/Technical Advisor

37 years of experience in project management and civil engineering. leading multi-disciplinary design teams on multi-million dollar public transportation and infrastructure projects. 34 years with BKF

50+ multi-million dollar grade separation projects in California including 12 rail crossings

30+ heavy rail and lightrail projects including UPRR, Amtrak, Caltrain, BART and SMART

90% of projects are for Public Sector clients including cities, counties and transportation agencies

4 award-winning grade separation projects in the last 5 years

SELECT RELEVANT PROJECT EXPERIENCE

Sunnyvale Caltrain Grade Separations Study, Sunnyvale, CA

Marina Bay Parkway Grade Separation, Richmond, CA

City Place Grade Separations, Santa Clara, CA

Mission Boulevard/Warren Avenue, UPRR Railroad Relocation, Fremont, CA

Kato Road Grade Separations, Fremont, CA



REGISTRATION
Professional Engineer
(Civil) CA C9063

EDUCATION
B.S. Civil Engineering
Santa Clara University
M.B.A. San Jose State
University

MARCELO CONSENTINO, PE

Civil Project Manager

24 years of experience in project management and civil engineering. leading multi-disciplinary design teams on multi-million dollar public transportation and infrastructure projects. 15 years with BKF.

25+ multi-million dollar grade separation projects in California including 12 rail crossings

15+ heavy rail and lightrail projects including UPRR, Amtrak, Caltrain, BART and SMART

98% of projects are for Public Sector clients including cities, counties and transportation agencies

3 award-winning grade separation projects in the last 5 years

SELECT RELEVANT PROJECT EXPERIENCE

Morgan Hill High Speed Rail EIR Support, Morgan Hill, CA

Eastridge to BART Regional Connector (Capitol Expressway LRT Extension), San Jose, CA

TAMC Salinas Rail Kick-Start, Salinas, CA

Mission Boulevard/Warren Avenue Grade Separations and UPRR Railroad Relocation, Fremont, CA

Kato Road Grade Separation, Fremont, CA



REGISTRATION
Professional Engineer
(Civil) CA 63424
Qualified SWPP
Developer/Practitioner
(QSD/QSP)

EDUCATION
B.S. Civil Engineering
University of Waterloo

JON MARSHALL, PE, QSD/QSP
Rail Manager

- 24** years of experience in railroad facility design, consulting, and general civil engineering; 10 years with JMA
- 200+** railroad projects in his career, primarily with UPRR and BNSF Railway. He has led the CPUC coordination role for several dozen rail grade separation and at-grade crossing improvement projects.
- 20+** 20 years of experience designing projects for and impacting Union Pacific Railroad
- 2X** AREMA Annual Conference General Session Presenter where he discussed the challenging technical considerations of the UPRR and BNSF Shooflies from the California High-Speed Rail projects.
- 75%** of Jon’s portfolio is rail related, public sector projects.

SELECT RELEVANT PROJECT EXPERIENCE
High-Speed Rail CP1 UPRR Shoofly Design, Fresno, CA
CA High-Speed Rail Construction Package 4 (CP4), Wasco, CA
Caltrain Underpass Studies, Whipple, South Linden and Scott, Redwood City, CA
Laurel Street Grade Separation, Colton, CA
Design Support of City of Brisbane Comments on the CA High-Speed Rail San Francisco to San Jose Segment EIR

Item # 1

AGENDA DATE: 06/26/2024

SUPPLEMENT # 1

From: Christina Turner

To: Michelle Bigelow

Subject: Wednesday, June 26, 2024 City Council Meeting Questions

Supplement for Item 1 - APPROVE A CONSULTANT AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC. FOR THE COMPLETION OF DESIGN AND ENGINEERING WORK FOR GRADE SEPARATIONS FOR DUNNE AND TENNANT AVENUE AND DOWNTOWN CALTRAIN STATION PEDESTRIAN CROSSING FOR THE NOT TO EXCEED AMOUNT OF \$2 MILLION, INCLUDING A CONTINGENCY OF \$200,000

Date: Monday, June 24, 2024

Staff Report: In January 2024, the City of Morgan Hill was awarded \$1 million by the California Department of Transportation (DOT) for grade separation design and engineering work at the railroad crossings and the pedestrian crossing at the Caltrain Station. In addition to the DOT grant, the City received earmarks from the Federal Railroad Administration (FRA) for an additional \$1 million for grade separations, \$500,000 for Quiet Zones, and \$500,000 for the widening of US Highway 101. The FRA funding requires a 20% match and can be satisfied by the time the City staff worked on the project. The DOT grant does not require a match and may also be used to meet the 20% match requirement from the FRA grant.

Question: It appears that all the awards and grants cover the expenditures of this project, correct?

Response: Yes, the Grant from the State DOT does not require City funds. We will utilize the funding from the State Grant to cover the 20% match requirement for the Federal Railroad Administration DOT (FRA) funds.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Joey Dinh, Associate Planner

APPROVED BY: City Manager

APPROVE OBJECTIVE DEVELOPMENT STANDARD WAIVERS AND DENY CONCESSION REQUEST FOR THE BARNELL - HAREN PROPERTIES LLC RESIDENTIAL PROJECT AT BARNELL AVENUE AND DUNNE AVENUE (LJ COMMONS)

RECOMMENDATION(S)

Adopt resolution approving the request for four waivers and denying the request for a concession to the City's Objective Development Standards for residential development.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

Advocating for Local, Regional, and State Legislative Initiatives

2024-2025 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Barnell-Haren Properties, LLC (LJ Commons) has applied for a Design Permit for the development of a 4-unit multifamily development with two detached accessory dwelling units (ADUs) for a total of 6 units to be developed on a 0.2-acre parcel located on Barnell Avenue, approximately 0.07 miles south of its intersection with Dunne Avenue (APN 767-12-012). The proposed project is within the General Plan's Residential Attached Medium designation, which allows a residential density of 16–24 units per acre. The project provides one unit (or 17 percent of the project) to be restricted for-sale to qualified buyers with a low income. This allows the project to be eligible for a density bonus under California Density Bonus Law (DBL) per Government Code Section 65915[b] and Section 65915[f]. By meeting the eligibility requirements of DBL, the project would qualify for two incentives or concessions and an unlimited number of waivers or reductions in development standards that could have the effect of preventing the project from constructing at its allowed density. Under State law, projects that include certain levels of affordable housing are entitled to receive concessions and

waivers based on the number of affordable units and level of affordability provided within the project. The project is not requesting a density bonus. A complete list of requested waivers and concessions has been provided (Attachment 2).

THE PROJECT:

There will be three buildings on-site. Building A will contain one 1,238-square-foot unit, Building B will contain three units of approximately 867 square feet, and Building C will contain five 1-car garages with two ADUs on the second floor. All units will be two stories. The project will provide a shared common area in the rear of the buildings with a barbecue grill, picnic table, and shaded landscaping. One electric vehicle charging station and one ADA parking space will also be on-site. The seven total on-site parking spaces are consistent with AB 2097, which grants reduced parking requirements for residential projects with less than 20 housing units and is located within 1/2 mile of Monterey Road, which is considered a high-quality public transit corridor due to Valley Transportation Agency (VTA) bus route 68 providing 15-minute headways [Gov. Code §65863.2(c)(2)]. A request for reduced parking calculation under DBL does not require a concession or waiver and may be granted by the City once the project is deemed complete. The project will meet this reduced parking requirement by providing five covered parking spaces (garages) and two uncovered spaces on-site for a total of seven parking spaces.

As proposed, the project includes one unit, or 17% percent affordable units for persons and families of low income, and is consistent with the General Plan. Government Code Section 65915(d)(2)(B) requires the City to grant up to two incentives or concessions and an unlimited amount of waivers unless the City makes specific written findings described below. Concessions and waivers must be approved, even if the project is not requesting an increase in density. Waivers are a form of assistance under State law, separate from incentives/concessions. A waiver is a reduction or modification of “development standards” and other regulations when those requirements potentially make the project's construction physically infeasible if not approved. Unlike concessions and incentives, there is no limit to the number of waivers an applicant can request, and applicants are entitled to a waiver of any and all development standards that would physically preclude the development at the density permitted and with the incentive(s) granted. [Gov. Code §65915(e)(1) and §65915(e)(2)] “Development standards” include a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation. [Gov. Code §65915(o)(2)]. Waivers are automatically allowed if they are necessary to achieve the full density allowed under the State Density Bonus Law. Concessions are similar to waivers but focus on cost reduction as the barrier to development. This project is entitled to up to two concessions and unlimited waivers and is requesting one concession and four waivers. A complete project description and list of requested waivers has been provided (Attachment 2).

The project plans are available here: [LJ Commons Plan Set](#).

CONCESSION REQUEST:

Concession: Park Dedication and Impact Fees. Barnell-Haren Properties, LLC is requesting a concession to waive all park dedication and impact fees relating to the project.

WAIVER REQUEST:

Waiver: Reduction in Minimum Rear Setback. Barnell-Haren Properties, LLC is requesting a waiver or reduction in the rear setback requirements applicable in the Residential Attached Medium (RAM) zone from 20 to 15 feet. This waiver is necessary because the application of a 20-foot front setback requirement would physically prevent the project from being built at its permitted density.

The Residential Attached Medium (RAM) District requires a minimum of 20 feet rear setback. The project is requesting a minimum of 15 feet front setback. The rears of the proposed residential buildings will be approximately 15 feet from the rear setback line. On the other side of the rear property line is a neighboring single-family attached to a common landscaped area and also a parking lot.

Waiver: Parking Lot Layout. Barnell-Haren Properties, LLC is requesting a waiver or reduction in the parking lot layout requirement of Residential Design Standard, Number 19. This design standard requires parking areas for a multifamily project to be dispersed throughout the project in small segmented parking areas as opposed to the creation of a large single parking lot. Parking would also be required to be located in the interior of or at the back of the site, not visible from the street. This waiver is necessary because the application of a parking lot layout requirement would physically prevent the project from being built at its permitted density.

Waiver: Front Porches. Barnell-Haren Properties, LLC is requesting a waiver or reduction in the requirements related to front porches (Residential Design Standard Number 25). This design standard requires 50 percent of the homes facing either a street or common interior courtyard to include a front porch on the ground floor that is a minimum size of 6 feet by 5 feet or 30 square feet. The proposed project will include porches for all four units that are smaller than the minimum requirement. Three units will have a 2-foot by 4-foot porch, and one unit will have a 3-foot by 5-foot porch. Larger porches could not be accommodated without physically preventing the project from being built at its permitted density.

Waiver: Balconies. Barnell-Haren Properties, LLC is requesting a waiver or reduction in the requirement related to balconies (Residential Design Standard Number 26). This design standard requires 25 percent of homes facing a street, alley, or common interior courtyard to include a balcony overlooking the common area with a minimum size of 6 feet by 4 feet. The project is not proposing to accommodate any balconies as this would affect the design of the project and prevent the project from being built at its permitted density.

Can the Agency Deny a Concession/Incentive or Waiver?

Yes. Nothing within DBL requires a local government to grant an incentive or waiver that

will potentially result in a specific, adverse impact upon public health, safety, the environment or on any property listed in the California Register of Historic Resources. [Gov. Code §65915(d)(1) and §65915(e)(1)]. In addition, the State Density Bonus Law does not require a local government to provide direct financial incentives such as waiving of any fees or dedication requirements. [Gov. Code §65915(l)]. Therefore, staff recommends denying the applicant's concession request to waive all park dedication and impact fees.

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

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

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

Staff is unable to make any of these findings for the waiver requests. Staff recommends approval of the four waivers requested by the developer. However, given that the State Density Bonus Law does not require a local government to provide direct financial incentives, staff recommends denying the applicant's concession request to waive all park dedication and impact fees.

Next steps for the project include administrative review of the Design Permit by the Development Services Director.

COMMUNITY ENGAGEMENT:

When the City has completed its review of the Design Permit for the proposed project, the project will be publicly noticed with mailing to property owners within 300 feet of the project, newspaper legal noticing, and a sign posted on the project site pursuant to the Planning Division requirements.

ALTERNATIVE ACTIONS:

City Council may find the project request to not be consistent with Government Code Section 65915(e)(1). City Council may choose to provide a concession for reduced park dedication and impact fees. However, this would require the General Fund to offset

some of the impact fees to ensure the City can build adequate infrastructure to support the development.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

An analysis pursuant to CEQA Guidelines will be prepared to identify and analyze potential environmental impacts of the proposed project.

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING 4 DEVELOPMENT STANDARD WAIVERS AND DENYING 1 CONCESSION FOR THE BARNELL-HAREN PROPERTIES LLC (LJ COMMONS) RESIDENTIAL PROJECT CONTAINING 17 PERCENT AFFORDABLE UNITS LOCATED SOUTHWEST OF THE INTERSECTION OF BARNELL AVENUE AND DUNNE AVENUE (APN 767-12-012).

WHEREAS, Haren Properties, LLC submitted an application for LJ Commons (Project) a multi-family residential development project consisting of four multi-family apartments and two detached accessory dwelling units.

WHEREAS, Haren Properties, LLC has requested four waivers and one concession for the housing development.

WHEREAS, the Project is a market rate housing development that includes 17 percent of the units to be restricted for-sale to qualified buyers with low incomes (1 low income unit).

WHEREAS, pursuant to Government Code Section 65915(d)(2)(B), at least 17 percent of the total units will be available to persons and families of low income in a common interest development and therefore, is allowed two concessions and unlimited waivers.

WHEREAS, the city shall grant the waiver requested by the applicant unless the city makes a written finding as required by Government Code Section 65915(e)(l), based upon substantial evidence, of any of the following:

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

WHEREAS, pursuant to Government Code Section 65915(l), the City is not required to provide direct financial incentives for a housing development, including the provision of publicly owned land, by the city, , or the waiver of fees or dedication requirements

WHEREAS, the proposed project will provide a public benefit of a minimum of 17 percent of affordable units, for persons and families of low income, incorporated within the LJ Commons project located at southwest of the intersection of Barnell Avenue and Dunne Avenue and identified by Assessor's Parcel No. 767-12-012.

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

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

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

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

Section 4. The City Council of the City of Morgan Hill hereby approves the waiver request for the Barnell – Haren Properties LLC (LJ Commons) project.

Section 5. The City Council of the City of Morgan Hill hereby denies the concession request for the Barnell – Haren Properties LLC (LJ Commons) project.

Section 6. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 26th day of June 2024 by the following vote:

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

APPROVED:

ATTEST:

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 June 26, 2024.

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

May 14, 2024

Attention-
Joey Dinh
Associate Planner
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

RE: LJ Commons – SB330 Project Narrative
(SR2023-0015/EA2023-0007)

Haren Properties LLC is in receipt of the City of Morgan Hill's comments on the above application. Please see below for a written description of the revised project, which includes a revised project description, the scope of work for which entitlement review is being requested, and revisions to the application in response to the City's comments.

Project Description

This 0.2-acre vacant lot (Assessor's Parcel Number: 767-12-012) is located between 16915 and 16935 Barnell Avenue, just a short walk south of West Dunne Avenue near Downtown Morgan Hill. It is within 0.5 miles of the public transportation stop at the intersection of West Dunne Avenue and Monterey Road. This four-unit multiplex project is well integrated with the existing multifamily homes in the RAL-zoned neighborhood.

The project is anticipated to construct a four-unit multiplex with two detached accessory dwelling units (ADU's) and five separate one-car parking garage stalls. The dwelling units will be two stories and range in size from 867 to 1,238 square feet, with 2 to 3 bedrooms and 1.5 to 2.5 bathrooms. The detached ADU units will be located atop the five-car parking garage and will include a 747 square feet with 2 bedrooms and 2 bathrooms, as well as another ADU unit with 702 square feet with 2 bedrooms and 1 bathroom.

Residents of the units will each have their own private backyards, with the exception of the Accessory Dwelling Units (ADU), which will have access to a shared common area with amenities such as a barbecue grill, picnic table, and shaded trees. This will provide a place for residents to gather and enjoy each other's company. Enhanced landscape design will add beauty to the surrounding community. Drought-tolerant planting will be used along the perimeter of the property and in the frontage, which will help to conserve water during this time of critical need. All units will be powered by electricity and meet the Sustainable Design requirements as an environmentally friendly project. In an effort to provide long-lasting sustainability, each unit will be equipped with solar paneling and electric vehicle charging stations in the garages. This will continue the move towards the use of clean energy.

Entitlement and Design

One Below Market Rate Unit Will Be Provided Pursuant to State Density Bonus Law

Pursuant to Residential Design Standard No.1, the applicant intends to build one inclusionary below market rate unit, which is identified on the IHO checklist and architectural plans as unit “#4”. The BMR unit will be rented to a lower-income household pursuant to the City's BMR rental program. By providing one BMR unit that will be affordable to a lower-income household, the project is eligible for waivers of development standards and concessions pursuant to state density bonus law, to facilitate the production of affordable housing at a cost and density threshold that is feasible to construct. The project is eligible for

two concessions given that 17% of the base units will be affordable to a lower-income household. (Gov. Code § 65915(d)(2)(C).)

Waivers of Development Standards

As noted in the attached application response, waivers to the following development standards are required, as their application would have the effect of physically precluding the construction of the proposed project at the densities permitted by state density bonus law (Gov. Code § 65915(e)). State density bonus law carries the presumption that any proposed waivers and concessions are needed to facilitate the proposed density and provision of onsite affordable units. State density bonus law imposes no requirement to supply financial backup to support the grant of cost-reduction incentives and concessions, or waivers of development standards.

Rear Setback of Property – Residential Design Standard No. 3 the property is zoned RAL 3500, however, under the general plan designation the property is zoned RAM. Whenever a requirement of an overlay zone or combining district conflicts with a requirement of the underlying base zone, the overlay zone or combining district requirement shall control. The project requests a waiver of Design Standard No. 3, because based on the constraints of the project layout the application of Standard No. 3 would preclude the project from proceeding at the level of density authorized under state density bonus law.

Parking Lot Layout – Residential Design Standard No. 19 provides that parking for the project should be dispersed throughout the project in smaller segmented parking areas, rather than the creation of a large parking lot, and that parking should be located interior to or at the back of the site where it is not visible to the street. The project requests a waiver of Design Standard No. 19 because, based on the narrow, rectangular geometry of the parcel, having dispersed or rear parking would reduce the number of units that could be built onsite and would preclude the development from proceeding at the level of density authorized under state density bonus law.

Front Porches – Residential Design Standard No. 25 provides that 50% of homes facing a street or common interior courtyard should include a front porch on the ground floor with a minimum size of 6 feet by 5 feet. The project requests a waiver of Design Standard No. 25 because, based on the narrow, rectangular geometry of the parcel, the project cannot physically accommodate larger porches. Larger porches would require other adjustments to the City's development standards, such as a reduction to the interior side setback, in order to physically accommodate the proposed units.

Balconies – Residential Design Standard No. 26 provides that 25% of homes facing a street, alley or common interior courtyard include a balcony overlooking a common area with a minimum size of 6'x4'. The project requests a waiver of Design Standard No. 26 for the same reasons above. The project site is physically constrained and balconies cannot be physically accommodated onsite without other adjustments to the City's development standards, such as a reduction to the interior side setback in order to physically accommodate the proposed units.

Incentives and Concessions

State density bonus law requires the issuance of incentives or concessions that will result in identifiable and actual cost reductions, to provide for the additional cost of providing affordable housing. (Gov. Code § 65915(k).) Concessions may include reductions in development standards, approval of mixed-uses in conjunction with housing, or any other regulatory incentives or concessions that result in identifiable cost reductions.

This project is eligible to receive two incentives or concessions, as the project is a rental project that reserves at least 17 percent of the base units to be affordable for lower-income households. (Gov. Code § 65915(d)(2)(C).) The project will set aside one of the six base units (Unit D) to be affordable for lower-income households and therefore is eligible for up to two incentives for reserving 17% of the base units to be affordable to a lower-income household.

The project currently requests one concession, to waive all park dedication and impact fee requirements for the project; this concession will result in actual cost savings to make the provision of affordable housing more financially feasible. The applicant reserves the right to propose one additional concessions for the project prior to it being considered for approval.

* * *

We look forward to working with the city on this development project. Our team is committed to building a housing development that meets the needs of our community and exceeds expectations. We will use only the highest-quality materials and construction techniques to build a housing development that is safe, durable, and comfortable for the residents of Morgan Hill.

From: Christina Turner

To: Michelle Bigelow

Subject: Wednesday, June 26, 2024 City Council Meeting Questions

Supplement for Item 2 - APPROVE OBJECTIVE DEVELOPMENT STANDARD WAIVERS AND DENY CONCESSION REQUEST FOR THE BARNELL – HAREN PROPERTIES LLC RESIDENTIAL PROJECT AT BARNELL AVENUE AND DUNNE AVENUE (LJ COMMONS)

Date: Monday, June 24, 2024

Staff Report: A request for reduced parking calculation under DBL does not require a concession or waiver and may be granted by the City once the project is deemed complete.

Question: The “may be granted” wording means it will come back to the Council for approval, correct?

Response: This project will not be coming back to Council unless appealed to Planning Commission and again to City Council.

Staff Report: The project will meet this reduced parking requirement by providing five covered parking spaces (garages) and two uncovered spaces on-site for a total of seven parking spaces.

Question: What is the required parking per City ordinance?

Response: Under the Municipal Code, a total of 10 spaces would be required but our Code is preempted by AB2097 which allows a project within 1/2 mile of Monterey to have zero parking spaces. The applicant is providing parking for all units in the development.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Rebecca Garcia, Housing Director

APPROVED BY: City Manager

APPROVE REQUEST BY EDEN HOUSING, INC. (EHI) TO WAIVE THE 2023 ANNUAL SURPLUS PAYMENT TO CITY FOR VILLA CIOLINO AFFORDABLE APARTMENTS TO MAKE NECESSARY REPAIRS

RECOMMENDATION(S)

Authorize the approval of a waiver for the receipt of the 2023 annual payment from Villa Ciolino's surplus cash in the amount of \$101,197 to support the property's urgent rehabilitation needs.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Advocating for Local, Regional, and State Legislative Initiatives

2024-2025 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Eden Housing is requesting that the City of Morgan Hill consider waiving the 2023 surplus cash distribution payment of \$101,197 to help support the projected costs for urgent repairs. In 2000, the former Redevelopment Agency of the City of Morgan Hill (RDA) provided a loan of \$2,375,000 for the development of Villa Ciolino Apartments ("The Property"), a 42-unit affordable housing project.

Villa Ciolino Associates ("The Partnership") is a California limited partnership formed in 1999. The Partnership is controlled by its general partner, Villa Ciolino LLC, whose sole member, Eden South Bay Inc., is under the control of the board of directors of Eden Housing, Inc. (EHI), a nonprofit public benefit corporation. Various loan, regulatory, and other agreements dictate the maximum income levels of new tenants and provide rent and other restrictions through the year 2054. The families that live here have incomes that range from \$22,700 to \$82,850 for a family of four.

EHI seeks approval to waive the 2023 surplus cash distribution owed to the City of

Morgan Hill. The diversion of funds is solely intended to help cover the projected capital needs, a benefit to the City as it will keep the affordable inventory in good condition. The City of Morgan Hill's housing policy towards its multifamily housing partnerships is to provide stewardship to guarantee investment and re-investment in quality, long-term housing stock. This generally results in supporting nonprofit partners as they raise rehabilitation dollars to renovate aging structures in the City of Morgan Hill. The City must consent to a waiver because the Loan Agreement requires this payment.

The requested waiver of the 2023 annual surplus payment will allow EHI to implement urgent capital needs at the Villa Ciolino Apartments quickly. EHI has a longer-term goal to continue to apply for and seek out Tax Credit and Bond Funds to do a full re-syndication for the entire property (a much larger scale rehab of the property in 2025); however, these funds are competitive and not guaranteed. EHI has applied in previous years and has not been awarded the funds, which has delayed many of the site's capital needs.

EHI plans to use the surplus cash payment of \$101,197 to help pay for replacing the roof and fence at Villa Ciolino. The roof has exceeded its useful life and is currently leaking. The fence is in disrepair, and replacing it will improve the property's appearance. The property currently has approximately \$136,000 in replacement reserves, but the roof replacement alone is estimated to cost \$240,000, and the fence replacement is estimated to cost \$44,000. EHI is asking for the City's support of \$101,197, which is the amount that would typically be paid to the City as part of the 2023 annual payment from the project's surplus cash. EHI will waive the distribution of surplus cash owed to themselves to support the repairs needed on the property. Staff recommends waiving the annual payment to support the immediate repairs and improve the integrity of the buildings.

COMMUNITY ENGAGEMENT:

This report is intended to inform the Morgan Hill community of the recommended waiver of the 2023 surplus cash payment due to the City of Morgan Hill from Villa Ciolino Associates.

ALTERNATIVE ACTIONS:

As an alternative action, the City Council may decide not to approve the waiver of the 2023 surplus cash payment, forego the improvements to the property, and require the Partnership to make the \$101,197 payment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 16, 1999, the former Morgan Hill Redevelopment Agency entered into an agreement with South County Housing for the development of Villa Ciolino. A first amendment to the loan agreement was entered into on October 30, 2000. On February 16, 2022, the City Council approved Eden Housing's request to waive the 2020 annual surplus payment for Villa Ciolino affordable apartments to make necessary property repairs.

FISCAL AND RESOURCE IMPACT:

With the execution of the waiver, the City is anticipated to forego the \$101,197 loan repayment to the Housing Program. The City will continue to receive future annual repayment through residual receipts for the remainder of the term, April 2054.

CEQA (California Environmental Quality Act):

This project is Categorically Exempt pursuant to Section 15301 of CEQA Guidelines as proposed repairs, maintenance, and minor alteration of existing facilities involving no expansion of existing use will not have a significant effect on the environment.

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made and entered into as of December 16, 1999, by and between the MORGAN HILL REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), and SOUTH COUNTY HOUSING CORPORATION, a California non-profit corporation (the "Developer").

Recitals

A. Developer has acquired that certain real property, including the land and all improvements thereon (hereinafter "Property") located along the south side of Ciolino Avenue between Monterey Road and Del Monte Avenue in the City of Morgan Hill, California (the "City"), legally described in Exhibit 1, attached hereto and incorporated herein by reference.

B. Developer intends to rehabilitate 8 existing units and construct 34 units on the Property to provide 41 housing units that will remain affordable to low- and very-low income households for 55 years plus one manager's unit (the "Project").

C. The Developer has submitted preliminary plans and specifications (the "Preliminary Plans") dated November 17, 1999 and revised and resubmitted to the City on November 29, 1999, for the construction and rehabilitation of the improvements contemplated herein (the "Improvements").

D. Pursuant to that certain Predevelopment Loan Agreement dated as of July 20, 1999, between the Agency and Developer, the Agency loaned to Developer the sum of \$292,250.00 (the "Predevelopment Loan") for costs incurred by Developer to unrelated third parties for due diligence review of the Property and other costs, including: costs for architectural, engineering, and environmental assessments of the Property; payment of the Third Deposit and the Front Property Exercise Consideration described in the Option Agreement; and emergency, temporary relocation, and mobile home repair costs necessary to bring the units up to their minimal management standards. The Agency has heretofore disbursed \$132,114 of the Predevelopment Loan Funds.

E. The Property consists of Lots 5 through 8 as set forth on Exhibit 1. The total purchase price for the Property was \$3,000,000, which was financed by the following: proceeds from the Predevelopment Loan in the amount of \$100,000; equity from the Developer in the amount of \$22,000; a loan (the "Heritage Bank Loan") from Heritage Bank in the principal amount of \$280,000, maturing on January 15, 2000, secured by first trust deed encumbering Lot 5; a loan from Equity Preservation, Inc., in the principal amount of \$1,180,175 ("Equity Preservation Loan 1") secured by a first trust deed encumbering Lots 7 and 8; and a loan from Equity Preservation, Inc. in the principal amount of \$1,417,825 ("Equity Preservation Loan 2") secured by a first trust deed encumbering Lot 6 and a second trust deed encumbering Lot 5.

F. In order to acquire the Property and complete the Improvements, the Developer requires the total estimated sum of \$8,759,581. To finance the Project, the Developer has contributed \$22,000 in equity funds (the "Developer's Equity Contribution"), and obtaining (i) equity funds, in the sum of not less than \$4,961,693 (the "LIHTC Equity Funds") derived from the syndication of low income housing tax credits (the "Tax Credits"), (ii) a loan from the County of Santa Clara (the "County") of funds made available to the County by the United States Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Program (the "HOME Program") in accordance with the regulations issued by HUD set forth in 24 CFR Part 92 (the "HOME Regulations"), in the sum of \$300,000 (the "HOME Loan"), which loan shall be for both construction and permanent financing for a term of 40 years; (iii) a loan from Bay View Bank, National Association, in the amount of \$315,000 (the "AHP Loan") under the 1999 Affordable Housing Program of the Federal Home Loan Bank of San Francisco for construction for a term of 40 years; (iv) a construction loan (the "Construction Loan") from Bank of America (the "Senior Lender") in the amount of \$4,985,000 for a term of 18 months; a portion of which (in the amount of \$2,140,000) shall convert to permanent financing (the "Permanent Loan") for a term of 30 years; and (v) a loan from the Agency for acquisition and other predevelopment purposes in the sum not to exceed \$1,900,000 (the "Agency Loan"), of which \$292,250 is on account of the outstanding balance of the Predevelopment Loan funds.

G. Prior to maturity of the Agency Loan, the parties hereto desire that 100% of Net Cash Flow and 100% of Net Proceeds (as those terms are defined below) be disbursed to the Agency for repayment of the Agency Loan.

H. The Developer represents that, with the LIHTC Equity Funds, the Developer's Equity Contribution, the HOME Loan funds, the AHP Loan funds, the Agency Loan funds, the Construction Loan and the Permanent Loan as described in Recital F, above, it will have sufficient funds and commitments of funds to complete construction of the Project.

I. All accrued interest on the Predevelopment Loan up to the date of Agency Loan funding shall be forgiven on the terms set forth herein.

J. The sources and uses of all loan financing is set forth in Exhibit 6, attached hereto (the "Sources and Uses of Funds").

K. The terms of the Construction Loan and the Permanent Loan shall be in accordance with the commitment letter dated May 7, 1999 from the Senior Lender to South County Housing (the "Senior Lender Commitment Letter").

NOW, THEREFORE, THE AGENCY AND THE DEVELOPER AGREE AS FOLLOWS:

1. Loan Agreement. Subject to the terms and conditions set forth below, the Agency agrees to lend to the Developer the Agency Loan. The Agency Loan shall mature on April 1, 2054. The Agency Loan shall be evidenced by a promissory note (the "Promissory

Note") in the form attached hereto as Exhibit 2 and incorporated by reference herein, and secured by (i) a deed of trust (the "Deed of Trust") in the form attached hereto as Exhibit 3, (ii) a Security Agreement (the "Security Agreement"), in the form attached hereto as Exhibit 8, covering all personal property belonging to the Developer now or hereafter located on or used in connection with the Property, which Security Agreement shall be perfected by UCC-1 Financing Statements (the "Financing Statements") filed with the California Secretary of State in form and substance reasonably acceptable to the Agency, and (iii) an Environmental Indemnity Agreement (the "Environmental Indemnity Agreement") in the form attached hereto as Exhibit 4. In addition, the Developer shall execute and record, concurrently with the Developer's acquisition of the Property, a Regulatory Agreement in the form attached hereto as Exhibit 5 (the "Regulatory Agreement"), the term of which shall commence upon recordation and continue until the date that is 55 years thereafter. The Agency Loan shall bear simple interest on funds as drawn at the rate of 4% per annum. The Agency is authorized to use and record (as applicable) the foregoing documents to consummate the Agency Loan when all conditions precedent described in section 4, below, have been satisfied. The Agency shall cause the proceeds of the Agency Loan to be disbursed on the terms and conditions set forth in section 3. The Developer shall assure that the proceeds of the Agency Loan shall be used and disbursed only in accordance with this Agreement. No payments on the Agency Loan shall be due before maturity except from 100% of the Net Cash Flow and 100% of the Net Proceeds.

2. Use of Agency's Loan Funds. The Agency Loan funds shall be used for the purposes described in this section.

(a) Use of Predevelopment Loan Funds. Developer acknowledges that Predevelopment Loan funds have heretofore been advanced to Developer for the following purposes:

<u>Use</u>	<u>Amount Drawn</u>
Architecture	\$15,267
Engineering	\$6,403
Environmental Audit	\$5,768
Consultant	\$608
Appraisal	\$4,068
Third Deposit described in Section 2.3.3 of the Option Agreement	\$25,000
Front Property Exercise Consideration described in Section 2.7.2 of the Option Agreement	\$75,000
Total	\$132,114

(b) Agency Loan Advances. The Developer shall use proceeds of the Agency Loan only for the following purposes, and in the following amounts:

(i) Payoff of Equity Preservation Loan 2 in the amount of \$1,417,825 plus interest accrued thereon to date and, at Agency's option, closing costs related thereto;

(ii) Payoff of the then outstanding balance of the Predevelopment Loan;

(iii) Payment of additional predevelopment costs, including costs of architecture, engineering, property repair, tenant relocation, and environmental audit services;

(iv) Payment of CTCAC Fees and Local Permits and Fees;
and

(v) Payoff of portions of either or both Heritage Bank Loan or Equity Preservation Loan 1.

The Agency's Executive Director, at its sole discretion, shall have the authority to approve modifications to the uses of Agency Loan funds.

3. Time of Disbursement of Funds

(a) The Agency has heretofore disbursed the sum of \$132,114 for the items described in section 2; \$9,165 for payment of CTCAC fees, and \$4,943 for payment of local permits and fees. Therefore, of the Agency Loan funds there remains to be disbursed \$1,753,778. Until the Closing Date, the Developer may continue to request disbursement of the remaining undisbursed balance of the Predevelopment Loan.

(b) Concurrently with the satisfaction of the conditions described in section 4, the Agency shall authorize the disbursal of the advance described in subsection 2(b)(i) to the payee of the Equity Preservation Loan 2, and shall apply the advance as described in subsection 2(b)(ii).

(c) Upon request by the Developer, the Agency shall disburse, to the payees thereof, the remainder of the Agency Loan proceeds for the uses described in subsections 2(b)(iii) and 2(b)(v) upon receipt of proof satisfactory to the Agency of the application of the funds for the purposes set forth therein, provided that all conditions described in Section 3 continue to be satisfied and provided that the Executive Director is satisfied, in his or her sole discretion, that the Project is proceeding in a timely manner.

4. Conditions to Disbursement of Proceeds of the Agency Loan. The Agency's obligations to advance any proceeds of the Agency Loan or to take any other action under the Loan Documents (as hereinafter defined) shall be subject to the satisfaction or waiver of the following conditions precedent. The Executive Director of the Agency is authorized to waive any of the conditions, subject to the provisions of Section 31 hereof:

(a) The Developer shall have executed and delivered to the Agency the Promissory Note, the Deed of Trust, the Financing Statements, the Regulatory Agreement, and the Environmental Indemnity Agreement;

(b) The Deed of Trust and the Regulatory Agreement shall have been recorded in Official Records of the Office of the Recorder of Santa Clara County;

(c) The Developer shall have delivered to the Agency an "LP-10" ALTA Lender's Extended Coverage Policy of Title Insurance satisfactory to the Agency in its reasonable discretion, with such endorsements as the Agency shall reasonably request, with coverage equal to the principal amount of the Agency Loan (including any capitalized interest), insuring the Agency that the Deed of Trust and the Regulatory Agreement are liens and charges against the Property free and clear of all liens, encumbrances, covenants, conditions, restrictions and other exceptions of record excepting only those exceptions described in section 6 below, and such other matters as may be approved by the Agency's Executive Director. The title policy shall be issued by a title company reasonably satisfactory to the Agency and contain such terms as the Agency and its counsel deems acceptable in its reasonable discretion;

(d) The Developer shall have concurrently closed the Construction Loan and the Agency shall have approved the terms and conditions to disbursement of the proceeds thereof;

(e) The Developer shall have provided to the Agency certificates of insurance (or copies of the insurance policies) as set forth in section 21 hereof;

(f) No Event of Default (as defined in section 20(a)) by the Developer of its obligations hereunder to the Agency shall have occurred, and shall be continuing, and there shall exist no event, omission or failure of condition which would constitute an Event of Default after notice or passage of time, or both;

(g) The Agency shall have approved the Preliminary Plans, which approval shall not unreasonably be withheld, a preliminary Construction Budget and a Schedule of Values/Cost Breakdown (the "Budgets") reasonably acceptable to the Agency, and a preliminary construction schedule in form satisfactory to the Agency showing estimated dates of the initiation and completion of each major phase of the construction;

(h) The estimated cost of completing the Project as set forth in the Sources and Uses of Funds shall not exceed the remaining amounts available therefor.

(i) The Agency has received a current Phase I environmental report on the Property made by an independent environmental consultant indicating that there are no hazardous or toxic materials on the Property (including asbestos or lead based paint), or if there are, the Developer shall have provided to the Agency a remediation plan, and otherwise indicating that the Property is in compliance with all federal, state, and local environmental laws, rules and regulations and otherwise in form, scope and substance reasonably satisfactory to the Agency;

(j) The Agency has received from the Developer an independent appraisal reasonably satisfactory to the Agency with a current certificate by an appraiser stating his or her appraisal of the Property;

(k) The Agency shall have received evidence reasonably satisfactory to the Agency that the present and contemplated uses of the Property are in compliance with all zoning and other laws, rules, regulations, ordinances and restrictions affecting the Property, and is not a non-conforming use.

(l) The Developer shall have provided the Agency with evidence reasonably satisfactory to the Agency that the Developer has the due authority to execute and deliver all of the contracts, entered into by the Developer in connection with the Project, including, without limitation, the Loan Documents. Such evidence shall include, without limitation, partnership agreements, certificates of limited partnership, articles of incorporation, by-laws, and resolutions of the Developer, as well as good standing certificates issued by the California Secretary of State;

(m) The Agency shall have received financial statements, supporting schedules and such other unaudited and audited financial data as the Agency may reasonably require with respect to the Property and the financial condition of the Developer, in form and content reasonably satisfactory to the Agency;

(n) The Agency shall have performed such due diligence as the Agency deem reasonably necessary, and shall have received such information about the Developer and the Property and such other documents, instruments, certificates and approvals as the Agency may reasonably request which are consistent with the terms of this Agreement and the standards of prudent investment fiduciaries;

(o) The Agency shall have received an affidavit of the Developer stating that there is no litigation pending or, to the best of the Developer's knowledge, threatened against the Developer which would materially interfere with or materially and adversely affect the financial condition of the Developer;

(p) The Agency shall have received an opinion from the Developer's counsel, in a form and substance acceptable to the Agency, with respect to such matters as shall reasonably be requested by the Agency.

(q) The Developer shall have submitted to the Agency, and the Agency shall have approved, a management plan or agreement in respect of the Property (the "Management Plan"). The Management Plan shall be consistent with the terms and conditions of the Regulatory Agreement and shall include: the tenant selection criteria; procedures for tenant selection and the establishment and maintenance of waiting lists; the form of lease and rental agreement; a copy of the house and ground rules adopted for the Property and all policies and procedures to be used to ensure compliance with the income and any other requirements set forth as conditions for eligibility or occupancy in the Property; and shall specify Developer's advertising and related pre-leasing work;

(r) The Developer shall have delivered to the Agency such other documents and instruments as the Agency shall reasonably require; and

(s) There exists no Event of Default on the part of the Developer, nor any event, omission or failure of condition which would constitute an Event of Default after notice or lapse of time, or both.

This Agreement, together with the Promissory Note, the Deed of Trust, the Security Agreement, the Environmental Indemnity Agreement, the Management Plan, the Regulatory Agreement, the Intercreditor Agreement and any other documents executed pursuant to this Agreement, are collectively referred to herein as the "Loan Documents."

5. Repayment of Agency Loan. The Developer shall repay the Agency Loan as set forth in this section.

(a) Annual Payments. The Developer shall make annual payments ("Annual Payments") during the term of the Agency Loan equal to 100% of the "Net Cash Flow" (defined below) derived from the operation of the Project and 100% of the Net Proceeds, if any, realized during the previous year. The first Annual Payment on the Agency Loan shall be due on April 1 of the calendar year following the year in which the Certificate of Completion is issued by the City. The period covered by the first Annual Payment shall commence on the date of issuance of the Certificate of Completion through December 31 of the same calendar year. Subsequent Annual Payments shall be due on each April 1 thereafter with respect to the period of January 1 through December 31 of the preceding calendar year. Any such Annual Payments shall be applied first to accrued but unpaid interest on the Agency Loan, and the remainder, if any, shall be applied in reduction of the principal balance of the Agency Loan. The Developer shall deposit all revenues into an interest bearing account and interest earned thereon shall be added to such Net Cash Flow. The Agency shall not be entitled to receive any portion of the Net Cash Flow from the applicable portion of the Project following repayment in full of the Agency Loan and all accrued interest thereon.

(b) In the event of any Refinancing or Sale (as defined below), the Developer shall pay to Agency, and Agency shall receive, 100% of the Net Proceeds derived from such Refinancing or such Sale to the extent that the principal of the Agency Loan and all accrued but unpaid interest thereon have not previously been paid in full. Nothing contained

herein shall limit or contradict the provisions set forth in Section 17 prohibiting transfer by the Developer without the prior consent of the Agency.

(c) All interest accrued to date on the Predevelopment Loan shall be forgiven concurrently with the date of payoff of the Predevelopment Loan in accordance with Section 2(b)(ii), provided that there has been no default by the Developer and no act, omission or failure of conditions that, with the passage of time or notice or both, would constitute a default.

(d) Definitions. As used herein, the following terms shall have the meanings ascribed below:

(i) "Net Cash Flow" shall mean the revenues (without regard to the source) derived from the operation of the Project minus items (1) through (5) below. There shall be no other deductions from revenues in calculating Net Cash Flow for partnership management, property management, asset management, deferred developer fees, or for any other reason without prior written approval of Agency, which approval may be withheld at Agency's sole and absolute discretion.

- (1) All real estate and personal property taxes and assessments, insurance premiums and reasonable costs of maintenance, operation and management incurred by the Developer in connection with the operation and maintenance of the Project;
- (2) The costs of servicing the Permanent Loan (and any approved Refinancings thereof) or other sources of financing (other than the Agency Loan) approved by the Agency;
- (3) A property management fee retained by the Developer or the Manager in the sum not to exceed 8% of the gross revenues, for reimbursement of actual costs incurred in the supervision and oversight of the management of the Property, including without limitation overhead and administration expenses associated with leasing, maintenance, secretarial, accounting, telephone and travel services. The property management fee shall not accrue if in any year Net Cash Flow is insufficient to pay such amount;
- (4) Amounts deposited into a replacement reserve account, in a sum not to exceed \$250 per annum per residential unit; and
- (5) A Partnership management fee for payment of actual costs required and incurred in the management of the Partnership, which shall not exceed \$15,000, and which shall not accrue if in any year Net Cash Flow is insufficient to pay such amount.

(ii) "Net Proceeds" with respect to any Refinancing shall mean (A) any and all proceeds, credits, offsets and allowances directly or indirectly received by or allowed to Developer from or by any source in any way, relating to any Refinancing, minus (B) the sum of (I) Deductible Expenses relating to such Refinancing, and (II) the sum of principal and interest paid with respect to the Permanent Loan and the AHP Loan. The term "Net Proceeds" with respect to any Sale shall mean (A) the Gross Sales Proceeds, minus (B) the sum of (I) Deductible Expenses relating to such Sale, and (II) the sum of principal and interest paid with respect to any and all loans, including the Permanent Loan and the AHP Loan.

(iii) "Gross Sales Proceeds" shall mean in the case of a Sale, the gross sales consideration (adjusted for customary prorations and security deposit credits) realized from the Sale; provided, however, that if the Sale involves any seller financing, then the portion of such Gross Sales Proceeds from such Sale which are attributable to payments under such seller financing shall be paid to Agency only as and if Developer actually receives such payments. Agency agrees that Developer shall not be responsible for any portion of the Gross Sales Proceeds which might otherwise be attributable to any payment made pursuant to the terms of any purchase money financing until and unless Developer actually receives such payment.

(iv) "Deductible Expenses" shall mean reasonable, customary and usual expenses actually paid by or on behalf of Developer in connection with any Refinancing or Sale, including, without limitation, reasonable (A) mortgage brokerage or sale commissions, (B) legal fees, (C) title insurance and survey fees, (D) escrow fees, (E) transfer and recording taxes and fees, (F) loan commitment fees, (G) points and/or (H) prepayment penalties.

(v) "Refinancing" shall mean any act or process by which Developer borrows any funds, credit or allowance, repayment or reimbursement of which is secured in whole or in part by Developer's interest in the Property or the Project, or by any direct or indirect interest in Developer. Refinancing shall include any so-called "convertible mortgage," pursuant to which any person or entity receives an option or right to acquire any interest in the Property, the Project, or Developer's interest therein in lieu of repayment. Refinancing shall not include (A) any Sale or other transfer of all or any part of the Property, the Project, Developer's interest in any of the foregoing, or any interest in Developer or any partner of Developer (including any transfer of limited partnership interests or transfers to facilitate the syndication of interests in Developer or the Project), or (B) the conversion of the Construction Loan to the Term Loan.

(vi) "Sale" shall mean any sale, land sale contract, ground lease or any transfer of fee title to all or any part of the Property or the Project, or a transfer of a majority of the economic interests in the Developer; provided, however, the term Sale shall not include (i) encumbrance of the Property pursuant to the Senior Lender financing, the HOME Loan, or the AHP Loan or any Refinancing thereof, or (ii) any transfer of limited

partnership interests or transfers to facilitate the syndication of interests in Developer or the Project.

6. Title Insurance. The recordation of the Deed of Trust and the Regulatory Agreement shall occur on or before December 23, 1999 (the "Closing" or the "Closing Date"). The Developer covenants that at the Closing Date it will be the owner of fee title to the Property. On the Closing Date, and as a condition of the Agency's obligation to originate the Agency Loan, the Property shall be encumbered only by the following, in the following order of priority:

(a) Current real property taxes and assessments, not yet due and payable,

(b) Exception Nos. 3, 4, 5, 6, 7, 9 and 10, as shown on the preliminary report issued by Commonwealth Land Title Company (the "Title Company"), Order No. 67700411-C, dated as of July 14, 1999, and a deed of trust securing the Construction Loan. As a condition precedent to the Agency's delivery of any Agency Loan funds, the Developer shall deliver to the Agency an LP-10 ALTA Lender's Policy of Title Insurance Form B-1970, if available (and if unavailable, then form B-1987) together with such endorsements as shall be required by the Agency, from the Title Company, insuring that fee title to the Property is vested in the Developer and insuring the priority of the Deed of Trust and the Regulatory Agreement, prior and superior to all liens and encumbrances other than the matters described in clauses (i) and (ii) of subsection (b) of this section.

7. Subordination; Further Encumbrance.

(a) The Agency's Executive Director is authorized, in his or her sole and absolute discretion, to consent to subordination of the Deed of Trust and Regulatory Agreement to liens securing the Permanent Loan; provided that the Developer is not in default hereunder, and only if the Executive Director approves all other aspects of the Project, in accordance with Section 8, including, without limitation, the terms of all other financing for the Project, including the Construction Loan and the Permanent Loan, which approval may be withheld in the Executive Director's sole and absolute discretion.

(b) The Executive Director may agree to the encumbrance of the Property by liens securing the AHP Loan and the HOME Loan, provided that the Executive Director approves all the terms of same, which approval may be withheld in the Executive Director's sole and absolute discretion, and further provided that same shall be subordinate to the Deed of Trust, the Environmental Indemnity, and the Regulatory Agreement.

8. Approval of Project. In addition to all other provisions in this Loan Agreement providing for Agency approvals, the Agency shall have the right to review and approve, which approval may be withheld at the Agency's sole and absolute discretion: the terms of all other Project financing; the terms of an intercreditor agreement (the "Intercreditor Agreement") between the Agency, the County, Bay View Bank, and the Senior Lender concerning the

management of the various loans to finance the Project; annual operating budgets for the Project; the terms of the Partnership, including net pay-in, project costs and reserve requirements; all plans and/or designs and any changes thereto, and the Construction Contract. The Developer shall provide to Agency a copy of all requests for draws on the proceeds of the Construction Loan, the AHP Loan, and the HOME Loan, and all documents underlying the requests, at the same time the request is submitted to the disbursing lender.

9. Schedule of Performance. The Developer shall complete the Improvements in accordance with the approved construction schedule approved by the Agency as provided in section 4(h), above. All conditions precedent to the funding of the LIHTC Equity Funds, the HOME Loan and the AHP Loan shall occur by March 15, 2000. The Developer shall obtain the Agency's approval of any of the matters described herein for which the Agency's approval is required within such time as the Agency reasonably believes necessary in order to timely complete the Project. Subject to Force Majeure Delays (as defined in section 20(a)(vi)) the Developer agrees to commence construction of the Project on or before March 15, 2000, and to diligently pursue completion of same with reasonable speed and in a skilled manner substantially in accordance with the plans approved by the Agency, and with all requirements of all governmental authorities having or asserting jurisdiction, and will pay the cost thereof; in any event, subject to Force Majeure Delays (not cumulatively exceeding 90 days), the Developer shall cause all Improvements to be completed by September 30, 2001. For purposes hereof, all the work shall be deemed "completed" when the Improvements have been completed substantially in accordance with the plans as approved by the Agency, and a valid notice of completion has been recorded by the Developer, all mechanic's liens, if any, have been discharged or bonded, and the Agency has issued the Certificate of Completion. If there is any difference between any governmental requirements and the plans, then the requirements of whichever thereof are the higher shall be met in construction of the Improvements. The Developer, or any general contractor or construction manager executing or acknowledging this Agreement shall notify the Agency at least one week prior to the initiation of construction as set forth on the construction schedule furnished to the Agency pursuant to section 4(h). Free Capital Contribution of the

10. Developer's Obligation to Clear Commercial Site. Within 5 years after the recordation of the notice of completion in accordance with Section 9, the Developer shall have razed the existing improvements on the commercial portion of the Property (which is designated "Lot 8" on the Exhibit 1); provided that if any building on Lot 8 is vacated by the tenant currently occupying it, the Developer will immediately raze the vacated building.

11. Developer's Covenants, Warranties and Representations. The Developer makes the following covenants, representations and warranties as of the date of this Agreement and agrees that such representations and warranties shall survive the Closing and continue thereafter:

(a) Use of the Property. In accordance with the Regulatory Agreement, the Developer shall lease at least 39 apartment units on the Property only to persons or families that, at the time of their initial occupancy, are of very low income (as

defined in Health and Safety Code Section 50105) and the remaining units (except the manager's unit) only to persons or families that, at the time of their initial occupancy, are of lower income (as defined in Health and Safety Code Section 50079.5). Units currently occupied by persons or families with incomes exceeding lower income may continue to be occupied by those tenants until the tenants vacate those units. The Developer shall not charge rents that exceed an "affordable rent," as defined in California Health and Safety Code Section 50053, as amended from time to time. To the extent allowed by law, preference in rental of apartment units on the Property shall be given to persons who have been working or residing within the City for at least one year.

(b) Authority. The Developer has complied with all laws and regulations concerning its organization, existence and transaction of business. The Developer has the right and power to own and rehabilitate the Property, and the improvements thereon as contemplated in the Loan Documents. The Developer has, or at all appropriate times shall have, properly obtained all permits, licenses and approvals necessary to construct, rehabilitate, occupy, operate and lease the Project, and in so doing has, or shall have (as appropriate), substantially complied with the plans approved by the Agency, and all other applicable statutes, laws, regulations and ordinances.

(c) Enforceability. The Developer has full right, power and authority to execute and deliver the Loan Documents and to incur the obligations of the Developer contained in the Loan Documents. The Loan Documents constitute valid and binding obligations of the Developer which are legally enforceable in accordance with their terms, subject to bankruptcy and similar rights of debtor protection.

(d) No Breach. None of the undertakings of the Developer contained in the Loan Documents materially violate any of the plans approved by the Agency or any other applicable statute, law, regulation or ordinance or any order or ruling of any court or governmental entity, or materially conflicts with, or constitutes a material breach or default under, any agreement by which the Developer is, or the Property and the improvements are, bound or regulated.

(e) Financial Information. All financial information delivered to the Agency, including, without limitation, information relating to the Developer, the Partnership, the Property, and the Improvements, are audited and fairly and accurately represents such financial condition as of the date of its preparation and has been prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted in such information. No material adverse change in such financial condition has occurred which will materially impair the Developer's ability to perform its obligations under the Loan Documents.

(f) Proceedings. To the best of its knowledge, the Developer is not in violation of any statute, law, regulation or ordinance, or of any order of any court or governmental entity. The Developer has no knowledge of any claims, actions or proceedings pending or threatened against the Developer or affecting the Property, the improvements

thereon, or the Developer's ability to consummate this transaction, other than those disclosed to the Agency in writing.

(g) Accuracy. To the best of Developer's knowledge, all documents, reports, instruments, papers, data, information and forms of evidence delivered to the Agency with respect to the Agency Loan are accurate and correct in all material respects, are complete insofar as completeness may be necessary to give the Agency true and accurate knowledge of the subject matter thereof, and do not contain any misrepresentation or omission of a material fact. The Agency may rely on such reports, documents, instruments, papers, data, information and forms of evidence without any investigation or inquiry.

(h) Adequacy of Loans. The amounts available for acquisition and construction purposes shall not be less than the amount necessary to: (i) pay all anticipated costs to be incurred in connection with the acquisition of the Property and the completion of the Improvements in accordance with the Loan Documents, (ii) pay interest on the Construction Loan, (iii) enable the Developer to perform and satisfy all of the covenants of the Developer contained in the Loan Documents, and (iv) commence the start-up of operations of the Property, including, without limitation, the initial working capital.

(i) Utilities. All utility services including, without limit, gas, water, sewage, electrical and telephone, necessary for the construction and the occupancy of the Property, and the improvements thereon are available at or within the boundaries of the Property or all steps necessary to assure that such utility services will be available upon completion of the improvements thereon have been taken by the Developer.

(j) Impairment of Security. No materials, equipment, fixtures, carpets, appliances, or any other part of the improvements shall be purchased or installed under installment sales agreements, leases, or under other arrangements wherein the right is reserved or accrues to anyone to remove or to repossess any such items.

(k) Examination. The Developer is familiar with all of the Preliminary Plans and all governmental requirements for construction of the Project. The Improvements will in all material respects conform to and comply with the plans approved by the Agency and all governmental requirements.

(l) Formation and Organization Documents. The Developer has delivered to the Agency all formation and organizational documents of the Developer and shall deliver to the Agency all formation and organizational documents of the Partnership. All formation and organizational documents delivered to the Agency to date remain in full force and effect and have not been amended or modified since they were delivered to the Agency, except as may be delivered to the Agency from time to time. The Developer shall immediately provide the Agency with copies of any amendments or modifications of the formation or organizational documents.

(m) No Consents Required. Neither this Agreement nor anything provided to be done by the Developer hereunder violates or shall violate any contract, agreement or instrument to which the Developer is a party, or which materially and adversely affects the Property or any part thereof. The Developer has the full power and authority to enter into this Agreement and consummate the transaction contemplated hereby. The execution, delivery and performance of this Agreement has been duly and validly authorized by Developer, and no other action by the Developer is requisite to the valid and binding execution, delivery, and performance of this Agreement by the Developer.

(n) Tax Liability. The Developer has filed all required federal, state, county and municipal tax returns required to be filed by it, and has paid all taxes and assessments owed and payable, and the Developer has no knowledge of any basis for any additional payment with respect to any such taxes and assessments. The Developer shall pay all real and personal property taxes, assessments, and charges, and all franchise, income, unemployment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. However, the Developer shall have the right to contest in good faith any such taxes, assessments, or charges, so long as the Developer provides the Agency with reasonable security against impairment of the Agency's security interest in the Property. If the Developer exercised its right to contest any tax, assessment, or charge against it, then upon final determination of the proceeding or contest the Developer shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(o) ADA Compliance. The Improvements will be completed such that the Property is in compliance with Americans with Disabilities Act standards to the extent required thereby.

(p) Hazardous Materials. There are no hazardous or toxic material at actionable levels in, on or about the Property. The Developer, in its ownership and operation of the Property, shall comply with all laws, statutes, ordinances, orders, rules or regulations of any governmental entity ("Environmental Laws") concerning the use or clean-up of any hazardous or toxic materials on, in or under the Property. Developer shall hold all permits required pursuant to all Environmental Laws.

12. Construction Contract. The general building contract for the construction of the Improvements (the "Construction Contract") shall obligate a reputable and financially responsible general contractor reasonably acceptable to and reasonably approved in writing by the Agency, licensed in California, and experienced in completing the type of construction herein contemplated, to commence and complete the Improvements in accordance with this Loan Agreement and all applicable federal, state and local laws, rules and regulations. The Construction Contract shall be a stipulated sum for construction of the improvements. The Construction Contract shall provide for customary and reasonable retentions (but at least ten percent (10%)) from each progress payment (except there shall be no retention for any items excused from retention when approved by the Agency in writing in a separate document) until

the final payment. The Agency shall have the right, at the Agency's expense, at any time, including, without limitation, during construction and after completion of construction, to audit the Construction Contract and all subcontracts to insure such parties' compliance with the terms hereof, and the Developer shall insure that such Construction Contract and all subcontracts shall include a provision setting forth the Agency's audit rights. The Construction Contract and any other contracts shall also provide for a warranty satisfactory to the Agency that all Improvements shall be free from defects for a period of at least 1 year from and after the date of filing of the notice of completion, and all fixtures and other personal property installed at the Project shall be free from defects for the term provided by their manufacturer.

13. Management of Project

(a) Manager. The Project shall at all times be managed by an experienced manager (the "Manager") reasonably acceptable to the Agency, with demonstrated ability to operate residential rental properties like the Project in a manner that will provide decent, safe, and sanitary housing, all pursuant to the Management Plan. The Management Plan will be complied with for the term of the Regulatory Agreement. The Developer shall submit for the Agency's approval the identity of any proposed Manager. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Manager as is reasonably necessary for the Agency to determine whether the proposed Manager meets the standard for a qualified Manager set forth above. If the proposed Manager meets the standard for a qualified Manager set forth above, and the Agency approves the Management Plan, the Agency shall approve the proposed Manager by notifying Developer in writing. The Agency hereby acknowledges and approves the selection of South County Property Management Corporation as the initial Manager.

(b) Performance Review. The Developer shall cooperate with the Agency in an annual review of management practices, in connection with which Agency shall have the right to review and approve the annual operations and management budget; provided, however, that the Agency reserves the right to conduct reviews more frequently at its sole discretion. The purpose of each annual review will be to enable the Agency to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement.

(c) Replacement of Manager.

(i) If as a result of the annual review, the Agency determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the requirements and standards of this Agreement, the Agency shall deliver notice to the Developer of its intention to cause replacement of the Manager. Within fifteen (15) days of receipt by the Developer of such written notice, the Agency and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the Manager.

(ii) If, after such meeting, the Agency elects to proceed with the replacement of the Manager, the Agency shall so notify the Developer in writing within fifteen (15) days following the meeting. Thereupon, the Developer shall promptly dismiss the then Manager, and shall appoint as the Manager a person or entity meeting the standards for a Manager set forth in this section and approved by the Agency pursuant to this section. Agency shall have the right to disapprove the replacement Manager within 30 days, and in such case Developer shall promptly dismiss the replacement Manager, and further Agency may, at its option, appoint the Manager.

(iii) Any contract for the operation or management of the Project entered into by the Developer shall provide that the contract can be terminated as set forth above. Nothing contained herein shall be construed as a limitation on any other provision herein entitling Agency to replace the Manager under any other circumstances.

14. Right of Entry.

(a) In addition to the Agency's rights of access to the Property in exercising its police powers for public health and safety purposes, representatives of the Agency shall have the reasonable right of access to the Property without charges or fees, at normal construction hours during the period of construction, for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in rehabilitating the Project as provided in this Agreement; provided, that the Agency shall not unreasonably interfere with the construction or operation of the Project in conducting such inspections.

(b) If the Agency reasonably determines that the work is not in substantial conformance with the plans approved by the Agency and the terms of this Agreement, the Agency shall have the right to require Developer to correct the nonconformity within 15 calendar days from the date of Agency's notice to Developer specifying the nonconformity. Developer's failure to correct the nonconformity within such time shall constitute a default by the Developer under the terms of this Agreement; provided, however, that if the nature of the correction is such that it requires more than fifteen (15) calendar days to correct, then no default shall exist if, within such 15-day period, the Developer or the general contractor commences such correction and pursues it diligently to completion thereafter.

(c) The Developer acknowledges that the Agency is under no duty to supervise or to inspect the work of construction, the labor performed therefor, the materials used therein or any books and records, and that any inspection by the Agency of the Improvements is for the sole purpose of protecting the security of the Agency, and that such inspection is not to be construed as a representation by the Agency that there is or will be a strict compliance on the part of the Developer with the plans approved by the Agency, or that the construction is or will be free from faulty material or defective work quality. The Developer agrees that any inspection by the Agency is for the sole purpose of preserving the Agency's rights hereunder and that neither the Developer nor any other person is entitled to

rely upon the same with respect to materials, construction quality, compliance with the plans for the Project or otherwise. The Developer intends and agrees to conduct its own investigations and inspections of the construction, the labor performed and materials supplied to determine that the quality of the Project and all other requirements of the construction are being performed in a manner satisfactory to the Developer. The Developer agrees to immediately notify the Agency, in writing, should the same be materially unsatisfactory. A failure to inspect the construction of the Project, any part thereof, or any books and records relating thereto, shall not constitute a waiver of any of the Agency's rights hereunder. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute an acknowledgment that there has been or will be compliance with the plans approved by the Agency or that the construction is free from defects.

15. Local, State, and Federal Laws. The Developer shall carry out the Improvements on the Property in conformity with all applicable laws, including all applicable federal and state labor standards and prevailing wage requirements.

16. City and Other Governmental Agency Permits. The Developer covenants, warrants and represents that it has secured, or will secure, any and all permits which may be required by the City or any other governmental agency required to complete the Project on the Property by January 21, 2000. Developer shall pay such fees as may be required in connection therewith if it has not done so to date.

17. Prohibition Against Transfer. The Developer shall not assign or attempt to assign this Agreement or any right herein, nor make any total or partial lease (except as provided below), sale, transfer, conveyance or assignment of the whole or any part of the Property or the improvements thereon, or encumber or hypothecate the Property without the prior written consent of the Agency, which consent may be given by Agency in its sole discretion. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the construction of the Property or to prohibit or restrict the renting for occupancy of residential units to be constructed or rehabilitated on the Property (subject to the terms of the Regulatory Agreement). Moreover, notwithstanding the foregoing, the Developer may transfer and assign its interest in this Agreement to a California limited partnership (the "Partnership") as described in the Senior Lender Commitment Letter (of which South County Housing Corporation or an affiliate of South County Housing Corporation is the sole general partner ("General Partner"), provided that the Agency approves the terms of the Partnership and the identity of the investor partner (the "Investor") which approval may be withheld in the Agency's sole and absolute discretion. In the event that the General Partner is an affiliate of South County Housing Corporation, then South County Housing Corporation shall execute a completion guaranty if required by the Agency, in a form satisfactory to the Agency (the "Completion Guaranty"). In addition, Developer may lease units within the Property (subject to the Regulatory Agreement), without first obtaining the consent of the Agency. Finally, this prohibition shall not be deemed to prevent acquisition of the Property by the General Partner upon the expiration of the 15-year tax credit compliance period. In explanation but not limitation of the foregoing, the Agency reserves the right to withhold consent to the placement of any encumbrance on the Property, whether prior to or subordinate to the Deed of Trust

and/or the Regulatory Agreement, in connection with any other financing for the Project including the sources described in Recital F above, if Agency does not approve any of the terms of such financing, which approval may be withheld in Agency's sole and absolute discretion.

18. Reports. Prior to the date the Project passes final inspection, the Developer shall deliver to the Agency a monthly report detailing the status of the Project, including percentage of completion by phase and budget category, percentage of funds expended to date, description of third party defaults, and any deviations in budget or time schedules. The Developer shall also deliver reports to the Agency without the Agency's prior request any time following third party defaults and other material matters which might or could either materially delay construction of the Project or materially increase the cost thereof.

19. Construction Responsibilities. The Developer shall construct and rehabilitate the Project in a quality manner substantially according to the Preliminary Plans and the plans approved by the Agency and the recommendations of any soils or engineering report approved by the Agency. The Developer shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Property or the improvements. The Developer shall be solely responsible for all aspects of the Developer's business and conduct in connection with the Property and Improvements, including, without limitation, the quality and suitability of the plans for the Project and their compliance with all governmental requirements and the Loan Documents, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, the accuracy of all applications for payment and Loan Draw Requests, and the proper application of all disbursements. The Agency is not obligated to supervise, inspect or inform the Developer or any third party of any aspect of the Improvements or any matter referred to above.

20. Default.

(a) Events of Default. The occurrence of any of the following shall constitute an event of default ("Event of Default"):

(i) The Developer's failure to make any payment hereunder or under the Promissory Note when due, or the Developer's failure to perform any other obligation for the payment of money under any Loan Document, provided such failure under this subsection 20(a)(i) is not cured within ten (10) days after the Agency give the Developer written notice of such failure; or

(ii) The filing with the Agency of a bonded stop notice or the recording of a mechanic's lien pursuant to Title 15, Part 4, Division 3 of the Civil Code of the State of California relating to works of improvement upon real property, and the Developer's failure to cause such notice or lien to be released (by bond or otherwise) within forty-five (45) days of the Developer's or the Agency's receipt of a copy of same; or

(iii) The Developer's failure to perform any other obligation (other than obligations described in subsections (i) and (ii), above) under any Loan Document within the prescribed cure period for such obligation, or if no cure period is specified, within thirty (30) days after the Agency gives the Developer written notice that such obligation was not performed; provided that, if such cure cannot reasonably be effected with such 30 day period, such failure shall not be an Event of Default so long as the Developer promptly (in any event, within 30 days after such notice is given) commences cure, and thereafter diligently prosecutes such cure to completion; or

(iv) The Developer fails to obtain any of the Agency approvals referred to in this Loan Agreement; or

(v) Any representation or warranty in any Loan Document proves to have been incorrect in any material respect when made, and, if the representation can reasonably be corrected, Developer fails to correct it within thirty (30) days after the Agency gives the Developer written notice thereof; provided that, if cure cannot reasonably be effected within such 30 day period, failure to cure shall not be an Event of Default so long as the Developer promptly (in any event, within 30 days after such notice is given) commences cure, and thereafter diligently prosecutes such cure to completion; or

(vi) Work on the Project ceases for 15 consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond the Developer's reasonable control ("Force Majeure Delays")); or

(vii) The Developer is dissolved, liquidated or terminated, unless the Property is acquired by Developer's General Partner upon the expiration of the 15-year tax credit compliance period; or

(viii) The Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or the Developer applies or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Developer and the appointment continues undischarged or unstayed for 90 days; or the Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, construction or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of the Developer and continues undismissed or unstayed for 90 days; or

(ix) Any material default or event of default on the part of the Developer occurs under any superior or inferior instrument or loan document affecting the Property following notice and an opportunity to cure as provided therein, including any other obligation of the Developer to the Agency, or any other loan which is secured by a lien encumbering the Property; or

(x) Any material adverse change in the financial condition of the Developer which the Agency reasonably believes will materially and adversely affect the Developer's obligation to perform its obligations under the Loan Documents; or

(xi) Any loss of priority or other failure of the Deed of Trust to be a valid monetary lien encumbering the Property in the following positions of priority, subject to the Agency's agreement to subordinate the Deed of Trust in accordance with Section 7(a) above: in second position only to the lien of the deed of trust securing the Heritage Bank Loan, as to Lot 5; in first position, as to Lot 6; in second position only to the lien of the deed of trust securing Equity Preservation Loan 1, as to Lots 7 and 8 (other than current, non-delinquent real property taxes and assessments); or

(xii) Discovery of significant hazardous or toxic materials that shall have a material adverse impact on the value of the Project which is not cured by Developer in a manner reasonably acceptable to the Agency; or

(xiii) Any sale or other transfer of the Property or the Project, or any portion thereof, without the Agency's prior written consent or where not specifically permitted pursuant to this Agreement.

(b) Remedies Upon Default. Upon the occurrence of any Event of Default, all sums disbursed or advanced by the Agency shall, at the option of the Agency, immediately become due and payable, and the Agency shall be released from any and all further obligations to the Developer under the terms of this Agreement, including but not limited to any obligation to advance any additional Agency Loan proceeds. The Agency shall also be entitled to all other remedies available at law or equity, including the right to foreclose the Deed of Trust, either judicially or non-judicially.

21. Insurance

(a) The Developer shall procure at its sole cost and expense, and shall keep in effect from the date of this Agreement and at all times until the end of the term, Commercial General Liability Insurance applying to the construction, use and occupancy of the Property. Such insurance shall not include any contractual limitations other than those found in a standard commercial general liability coverage form and shall not be subject to any deductible. Such coverage shall have a minimum combined single limit of liability of at least Three Million Dollars (\$3,000,000) per occurrence and in the aggregate. All such policies shall be written to apply to all bodily injury, property damage, personal injury, and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add the Agency and its council members, board members, officers, employees and agents as additional insureds, and to provide that such coverage shall be primary and that any insurance maintained by the Agency shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Agency. The Commercial General Liability insurance shall be in force prior to release of any Agency Loan proceeds.

(b) The Developer shall also maintain Workers' Compensation insurance in accordance with California law, and an employer's liability insurance endorsement with limits of no less than \$1,000,000 each employee, \$1,000,000 each accident, and a \$1,000,000 policy limit. Any policy shall be endorsed with a waiver of subrogation clause for the Agency and its board members, officers, employees, and agents.

(c) The Developer shall obtain (or cause to be obtained) and keep in force until the Promissory Note is paid in full a standard "all risk" property policy, including, if required by the Senior Lender, broad form flood including back-up of sewers and drains and earthquake covering loss or damage to the Project, including all improvements thereon, in the amount of the full replacement value thereof, as the same may exist from time to time, but in no event less than the replacement value of all improvements at the Property, and an inflation factor endorsement and extension for increased costs of construction and demolition in an amount of no less than 10% of the replacement costs of the building and coverage for contingent liability from operation of building laws. The policy shall contain an agreed amount clause or no co-insurance equivalent waiving any co-insurance requirement. During construction, such policy shall include a course of construction endorsement. The Agency shall be named as a mortgagee/loss payee on such policy together with Lender, as their interests may appear, and such policy shall contain a standard mortgagee clause. The Developer shall, in addition, obtain and keep in force during the Project until completion a policy of builder's risk insurance in an amount not less than the total amount of the insurable improvements being rehabilitated. If any such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and the Developer shall be liable for such deductible amount.

(d) The Developer and its contractors shall also maintain automobile liability insurance containing a \$1,000,000 combined single limit for bodily injury and property damage and covering all owned, non-owned and hired vehicles.

(e) The Developer shall also require all contractors and subcontractors to provide Commercial General Liability Insurance, applying to the construction of the Project in amount and on terms approved by the Agency.

(f) All insurance described in this section shall be endorsed to provide the Agency with 30 days' advance notice of cancellation or change in its terms.

(g) If the Developer fails or refuses to maintain insurance as required hereunder, or fails to provide the proof of insurance, the Agency shall have the right to declare this Agreement in default following provision of notice and an opportunity to cure as provided in section 20, above.

(h) The procuring of such required policies of insurance shall not be construed to limit the Developer's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said insurance policies, the Developer shall

be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement or with the use or occupancy of the Property.

(i) Insurance Policies. If the Developer shall fail to obtain any insurance required hereunder, the Agency may, at its election, after notice to the Developer, obtain such insurance, and the Developer shall reimburse the Agency for the cost thereof plus a five percent (5%) handling charge, within five (5) days following demand therefor. Insurance required hereunder shall be issued by companies reasonably satisfactory to the Agency. The Developer shall deliver to the Agency copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with mortgagee/loss payable clauses as required by this section. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to the Agency. The Developer shall, at least thirty (30) days prior to the expiration of such policies, furnish the Agency with renewals or "binders" thereof. The Developer shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this section. All policies of insurance shall name the Agency, and, at the Agency's option, any additional parties designated by the Agency, as additional insureds. All insurance required to be provided hereunder is in addition to, and not in lieu of, the indemnity provisions set forth below. All of the foregoing policies shall be written with insurance companies licensed to do business in the State of California and rated no lower than A VII in the most current edition of A.M. Best's Property Casualty Key Rating Guide.

22. Indemnity. The Agency shall in no way be liable for any acts or omissions of the Developer or the Developer's agents, contractors or any person furnishing labor and/or materials used in or related to such construction. The Developer shall indemnify, defend, protect, and hold harmless the Agency and its respective directors, officers, employees, agents, successors and assigns from and against any and all claims, losses, proceedings, damages, causes of action, liabilities, costs and expenses, (including attorneys' fees) arising from or in connection with, or caused by (i) any act, omission or negligence of the Developer or any of the Developer's respective contractors, licensees, invitees, agents, servants or employees, wheresoever the same may occur; (ii) any use of the Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Property or any part thereof, or from the construction or use by the Developer of the Property or the Project, or from any activity, work or thing done, permitted or suffered by the Developer or its contractors, employees, servants, or invitees, in or about the Property or elsewhere to the extent not caused by the acts or omissions of the Agency; (iii) any breach or default in the performance of any obligations on the Developer's part to be performed under the terms of this Agreement, or arising from any negligence of the Developer, or any such claim or any action or proceeding brought thereon; and (iv) any failure at any time of any representations or warranties of the Developer to be true and correct; and in case any action or proceeding be brought against the Agency by reason of any such claim, the Developer, upon notice from the Agency, shall defend the same at the Developer's expense with counsel satisfactory to the Agency; provided, however, the foregoing shall not apply to the extent any such claim, loss, proceeding, damage, cause of action, liability, cost, or expense is caused by the gross negligence or willful misconduct of the Agency. The Developer, as a material part of the consideration to the Agency, hereby assumes all risk of damage to property or injury to persons

in, upon or about the Property arising from any cause whatsoever. The Developer shall immediately pay to the Agency upon demand any amounts owing under this indemnity, together with interest at the rate of 10% per annum from the date of loss by the Agency. **THE DEVELOPER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AGENCY SHALL SURVIVE CANCELLATION OF THE PROMISSORY NOTE AND THE RELEASE OF THE DEED OF TRUST WITH RESPECT TO CLAIMS, LOSSES, PROCEEDINGS, DAMAGES, CAUSES OF ACTION, LIABILITIES, COSTS OR EXPENSES, ACCRUING DURING THE DEVELOPER'S OWNERSHIP OF THE PROPERTY.** These provisions are in addition to, and not in lieu of, the insurance required to be provided by subsection 21 hereof.

23. Authority to File Notices. The Developer does hereby irrevocably appoint, designate, empower and authorize the Agency as its Agent, coupled with an interest, to sign and file for record any notice or written document that it may deem necessary to file or record to protect its security or interests hereunder.

24. Cessation of Work. Should work cease on the Improvements in violation of Section 20(a)(vi) hereof, specifically including stoppage by the Agency in accordance with section 14 hereof, then the Agency may, at its option, without notice, declare the Developer to be in default hereunder and/or may take possession of the Property and enter into contracts for or proceed with the finishing of the Improvements and pay the cost thereof, plus a fee of fifteen percent (15%) for supervision of construction, disbursing all or any part of the Agency Loan for such purposes. Should the cost of finishing the Improvements plus such fee amount to more than the undisbursed balance of the Agency Loan, then such additional costs may be expended by the Agency at its option, in which event it shall be considered and be an additional loan to the Developer which Developer shall repay within thirty (30) days after the completion of the Improvements, together with interest thereon at the same rate as the Agency Loan and which shall be secured by the Deed of Trust. The Developer further hereby authorizes the Agency at its option at any time, when an Event of Default occurs, either in its own name or in the name of the Developer, to do any and all the things necessary or expedient in the opinion of the Agency to secure the performance of the construction contracts and to secure the completion of the Improvements substantially in accordance with the plans approved by the Agency, and to do any and every act or thing pertaining to or arising out of the construction or completion of such improvements or any contract therefor, disbursing all or any part of the Agency Loan proceeds for such purposes. In addition to the specific rights and remedies hereinabove mentioned, the Agency shall have the right to avail itself of any other rights or remedies to which it may be entitled under any existing law or laws.

25. Certificate of Completion

(a) Upon completion of the Project, the Agency shall, upon the request of the Developer or at its own election, furnish the Developer with a certificate of completion (the "Certificate of Completion"). The Certificate of Completion shall be issued within thirty (30) days after receipt of a written request therefor by the Developer. The Agency shall not unreasonably withhold or delay the issuance of the Certificate of Completion.

(b) If the Agency refuses or fails to furnish a Certificate of Completion for the Property after written request from the Developer, the Agency shall, within thirty (30) days after receipt of such written request, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the completion of off-site improvements or the immediate availability of specific items or materials for landscaping and/or minor "punch list" items which shall not exceed in the aggregate ten percent (10%) of the total construction cost of the Improvements, the Agency will issue its Certificate of Completion upon the posting of security in the form of a bond, or a letter of credit from a financial institution approved by Agency, or a cash deposit by the Developer or its contractor with the Agency in an amount representing the cost of the work not yet completed; provided that a Certificate of Occupancy for the Property has been provided by the City. The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the Project required by this Agreement. After recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the Regulatory Agreement and the Deed of Trust.

(c) The Certificate of Completion shall be in such form as to permit it to be recorded in the Recorder's Office of Santa Clara County.

(d) The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of an encumbrance senior to the Regulatory Agreement and/or the Deed of Trust. Such Certificate of Completion is not a "notice of completion" as referred to in Section 3093 of the California Civil Code.

26. Nondiscrimination. The Developer agrees that there shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, sexual orientation, creed, religion, ancestry, political affiliation or opinion, national origin, sex, physical condition, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, familial status, marital status or status with regard to public assistance in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

27. Relocation. The Developer shall provide, at the Developer's cost, any relocation assistance required under the Federal Uniform Relocation Act or California Government Code section 7260, *et seq.*, in connection with this Agreement and the Project. Developer agrees to and shall indemnify, defend and hold the Agency and the City harmless from and against all liability, loss, damage, costs, or expenses (including attorneys' fees and court costs) arising from or as a

result of the claim of any person for relocation benefits alleged to result from this Agreement or the construction of the Project. The Developer shall give preference in the rental of any units to eligible households or persons displaced by Agency activity.

28. Notices. All notices, demands or other communications under this Agreement and the other Loan Documents shall be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery or by overnight courier. Notices shall be considered given upon the earlier of (a) personal delivery; (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested; or (c) one (1) business day following deposit with an overnight courier. Notices shall be addressed as provided in Exhibit 7 for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice.

29. General. Time is of the essence of this Agreement and of each and every provision hereof. The waiver by the Agency of any breach or default herein shall not be deemed, nor shall it constitute, a waiver of any subsequent breach or breaches. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties hereto, and there shall be no other agreement regarding the subject matter hereof unless signed in writing by the party to be charged. This Agreement is made for the sole benefit of the Developer and the Agency, as the case may require, and its successors and assigns, and no other person shall have any right of action or right to rely hereon. All covenants and agreements contained herein shall be to the benefit of the Agency, and shall be liberally interpreted to give full force and effect in view of the public purposes of the Agency Loan. Any failure or delay by the Agency in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the Agency of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. This Agreement and the rights of the parties shall be governed by California law. The parties consent to the exclusive jurisdiction of the California Superior Court for the County of Santa Clara. The Developer agrees, for the benefit of the Agency, that if service of process upon the Developer in the State of California may not be otherwise effected, the Secretary of State of the State of California is designated as agent for the Developer, with full authority to receive such service of process on its behalf, which designation and authorization shall survive the termination hereof or the performance of all obligations hereunder. The Agency shall have the right at all reasonable times to inspect the books and records of the Developer pertaining to the Property as pertinent to the purposes of this Agreement. All of the terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and the permitted successors and assignees of the Developer. Whenever the term Developer is used herein, such term shall include any other permitted successors and assignees as provided in section 17 of this Agreement.

30. Disbursements in Excess of Maximum Loan Amount. In the event the total disbursements by the Agency exceed the maximum Agency Loan amount, the total of all disbursements shall be secured by the Deed of Trust.

31. No Waiver; Remedies Cumulative. No disbursement of proceeds of the Agency Loan shall constitute a waiver of any conditions to further disbursements nor, in the event the Developer is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Agency from thereafter declaring such inability to constitute a default under this Loan Agreement. No disbursement of proceeds based upon inadequate or incorrect information shall constitute a waiver of a right to receive a refund thereof. No failure or delay on the part of the Agency in the exercise of any power, right or privilege hereunder or under any of the other Loan Documents shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under this Agreement or the other Loan Documents are cumulative to and not exclusive of any rights or remedies otherwise available. The Agency's acceptance of less than the entire amount due for any payment on the Promissory Note shall not constitute a waiver by the Agency to thereafter demand the entire amount due.

32. Litigation. In the event of any dispute between the parties hereto arising out of this Loan Agreement, the non-prevailing party agrees to pay to the prevailing party all sums paid or incurred by the prevailing party as costs and expenses in the legal proceedings, including but not limited to actual attorneys' fees and costs incurred by the prevailing party.

33. Warranty Against Payment of Consideration for this Loan Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Loan Agreement.

34. Nonliability of Officials and Employees. No member, director, officer, agent, attorney, official or employee of any of the Agency shall be personally liable to the Developer or any successors in interest in the event of any default or breach by the Agency or for any amount which may become due to the Developer or its successors or on any obligations under the terms of this Loan Agreement.

35. No Third Party Beneficiaries. This Loan Agreement is made for the sole protection of the Agency and the Developer and their respective permitted successors and assigns, and no other person or persons shall have any right of action hereon, nor should any laborer, materialman, subcontractor, or other third party rely upon the funds deposited hereunder as a source of payment for work done or labor and/or materials supplied in respect to the Improvements contemplated hereunder or otherwise, notwithstanding any representation to the contrary made by the Developer, contractor or any other person. This Loan Agreement, the Promissory Note, Deed of Trust, and the other Loan Documents, contain all of the terms and conditions agreed to by the Developer and the Agency, and no other agreement regarding the subject matter of this Loan Agreement, unless it is in writing and signed by the Agency and the Developer, shall be deemed to exist or to bind any party hereto.

36. Conflict with Regulatory Agreement. In the event of any conflict between the terms hereof, the Promissory Note, or the other Loan Documents, on the one hand, and any of the Regulatory Agreement, on the other hand, the terms of the Regulatory Agreement shall control and the Agency shall be entitled to enforce its Regulatory Agreement notwithstanding any other provision to the contrary herein or in the Loan Documents.

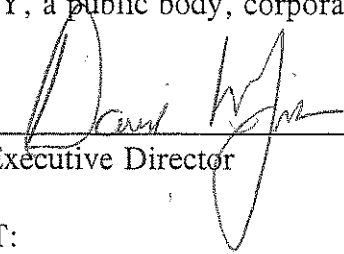
37. Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, consent, request, or other action by the Agency is required or permitted under this Agreement, such action may be given, made or taken by the Agency's Executive Director, or by any person who shall have been designated in writing to the Developer by the Agency's Executive Director, without further approval by the Agency Board, and any such action shall be in writing. The Agency's Executive Director is also hereby authorized, in his or her sole and absolute discretion: to approve modifications to the uses of Agency Loan funds; to make modifications to the terms of the instruments and agreements to be executed pursuant hereto (including, without limitation, the Promissory Note, the Deed of Trust, the Completion Guaranty, and the Regulatory Agreement) that the Executive Director deems necessary in order to comply with federal tax credit requirements; to take any actions and execute any documents necessary to implement this Agreement; and to approve, on behalf of the Agency, requests by the Developer for reasonable extensions of time deadlines set forth in this Agreement, provided that he or she reasonably determines that such extensions of time will not result in a delay in completion of construction beyond July 31, 2001. The Agency's Executive Director is further authorized to consent to subordination of the Deed of Trust below second position of priority, only as allowed under the California Redevelopment Law (Health and Safety Code Sections 33000, *et seq.*), which consent may be withheld in his or her sole and absolute discretion. The Agency shall not unreasonably delay in reviewing or approving or disapproving any proposal made by the Developer in connection with this Agreement. Approvals by the Agency shall not be subject to a reasonableness standard, unless specifically provided otherwise.

38. Signs. Agency may place signs satisfactory to the Developer on the Property at locations satisfactory to the Developer advising of the financing of the Project by the Agency. Agency may also make announcements regarding same through press releases to newspapers and trade publications.

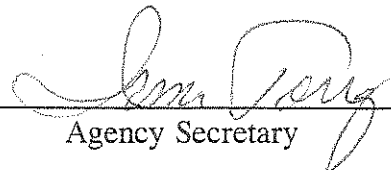
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

"Agency":

MORGAN HILL REDEVELOPMENT
AGENCY, a public body, corporate and politic

By:  12/20/99
Executive Director

ATTEST:


Agency Secretary

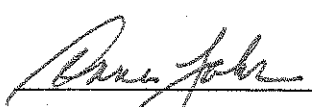
APPROVED AS TO FORM:

Richards, Watson & Gershon, a Professional
Corporation, Agency Special Counsel

By: 
Assistant Agency Special Counsel

"Developer":

SOUTH COUNTY HOUSING
CORPORATION, a California non-profit
corporation

By: 

DENNIS LALOR
[Typed/printed name]

EXECUTIVE DIRECTOR
[Title]

By: _____

[Typed/printed name]

[Title]

ATTACHMENTS

- Exhibit 1- Legal Description of Property
- Exhibit 2- Form of Promissory Note
- Exhibit 3- Form of Deed of Trust
- Exhibit 4- Form of Environmental Indemnity
- Exhibit 5- Form of Regulatory Agreement
- Exhibit 6- Sources and Uses of Funds
- Exhibit 7- Addresses for Notices
- Exhibit 8- Form of Security Agreement

Exhibit 1

That certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Lots 5, 6, 7, and 8, Map of the Mason Addition, filed April 8, 1912 in Book "N" of Maps, at Page(s) 93, Santa Clara County Records.

Assessor's Parcel Numbers: 767-09-022, 767-09-023, 767-09-024, 767-09-025

Exhibit 6

(Sources and Uses of Funds)

[To Be Provided By Developer]

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

RECEIVED

JAN 13 2000

January 11, 2000

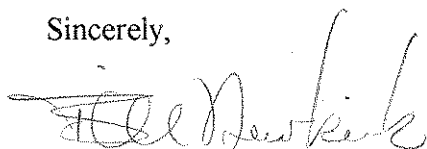
Ms. Jan Lindenthall
South County Housing Corp.
7455 Carmel Street
Gilroy, CA 95020

RE: Villa Ciolino Project, Morgan Hill CA

Dear Jan:

In reviewing the Redevelopment Agency's loan documents, I noticed that Exhibit 6 to the Loan Agreement did not get included in the final documents. I am aware that not all costs have been finalized. But I enclose the Sources and Uses which best described the project at the time of signing, and which should have been included as Exhibit 6. I apologize for the omission.

Sincerely,



Bill Newkirk
Business Assistance and
Housing Services Analyst

enclosure

Villa Ciolino
42 Family Apartments
South County Housing

Table 2.1 Sources and Uses of Funds

Sources of Funds	Terms	Amount	
Construction Loan	16 months	9.25%	5,220,000
Permanent Loan	360 months	9.00%	1,735,000
Morgan Hill RDA	360 months	4.00%	1,000,000
AHP Loan	42 7500		315,000
RDA Construction Period Deferred Interest			67,500
Income from Operations			85,257
County HOME loan			300,000
Fed/State Tax credits (LP)	0.99		4,994,188
General Partner Contribution	0.008		40,061
Total Sources of Funds			14,657,006
			23.3%
			42
			12
			16
			14
			42
			40,061
			632,191
			6%
			0.8%
Uses of Funds			
		Cost	Eligible Basis
Acquisition			
Land Cost or Value (incl seller int)		3,136,083	0
Legal Fees		5,000	
Off-site Improvements		382,000	
Demolition		60,000	
Title and Escrow		10,000	
Total Acquisition Cost		3,593,083	
Rehabilitation			
Site Work		0	
Structures		135,000	135,000
Total Rehabilitation		135,000	
New Construction			
Site Work - Utilities, Testing		130,000	130,000
Structures		2,857,198	2,857,198
Total New Construction		2,987,198	
Architectural Fees			
Design		243,000	
Supervision		42,000	
Total Architectural Costs		285,000	285,000
Survey and Engineering		94,000	94,000
Construction Interest and Fees			
Construction Loan Interest		446,636	366,161
Origination Fee		39,150	39,150
Construction Loan Repayment		5,220,000	
Credit Enhancement & App. Fee		0	0
RDA Pradevelopment Interest		67,500	67,500
SCH/GP Advance repayment		0	0
Construction Bond Premium		15,000	15,000
Taxes		0	0
Insurance		7,500	7,500
Title and Recording (construction loan)		10,000	10,000
Total Construction Interest and Fees		5,805,788	
Permanent Financing			
Loan Origination Fee (perm loan)		26,025	
Rate Lock Fee		8,675	
Title and Recording (Perm Loan)		10,000	
Other (perm loan)		0	
Total Permanent Financing Costs		44,700	
Legal Fees			
Lender Legal Paid by Applicant		20,000	10,000
Other Legal		50,000	5,000
Total Attorney Costs		70,000	0
Reserves			
Rent Reserves		41,881	
Other reserves		0	
Total Reserve Costs		41,881	0
Total Appraisal Costs		22,000	14,000
Total Construction Contingency costs		250,000	250,000
Other			
TCAC App/Alloc/Monitoring Fees		37,454	0
Environmental Audit		19,000	19,000
Permit Processing Fees		436,748	436,748
Capital Fees		0	0
Marketing		15,000	0
Relocation Expenses	** adjusted	79,404	79,404
Furnishings		0	0
Other - Contingency Soft Costs		15,000	15,000
Other Audit		8,500	0
Other - Property Maintenance		15,000	15,000
Total Other Costs		626,106	
Developer Costs			
Developer Fee		672,252	672,252
Consultant		30,000	0
Project Administration		0	0
Other - Developer Costs		0	0
Total Developer Costs		702,252	
TOTAL PROJECT COST		14,857,008	5,522,913
TOTAL PROJECT COST LESS LOAN REPAYMENT		9,437,006	
COST PER UNIT		224,691	

Exhibit 7

Addresses for Notices

Agency:

Morgan Hill Redevelopment Agency
17555 Peak Avenue
Morgan Hill, California 95037
Attention: Executive Director
Tel: (408) 776-7373
Fax: (408) 779-3117

Copy to:

Richards, Watson & Gershon
333 South Hope Street
38th Floor
Los Angeles, California 90071
Attn.: Jeffrey Rabin
Tel.: (213) 626-8484
Fax: (213) 626-0078
e-mail: JRabin@rwglaw.com

Developer:

South County Housing Corporation
7455 Carmel Street
Gilroy, California 95020
Attention: Jan Lindenthal
Fax. No: (408) 842-0277
Tel. No.: (408) ~~842-1511~~

842-9181



FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this "Amendment") is made and entered into as of OCTOBER 30, 2000, by and between the MORGAN HILL REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), and VILLA CIOLINO ASSOCIATES, a California limited partnership (the "Developer").

1. This Amendment is made with respect to the following facts:

a. The Agency and South County Housing Corporation, a California non-profit corporation ("SCH") entered into that certain Loan Agreement (the "Loan Agreement") dated as of December 16, 1999, pertaining to the acquisition and development of that certain real property (the "Property") located along the south side of Ciolino Avenue between Monterey Road and Del Monte Avenue in the City of Morgan Hill, California. The Loan Agreement was assigned to and assumed by the Developer pursuant to that certain Assignment, Assumption and Consent Agreement dated December 22, 1999. Notwithstanding anything to the contrary contained in the Assignment, Assumption and Consent Agreement, the obligations assigned by SCH and assumed by Developer include the Loan Agreement and all documents executed in connection with the Loan Agreement with respect to the loan from the Agency, including without limitation, the Regulatory Agreement and Deed of Trust. All capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

b. Pursuant to the Loan Agreement, the Developer agreed to acquire and make certain improvements to the Property, and the Agency agreed to make the Agency Loan in the amount of \$1,900,000 to finance a portion of the acquisition and predevelopment costs, as described in the Loan Agreement.

c. Subsequently, Developer has determined and represents and warrants to Agency that the estimated cost of completing the Project construction has increased by \$475,000.

d. The Agency desires to increase the Agency Loan amount by \$475,000 (the "Additional Agency Funds") to fund such deficiency.

e. The Developer also represents and warrants that in order for Developer to obtain the Construction Loan and the Permanent Loan described in the Loan Agreement, the Senior Lender requires that the Agency Loan be non-recourse upon completion of the Improvements.

f. Pursuant to an Inter-Creditor Agreement, dated as of December 1, 1999, by and among Agency, Developer and Bank of America, N.A., a national banking association (the "Bank"), Agency and Bank agreed to obtain the prior written consent of the other regarding any material modification of their respective Loans.

2. The Loan Agreement is hereby amended as follows:

a. The principal amount of the Agency Loan is hereby increased from \$1,900,000 to \$2,375,000.

b. The Developer shall use the Additional Agency Funds only for the construction of new structures and the uses set forth on Exhibit A attached hereto and incorporated herein by this reference (the "Approved Uses").

c. The Agency shall disburse the Additional Agency Funds to Developer, or at Agency's option jointly to Developer and the general contractor or the applicable subcontractor(s), upon the occurrence of all of the following conditions precedent, (which supplement, are added to and made a part of the conditions precedent set out in Section 4 of the Loan Agreement):

(1) Agency's receipt of copies of the evidence submitted to Bank in satisfaction of the conditions set forth in Section 3.1 of that certain Loan Agreement dated as of December 1, 1999 by and between Developer and Bank, as it exists as of the date this Amendment is executed by the Agency (the "Senior Loan Agreement") and the conditions set forth in Sections 2.3.2 (i) - 2.3.2 (iii) of Exhibit E to the Senior Loan Agreement.

(2) Agency's receipt of a statement from Bank certifying that: (a) Bank is not aware of any condition, event, act or omission that constitutes a breach, violation or default of or under the Senior Loan Documents, or that but for the passage of time or giving of notice, or both, would constitute a breach, violation or default under the Senior Loan Documents, and (b) all conditions precedent to Bank's disbursement of the Senior Loan proceeds except disbursement of the Additional Agency Funds, have occurred. "Senior Loan Documents" shall have the meaning ascribed to the term "Loan Document" in the Senior Loan Agreement, as it may be amended from time to time.

(3) Borrower's provision to Agency of endorsements to, or a reissuance of, Agency's title insurance policy insuring lien-free completion of the Project and insuring against any potential loss of priority of the deed of trust securing the Agency Loan as a result of the Agency's loan to Borrower of the Additional Agency Funds.

(4) Agency's receipt of Bank's consent to this Loan Amendment in the form attached hereto as Exhibit B, which is incorporated herein by reference.

(5) Developer and Agency agree that the Additional Agency Funds shall be disbursed in a coordinated manner with the Senior Loan Agreement in payment for the Approved Uses. At least one week prior to scheduled monthly draw meetings between Agency, Developer and Bank required under the Senior Loan Documents, Developer shall submit copies to Agency of all Draw Requests submitted to Bank, as such are defined by and required to be submitted under the Senior Loan Documents, and such Draw Requests shall be considered draw requests for the Additional Agency Funds (the "Agency Draw Requests"). Developer and Agency agree that the Additional Agency Funds may be disbursed prior to any additional funds being disbursed under the Senior Loan Agreement. Further, Developer shall notify Agency of the time and place of all monthly draw meetings no later than at the time of the delivery of the draw packets, and shall submit to Agency copies of the minutes of all weekly construction progress meetings with the Agency Draw Requests. Agency shall have the right to approve or disapprove all Agency Draw Requests, in whole or in part, prior to disbursing the Additional Agency Funds related thereto. After the Additional Agency Funds have been disbursed pursuant to Agency Draw Requests approved and paid by Agency, Developer shall continue to provide to Agency copies of its Draw Requests submitted to Bank that relate to the Senior Loan, though at such time Agency's approvals shall be advisory only.

3. The Loan Agreement is further amended by adding thereto a new paragraph 39 to read as follows:

"39. Non-Recourse Upon Completion.

"a. Except as provided in subsection 39(b) hereof to the contrary, from and after the date on which the Agency furnishes the Certificate of Completion, the Agency shall not be entitled to obtain a personal or deficiency judgment against the Developer or any partner of the Developer for nonpayment of the principal and interest due under this Agreement or the Promissory Note.

"b. Nothing in this provision shall prejudice the rights of the Agency as against the Developer or against any other entity under any policy of insurance or other agreement which the Developer or such other entity may have given the Agency that does not create personal liability on the part of the Developer for the payment of principal and interest on this Agreement or the Promissory Note. Moreover, notwithstanding subsection (a), above, the Developer shall be fully liable to the Agency, and the Agency shall be entitled to obtain a personal or deficiency judgment in the amount of all loss and damage suffered by the Agency (including but not limited to reasonable attorneys' fees and costs), as a result of (i) the Developer's intentional fraud or intentional

misrepresentation to the Agency, (ii) misapplication or wrongful retention of rental income or casualty insurance or condemnation proceeds attributable to the Property, (iii) the Developer's removal of personal property or fixtures from the Property in violation of the provisions of the Deed of Trust, (iv) the commission of any act of deliberate waste with respect to the Property by the Developer, (v) any losses suffered or liability incurred as a result of the Developer's use of hazardous or toxic material or wastes on the Property or any losses suffered or liability incurred by the Agency due to the presence of hazardous or toxic material or wastes on the Property, (vi) the Developer's failure to pay all taxes and assessments levied against the Property, or (vii) Developer's indemnification obligations under the Environmental Indemnity Agreement or section 22 hereof."

4. Agency and Developer shall execute, and Developer shall record in the County Recorder's Office, a First Amendment to Note, Deed of Trust, and Regulatory Agreement in the form attached hereto as Exhibit C, which is incorporated herein by reference.

5. All terms and provisions of the Loan Agreement not specifically altered herein shall remain unchanged and continue in full force and effect.

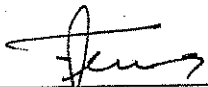
6. This Amendment may be signed in two or more counterparts. These counterparts, taken together, shall constitute a single Amendment even though two or more parties are not signatories to the same counterpart.

[Remainder of page intentionally blank.]

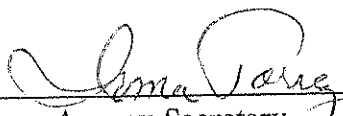
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

"Agency":

MORGAN HILL REDEVELOPMENT
AGENCY, a public body, corporate and
politic

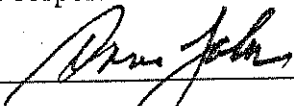
By: 
Executive Director

ATTEST:


Agency Secretary

"Developer":

VILLA CIOLINO ASSOCIATES, a
California limited partnership
By its General Partner, South County
Housing Corporation, a California non-
profit corporation

By: 
DENNIS LALOR
[Typed/printed name]

EXECUTIVE DIRECTOR
[Title]

By: _____

[Typed/printed name]

[Title]

APPROVED AS TO FORM:

Richards, Watson & Gershon, a Professional
Corporation, Agency Special Counsel

By: _____
Assistant Agency Special Counsel

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement
as of the day and year first above written.

"Agency":

MORGAN HILL REDEVELOPMENT
AGENCY, a public body, corporate and
politic

By: _____
Executive Director

ATTEST:

Agency Secretary

"Developer":

VILLA CIOLINO ASSOCIATES, a
California limited partnership
By its General Partner, South County
Housing Corporation, a California non-
profit corporation

By: _____

[Typed/printed name]

[Title]

By: _____

[Typed/printed name]

[Title]

APPROVED AS TO FORM:

Richards, Watson & Gershon, a Professional
Corporation, Agency Special Counsel

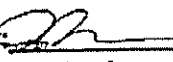
By:  _____
Assistant Agency Special Counsel

Exhibit A

Funds from the First Amendment to Loan Agreement between Morgan Hill Redevelopment Agency and Villa Ciolino Associates may be disbursed to pay for construction labor and materials installed and approved for the five new apartment buildings (pads A through E) according to approved and accepted subcontractor agreements, copies of which are on file with the Redevelopment Agency of the City of Morgan Hill.

Labor and Materials which could be included in the construction of these five buildings are:

- rough grading
- layout and trenching
- construction of concrete pad
- framing
- rough and finish plumbing
- rough and finish electrical
- insulations
- windows and doors
- finish carpentry
- roofing
- HVAC
- drywall
- cabinetry
- fixtures and appliances
- floor and window coverings
- paint and other finishes

The above list is not exclusive. Other items may be added with approval and verification by the Redevelopment Agency.

Exhibit B

CONSENT OF BANK OF AMERICA, N.A.

Pursuant to an Inter-Creditor Agreement (the "Agreement"), dated as of December 1, 1999, by and among MORGAN HILL REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), VILLA CIOLINO ASSOCIATES, a California limited partnership (the "Developer") and BANK OF AMERICA, N.A., a national banking association (the "Bank"), Agency and Bank agreed to obtain the prior written consent of the other regarding any material modification of their respective loans as described in the Agreement. By the signature of its authorized representative below, Bank hereby consents to the increase in the principal amount of the Co-Construction Loan (as defined in the Agreement) from \$1,900,000.00 to \$2,375,000.00, pursuant to the terms and conditions of that certain First Amendment to Loan Agreement between Agency and Developer, dated as of OCTOBER 30, 2000.

WITNESS the signature of the authorized representative of Bank as of the date indicated below.

BANK OF AMERICA, N.A., a national
banking association

By 

Title: Vice President

Date: 9/29/00

Address:

Bank of America, N.A.
Loan Administration Unit #CA5-514-01-13
485 California Street
San Francisco, CA 94104
Attention: Georgia Martin



June 12, 2024

Rebecca Garcia
Housing Manager
17575 Peak Ave
Morgan Hill, CA 95037

**Re: Villa Ciolino Associates
Villa Ciolino Apartments
2023 Annual Payment from Surplus Cash**

Dear Ms. Garcia,

Villa Ciolino Associates (the "Partnership") is the owner of Villa Ciolino Apartments, a 42-unit affordable housing complex for families originally built in 2001 located at 80 Ciolino Avenue Morgan Hill, CA 95037 (the "Property"). Eden Housing is the sponsor, developer, and property manager of the Property.

The Partnership has a loan from the City of Morgan Hill in the principal amount of \$2,375,000 which bears a 4% simple interest with payments made from excess/distributable cash.

The Property currently has an extensive list of urgent capital needs, including but not limited to:

- Leaking roof that is beyond repair and has passed its useful life.
- Dry rot fence.

The Property currently has approximately \$136,000 replacement reserves but the roof replacement is estimated to cost \$240,000 and the fence replacement is estimated to cost \$44,000.

Therefore, we respectfully request the City of Morgan Hill for the following:

- A waiver of the 2023 annual payment from surplus cash of \$101,197 due to the City (Eden Housing has waived distributions from surplus cash owed to Eden Housing since 2023 to support the Property)

We thank you for your continued partnership. Should you have any questions, please contact Quyen Nguyen at (510) 247-8139 or via e-mail at quyen.nguyen@edenhousing.org.

Sincerely,

Quyen Nguyen
Asset Manager

22645 Grand Street | Hayward, CA 94541 | Tel: 510-582-1460 | edenhousing.org



Broker License No. 872400



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH CITY OF GILROY FOR PROVIDING STAFF SERVICES

RECOMMENDATION(S)

Authorize the City Manager to execute the Third Amendment to the City of Gilroy Staff Services Agreement for Stormwater Permitting Requirements and Environmental Management Services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2024-2025 Strategic Priorities

Fiscal Sustainability

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider an amendment to the City's staff services agreement with the City of Gilroy that would extend Stormwater Program and Environmental Management services for an additional year through FY 2024-25 (see Attachment 1). The Third Amendment to the Agreement would provide a 30-hour per week temporary staff person to support the coordination of Gilroy's Stormwater Program as well as ongoing Environmental Program management by the City of Morgan Hill.

Since 2015, the City of Morgan Hill has shared a full-time Environmental Programs Coordinator with the City of Gilroy to run the Stormwater Program in both cities. Gilroy has reimbursed the City for 50 percent of the Environmental Programs Coordinator position and associated overhead costs. This shared staff arrangement has resulted in efficient and effective use of resources to achieve stormwater compliance over the past nine years. As stormwater requirements have grown, both Morgan Hill and Gilroy have supplemented with consultant work and in-house interns to meet the increasing needs of the program. In January 2021, the City of Morgan Hill hired a part-time temporary Environmental Services Technician to provide additional focused help in meeting Water Board expectations for Stormwater Program compliance. The City of Gilroy determined that they also required additional Stormwater Program support and so, in addition to the shared Environmental Services Coordinator, the City has also shared an Environmental

Services Technician in fiscal years 2022-23 and 2023-24.

As the current Staff Services Agreement has neared the end of its term, the City of Morgan Hill and Gilroy have determined that focused in-house staff and program oversight is the best way to address increasingly complex environmental regulations and associated program needs. As such, Gilroy has begun recruiting for their own Environmental Programs Manager and has requested continued environmental programs staff support services from the City of Morgan Hill while they transition their environmental programs to an in-house setup over the coming 2024-25 fiscal year. The Third Amendment to the Agreement is intended to provide the requested transitional staffing for Gilroy in FY 2024-25 and also updates the agreement to include revised bill rates for Environmental Services Division staff plus related expenses.

COMMUNITY ENGAGEMENT:

This staff report serves to inform the community of the proposed third amendment to the agreement with City of Gilroy for providing staff services.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the Third Amendment to the Staff Services Agreement with Gilroy. In this case, the City of Morgan Hill would be unable to fulfill Gilroy's request for continued environmental staff services while they transition to an in-house staffing setup.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 16, 2015, the City entered into an agreement to provide staff services for the implementation of stormwater permitting requirements and environmental services through June 30, 2019.

On May 15, 2019, the City Council approved the First Amendment to the Agreement to extend the term of the Agreement for another five years through June 30, 2024.

On April 20, 2022, the City Council approved the Second Amendment to the Agreement to increase staffing to include a shared Environmental Services Technician to support the Stormwater Programs in both cities.

FISCAL AND RESOURCE IMPACT:

As indicated in Exhibit B of the Third Amendment to the Agreement, payments from the City of Gilroy to the City of Morgan Hill for staff services in FY 2024-25 are estimated at \$178,542. The budget approved by the Council on June 19, 2024, includes the updated recommendation to increase revenue by approximately \$153,500 and an increase in expenses of approximately \$110,000. This will result in a positive net impact on the City's General Fund.

Completing work for the City of Gilroy is included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

This is an organizational/administrative action that will not result in direct or indirect physical changes to the environment.

**THIRD AMENDMENT TO AGREEMENT
FOR PROVIDING STAFF SERVICES FOR THE IMPLEMENTATION OF STORMWATER
PERMITTING REQUIREMENTS AND ENVIRONMENTAL SERVICES TO THE CITY OF
GILROY**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF GILROY, a municipal corporation ("GILROY"), and the CITY OF MORGAN HILL, a municipal corporation ("MORGAN HILL").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into based upon the approval of the City of Morgan Hill City Council on _____, 2024, and the City of Gilroy City Council approval on _____, 2024.
2. GILROY and MORGAN HILL entered into that "Agreement for Providing Staff Services for the Implementation of Stormwater Permitting Requirements and Environmental Services to the City of Gilroy" ("STAFF SERVICES AGREEMENT") to provide staff services on March 16, 2015.
3. GILROY and MORGAN HILL then entered into a "First Amendment to Agreement" made as of June 17, 2019, based upon the approval of the City of Morgan Hill City Council, and the City of Gilroy City Council extending the term to June 30, 2024, and increasing the reimbursable compensation under the STAFF SERVICES AGREEMENT.
4. GILROY and MORGAN HILL entered into a "Second Amendment to Agreement" made as of July 21, 2022, based upon the approval of the City of Morgan Hill City Council, and the City of Gilroy City Council, whereby the statement of costs, termination and waiver clauses were amended, and a new Exhibit A and Exhibit B incorporated. The STAFF SERVICES AGREEMENT, the First Amendment, and Second Amendment thereto are attached as Exhibit "1".
5. GILROY and MORGAN HILL have agreed to a new staffing structure that will provide the services of a three-quarter-time staff position at the temporary Environmental Coordinator level to GILROY and that GILROY will reimburse MORGAN HILL for MORGAN HILL's costs incurred to employ this position.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the STAFF SERVICES AGREEMENT, as amended and attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Section 2 shall be amended and replaced in its entirety by the following:

"Section 2. **TERM.**

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall terminate on **June 30, 2025**, unless this AGREEMENT is amended, or GILROY or MORGAN HILL exercises the right to terminate this AGREEMENT pursuant to Section 7 of this Agreement."

B. Section 3 shall be amended and replaced in its entirety by the following:

“Section 3. STATEMENT OF COSTS.

GILROY shall reimburse MORGAN HILL for all costs incurred by MORGAN HILL pursuant to this AGREEMENT, which may include, but are not limited to, direct costs for labor and benefits, field work supplies for use while in GILROY (e.g., PPE, boots, rain gear, inspection tools, etc.), and training and travel expenses. The terms related to staff resources to be provided by MORGAN HILL, as well as estimated costs to MORGAN HILL of the resources provided by MORGAN HILL to GILROY pursuant to this AGREEMENT are shown in EXHIBIT “A” and **REVISED EXHIBIT “B,”** respectively, which are attached hereto. Cost estimates are for budgetary purposes only and are not intended to limit the parties’ obligations under this AGREEMENT. MORGAN HILL shall use all funds paid to MORGAN HILL by GILROY pursuant to this AGREEMENT solely for providing staff services to GILROY. The contribution of GILROY to MORGAN HILL under this Agreement shall not exceed \$54,441 for FY 2014/2015; \$94,614 for FY 2015/2016; \$100,750 for FY 2016/2017; \$107,341 for FY 2017/18; \$114,423 for FY 2018/2019; \$121,854 for FY 2019/2020; \$130,036 for FY 2020/2021; \$138,835 for FY 2021/2022; \$187,097 for FY 2022/2023; \$194,663 for FY 2023/2024; and \$178, 542 for FY 2024/2025 unless MORGAN HILL has notified GILROY in writing that the estimated amounts will not be adequate to reimburse MORGAN HILL for actual costs and GILROY agrees in writing that a change in the amount is warranted.”

2. **Electronic Signatures.** Unless otherwise prohibited by law or by GILROY or MORGAN HILL 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 GILROY or MORGAN HILL.
3. **Conflicts.** In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the STAFF SERVICES AGREEMENT, as amended, the terms of this Third Amendment to Agreement shall govern and control.
4. **Authority to Execute.** The individuals who are signing this Third Amendment to 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 Third Amendment to the Agreement.

//

//

[Signatures on the Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the EFFECTIVE DATE first set forth above.

GILROY

APPROVED AS TO FORM: CITY OF GILROY, a municipal corporation

Andy Faber
City Attorney

Jimmy Forbis
City Administrator

ATTEST:

Beth Minor
Interim City Clerk

MORGAN HILL

APPROVED AS TO FORM: CITY OF MORGAN HILL,
Donald Larkin a municipal corporation
City Attorney

Christina Turner
City Manager

ATTEST:

Michelle Bigelow
City Clerk

REVISED EXHIBIT B
Cost Estimate

24-25

Staff (30hr/week)	\$107,640
Indirect Service Charges	\$2,153
Training	\$1,000
Cell Phone	\$0
Mileage Reimbursement	\$250
Field Work Supplies/PPE	\$400

Total Staff and Supplies	\$111,443
--------------------------	-----------

Management Staff (25% FTE)	\$65,784
Indirect Service Charges	\$1,316

Total Management	\$67,100
------------------	----------

Total	\$178,542
--------------	------------------

	19-20	20-21	21-22	22-23	23-24
Staff (50% FTE)	\$86,032	\$93,044	\$100,627	\$155,100	\$161,500
Indirect Service Charges	\$2,304	\$2,492	\$2,695	\$2,914	\$3,152
Training	\$500	\$500	\$500	\$1,000	\$1,000
Cell Phone	\$0	\$0	\$0	\$0	\$0
Mileage Reimbursement	\$250	\$250	\$250	\$250	\$250
Field Work Supplies/PPE				\$400	\$400
Total Half Time Staff	\$89,086	\$96,285	\$104,071	\$159,664	\$166,302
Management Staff (12% FTE)	\$31,914	\$32,871	\$33,857	\$26,500	\$27,400
Indirect Service Charges	\$854	\$880	\$906	\$933	\$961
Total Management	\$32,768	\$33,751	\$34,764	\$27,433	\$28,361
Total	\$121,854	\$130,036	\$138,835	\$187,097	\$194,663

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
 Total Half Time Staff	 \$26,200	 \$65,500	 \$70,762	 \$76,454	 \$82,609
 Management Staff (12% FTE)	 \$27,504	 \$28,355	 \$29,206	 \$30,082	 \$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
 Total Management	 \$28,241	 \$29,114	 \$29,987	 \$30,887	 \$31,814
 Total	 \$54,441	 \$94,614	 \$100,750	 \$107,341	 \$114,423

* costs for 14/15 are estimated for 40% of the fiscal year for the staff position and 100% of the fiscal year for the management position.

127-04-15-014

EXHIBIT 1

**SECOND AMENDMENT TO AGREEMENT FOR PROVIDING STAFF SERVICES FOR THE
IMPLEMENTATION OF STORMWATER PERMITTING REQUIREMENTS AND
ENVIRONMENTAL SERVICES TO THE CITY OF GILROY**

7/21/2022 This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on April 20, 2022 (Effective Date), by and between the CITY OF GILROY, a municipal corporation ("GILROY"), and the CITY OF MORGAN HILL, a municipal corporation ("MORGAN HILL").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon the approval of the City of Morgan Hill City Council on April 20, 2022 and the City of Gilroy approval on April 18, 2022.
2. GILROY and MORGAN HILL entered into that Agreement to provide staff services (STAFF SERVICES AGREEMENT) on March 16, 2015.
3. GILROY and MORGAN HILL entered into a "First Amendment" on June 17, 2019, extending the length of the STAFF SERVICES AGREEMENT and adding reimbursement amounts for the extended term. The STAFF SERVICES AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Second Amendment.
4. MORGAN HILL has hired a half time Environmental Services Technician in 2021 to provide additional help in meeting Water Board expectations for Stormwater Program compliance, and has agreed to hire a full-time Environmental Services Technician to also provide half-time Environmental Services Technician staff services to GILROY; and
5. GILROY and MORGAN HILL have agreed that MORGAN HILL will provide the services of a second half-time staff position at the Environmental Technician level to GILROY and that GILROY will reimburse MORGAN HILL for MORGAN HILL's costs incurred to employ this position and carry out this work in the amount of one-half of the actual costs to MORGAN HILL for the position.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Section 3 shall be amended and replaced in its entirety by the following:

"Section 3. STATEMENT OF COSTS.

GILROY shall reimburse MORGAN HILL for all costs incurred by MORGAN HILL pursuant to this AGREEMENT, which may include, but are not limited to, direct costs for labor and benefits, field work supplies for use while in GILROY (e.g., PPE, boots, rain gear, inspection tools, etc.), and training and travel expenses. The terms related to staff resources to be provided by

MORGAN HILL, as well as estimated costs to MORGAN HILL of the resources provided by MORGAN HILL to GILROY pursuant to this AGREEMENT are shown in EXHIBIT "A" and EXHIBIT "B," respectively, which are attached hereto. Cost estimates are for budgetary purposes only and are not intended to limit the parties' obligations under this AGREEMENT. MORGAN HILL shall use all funds paid to MORGAN HILL by GILROY pursuant to this AGREEMENT solely for providing staff services to GILROY. The contribution of GILROY to MORGAN HILL under this Agreement shall not exceed \$54,441 for FY 2014/2015; \$94,614 for FY 2015/2016; \$100,750 for FY 2016/2017; \$107,341 for FY 2017/18; \$114,423 for FY 2018/2019; \$121,854 for FY 2019/2020; \$130,036 for FY 2020/2021; \$138,835 for FY 2021/2022; \$187,097 for FY 2022/23; and \$194,663 for FY 2023/2024 unless MORGAN HILL has notified GILROY that the estimated amounts will not be adequate to reimburse MORGAN HILL for actual costs and GILROY agrees that an increase in the amount is warranted."

B. Section 7 shall be amended and replaced in its entirety by the following:

"Section 7.0 TERMINATION

- A. MORGAN HILL or GILROY may terminate this AGREEMENT by giving notice to the other party of not less than thirty (30) days.
- B. If either party fails to perform any of its material obligations under this AGREEMENT, then, in addition to all other remedies available by law, the non-defaulting party may terminate this AGREEMENT immediately upon written notice to defaulting party.
- C. The MORGAN HILL City Manager, or their delegatee or designee, is authorized to terminate this AGREEMENT on behalf of MORGAN HILL.
- D. The GILROY City Administrator, or their delegatee or designee, is authorized to terminate this AGREEMENT on behalf of GILROY.
- E. In the event of termination, MORGAN HILL shall deliver to GILROY copies of all reports, documents, or other data generated by MORGAN HILL for or under this AGREEMENT. GILROY shall be responsible for payment to MORGAN HILL of the cost of any services properly rendered in accordance with this Agreement prior to termination within 30 days of termination."

C. Section 16 shall be amended and replaced in its entirety by the following:

"Section 16.0 WAIVER

Each party to this AGREEMENT agrees that the waiver by any party of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition of this AGREEMENT. The acceptance by any party of the performance of the services performed by MORGAN HILL or any other work or service under this AGREEMENT shall not be deemed to be a waiver of any term or condition of this AGREEMENT."

D. Exhibit "A" of the original agreement shall be amended and replaced in its entirety by the attached Exhibit "A".

E. Exhibit "B" of the original agreement shall be amended and replaced in its entirety by the attached Exhibit "B".

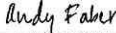
2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the STAFF SERVICES AGREEMENT, as amended, the terms of this Second Amendment to Agreement shall govern and control.

3. **Authority to Execute.** The individuals who are signing this Second Amendment to 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 Second Amendment to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the EFFECTIVE DATE first set forth above.

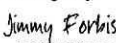
GILROY

APPROVED AS TO FORM:

DocuSigned by:


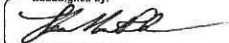
Andy Faber
City Attorney

CITY OF GILROY,
a municipal corporation

DocuSigned by:


Jimmy Forbis
City Administrator

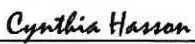
ATTEST:

DocuSigned by:


Thai Pham
City Clerk

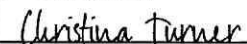
MORGAN HILL

APPROVED AS TO FORM:

DocuSigned by:


Cynthia Hasson
City Attorney

CITY OF MORGAN HILL,
a municipal corporation

DocuSigned by:


Christina Turner
City Manager

ATTEST:

DocuSigned by:


Michelle Bigelow, City Clerk

EXHIBIT A
DESCRIPTION OF STAFF RESOURCES TO BE PROVIDED AND TERMS RELATED TO
ADMINISTERING STAFF RESOURCE

The purpose of this Exhibit is to describe the work anticipated to be conducted under this AGREEMENT and the general terms relating to the employment of the staff resources (STAFF) provided under this AGREEMENT.

1. **Work Locations** - The primary office location for STAFF shall be MORGAN HILL's offices. If desired by GILROY and if GILROY provides a comfortable, productive, functioning, and professional workspace, STAFF shall work in GILROY offices and attend meetings and work directly with customers in GILROY. GILROY office setup including, but not limited to, computer equipment and programs, telephone, office supplies, business cards, and ergonomic needs shall be provided by GILROY. The scheduling of STAFF's work in GILROY can be designed to provide both regular office hours and flexibility to work in GILROY at additional times as desired. STAFF scheduling shall be arranged through the MORGAN HILL manager.
2. **Management and Supervision** - MORGAN HILL shall provide primary management and supervision of STAFF. MORGAN HILL shall communicate monthly with GILROY to ensure that STAFF is providing expected services to GILROY. Any and all disciplinary activities, if needed, shall be conducted solely by MORGAN HILL with costs thereof shared equally by GILROY. Environmental Services Technician shall be supervised and assigned tasks by the Environmental Programs Coordinator.
3. **Recruitment and Hiring** - MORGAN HILL will conduct the recruitment, administer interviews, and complete background analysis to employ STAFF, with costs thereof to be shared equally by GILROY. GILROY shall be invited to participate in the interview and selection process.
4. **General Description of Work Activities** - While it is understood that the work associated with this AGREEMENT is dynamic and may fluctuate over time depending on General Permit requirements and GILROY's interests, the following general work activities are expected to be core activities under the AGREEMENT:
 - a. Track program accomplishments and work activities to develop related reports.
 - b. Evaluate the water quality elements of development plans and provide comments to GILROY staff and development applicants.
 - c. Conduct public education and outreach activities.
 - d. Assist GILROY staff in identifying other General Permit requirements to be completed by other GILROY departments.
 - e. Update and administer the requirements of the Operation and Maintenance Program for Post Construction Stormwater Treatment Features.
5. **Management Services** - MORGAN HILL will provide management services to GILROY relating to solid waste management, stormwater pollution prevention, and environmental services. These services will include, but not be limited to, preparing annual regulatory reports recording solid waste diversion, interacting with state and local representatives on GILROY's behalf, representing GILROY at regional meetings, and responding to queries from GILROY staff on a variety of environmental programs.

**EXHIBIT B
COST ESTIMATE**

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
 Total Half Time Staff	 \$26,200	 \$65,500	 \$70,762	 \$76,454	 \$82,609
 Management Staff (12% FTE)	 \$27,504	 \$28,355	 \$29,206	 \$30,082	 \$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
 Total Management	 \$28,241	 \$29,114	 \$29,987	 \$30,887	 \$31,814
 Total	 \$54,441	 \$94,614	 \$100,750	 \$107,341	 \$114,423

	19-20	20-21	21-22	22-23	23-24
Staff (50% FTE)	\$86,032	\$93,044	\$100,627	\$155,100	\$161,500
Indirect Service Charges	\$2,304	\$2,492	\$2,695	\$2,914	\$3,152
Training	\$500	\$500	\$500	\$1,000	\$1,000
Cell Phone	\$0	\$0	\$0	\$0	\$0
Mileage Reimbursement	\$250	\$250	\$250	\$250	\$250
Field Work Supplies/PPE				\$400	\$400
 Total Half Time Staff	 \$89,086	 \$96,285	 \$104,071	 \$159,664	 \$166,302
 Management Staff (12% FTE)	 \$31,914	 \$32,871	 \$33,857	 \$26,500	 \$27,400
Indirect Service Charges	\$854	\$880	\$906	\$933	\$961
 Total Management	 \$32,768	 \$33,751	 \$34,764	 \$27,433	 \$28,361
 Total	 \$121,854	 \$130,036	 \$138,835	 \$187,097	 \$194,663

* costs for 14/15 are estimated for 40% of the fiscal year for the staff position and 100% of the fiscal year for the management position.

Exhibit 1

127-04-15-014

FIRST AMENDMENT TO AGREEMENT FOR PROVIDING STAFF SERVICES FOR THE IMPLEMENTATION OF STORMWATER PERMITTING REQUIREMENTS AND ENVIRONMENTAL SERVICES TO THE CITY OF GILROY

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 17, 2019 (Effective Date), by and between the CITY OF GILROY, a municipal corporation ("GILROY"), and the City of MORGAN HILL, a municipal corporation ("MORGAN HILL").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the approval of the City of Morgan Hill City Council on May 15, 2019 and the City of Gilroy approval on June 17, 2019.
2. GILROY AND MORGAN HILL entered into that agreement to provide staff services (STAFF SERVICES AGREEMENT) on March 16, 2015. The agreement is attached as Exhibit "1" to this First Amendment.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"Section 2. **TERM.**

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall terminate on June 30, 2024 unless this AGREEMENT is amended or GILROY or MORGAN HILL exercises the right to terminate this AGREEMENT pursuant to Section 7 of this AGREEMENT, below."

B. Section 3 shall be amended and replaced in its entirety by the following:

"Section 3. **STATEMENT OF COSTS.**

GILROY shall reimburse MORGAN HILL for all costs incurred by MORGAN HILL pursuant to this AGREEMENT, which may include, but are not limited to, direct costs for labor and benefits and training and travel expenses. The estimated costs to MORGAN HILL of the resources provided by MORGAN HILL to GILROY pursuant to this AGREEMENT are shown in EXHIBIT "B," which is attached hereto. These estimates are for budgetary purposes only and are not intended to limit the parties' obligations under this AGREEMENT. MORGAN HILL shall use all funds paid to MORGAN HILL by GILROY pursuant to this AGREEMENT solely for providing staff services to GILROY. The contribution of GILROY to MORGAN HILL under this Agreement shall not exceed \$54,441 for FY 2014/2015; \$94,614 for FY 2015/2016; \$100,750 for FY

2016/2017; \$107,341 for FY 2017/18; \$114,423 for FY 2018/2019; \$121,854 for FY 2019/2020; \$130,036 for FY 2020/2021; \$138,835 for FY 2021/2022; \$148,299 for FY 2022/23; and \$158,480 for FY 2023/2024 unless MORGAN HILL has notified GILROY that the estimated amounts will not be adequate to reimburse MORGAN HILL for actual costs and GILROY agrees that an increase in the amount is warranted."

C. Exhibit "B" of the original agreement shall be amended and replaced in its entirety by the attached Exhibit "B".

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

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the EFFECTIVE DATE first set forth above.

GILROY

APPROVED AS TO FORM:

CITY OF GILROY, a municipal corporation


for Andy Faber
City Attorney


Gabriel Gonzalez
City Administrator

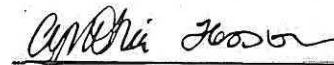
ATTEST:


for Shawna Freels
City Clerk

MORGAN HILL

APPROVED AS TO FORM:

CITY OF MORGAN HILL,
a municipal corporation


for Donald Larkin
City Attorney


Christina Turner
City Manager

**EXHIBIT B
COST ESTIMATE**

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
Total Half Time Staff	\$26,200	\$65,500	\$70,762	\$76,454	\$82,609
Management Staff (12% FTE)	\$27,504	\$28,355	\$29,206	\$30,082	\$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
Total Management	\$28,241	\$29,114	\$29,987	\$30,887	\$31,814
Total	\$54,441	\$94,614	\$100,750	\$107,341	\$114,423

	19-20	20-21	21-22	22-23	23-24
Staff (50% FTE)	\$86,032	\$93,044	\$100,627	\$108,828	\$117,697
Indirect Service Charges	\$2,304	\$2,492	\$2,695	\$2,914	\$3,152
Training	\$500	\$500	\$500	\$500	\$500
Cell Phone	\$0	\$0	\$0	\$0	\$0
Mileage Reimbursement	\$250	\$250	\$250	\$250	\$250
Total Half Time Staff	\$89,086	\$96,285	\$104,071	\$112,492	\$121,599
Management Staff (12% FTE)	\$31,914	\$32,871	\$33,857	\$34,873	\$35,919
Indirect Service Charges	\$854	\$880	\$906	\$933	\$961
Total Management	\$32,768	\$33,751	\$34,764	\$35,807	\$36,881
Total	\$121,854	\$130,036	\$138,835	\$148,299	\$158,480

* costs for 14/15 are estimated for 40% of the fiscal year for the staff position and 100% of the fiscal year for the management position

12-04-15-014

DUPLICATE
Original Maintained by
City Clerk's Office

**AGREEMENT FOR PROVIDING STAFF SERVICES FOR THE IMPLEMENTATION
OF STORMWATER PERMITTING REQUIREMENTS AND ENVIRONMENTAL
SERVICES TO THE CITY OF GILROY**

This Agreement ("AGREEMENT") is made and entered into this 16th day of March, 2015 ("EFFECTIVE DATE"), by and between the CITY OF GILROY, a municipal corporation ("GILROY"), and the City of MORGAN HILL, a municipal corporation ("MORGAN HILL").

RECITALS

WHEREAS, MORGAN HILL and GILROY have previously adopted a Joint Regional Storm Water Management Plan (SWMP) which was accepted by the Central Coast Regional Water Quality Control Board as the implementation document for the Joint Phase II Municipal Storm Water Permit and cooperated extensively in the implementation of the SWMP; and

WHEREAS, the State Water Resources Control Board adopted General Permit No. CAS000004 (Waste discharge requirements for storm water discharges from small municipal separate storm sewer systems) (General Permit) on February 5, 2013; and

WHEREAS, the General Permit institutes significant new regulatory requirements that the cities must comply with and both MORGAN HILL and GILROY have budgeted for increased staff resources in order to comply with the General Permit's requirements; and

WHEREAS, MORGAN HILL is hiring a new staff person to implement measures to comply with the General Permit requirements and MORGAN HILL and GILROY agree that it would be most cost efficient for all parties for MORGAN HILL to share the staff person with GILROY; and

WHEREAS, GILROY and MORGAN HILL have agreed that MORGAN HILL will provide one half-time staff position to GILROY and that GILROY will reimburse MORGAN HILL for MORGAN HILL's costs incurred to employ this position and carry out this work in the amount of one-half of the actual costs to MORGAN HILL for the position; and

WHEREAS, GILROY and MORGAN HILL have agreed that MORGAN HILL will provide part-time management services to GILROY in the areas of solid waste management and stormwater pollution prevention and that GILROY will reimburse MORGAN HILL for MORGAN HILL's costs incurred in providing management services.

NOW, THEREFORE, in consideration for the mutual promises and agreements set forth herein, the parties hereby agree as follows:

SECTION 1. PURPOSE; DELEGATION.

The purpose of this AGREEMENT is to promote efficiency and an economy of operations and resources in complying with the requirements of the General Permit adopted by the State of California. To achieve this end, MORGAN HILL will provide a one-half time staff resource to GILROY to support GILROY'S activities to comply with the General Permit and, in addition, shall provide management services relating to solid waste management, stormwater pollution prevention, and environmental services as set forth in Exhibit "A" (which is attached hereto and incorporated herein), subject to and in accordance with this AGREEMENT. Exhibit "A" may be amended from time to time by the written consent of all parties to this AGREEMENT.

SECTION 2. TERM.

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall terminate on June 30, 2019, unless this AGREEMENT is amended or GILROY or MORGAN HILL exercises the right to terminate this AGREEMENT pursuant to Section 7 of this AGREEMENT, below.

SECTION 3. STATEMENT OF COSTS.

GILROY shall reimburse MORGAN HILL for all costs incurred by MORGAN HILL pursuant to this AGREEMENT, which may include, but are not limited to, direct costs for labor and benefits and training and travel expenses. The estimated costs to MORGAN HILL of the resources provided by MORGAN HILL to GILROY pursuant to this AGREEMENT are shown in EXHIBIT "B," which is attached hereto. These estimates are for budgetary purposes only and are not intended to limit the parties' obligations under this AGREEMENT. MORGAN HILL shall use all funds paid to MORGAN HILL by GILROY pursuant to this AGREEMENT solely for providing staff services to GILROY. The contribution of GILROY to MORGAN HILL under this Agreement shall not exceed \$54,441 for FY 2014/2015; \$94,614 for FY 2015/2016; \$100,750 for FY 2016/2017; \$107,341 for FY 2017/18; and \$114,423 for FY 2018/2019 unless MORGAN HILL has notified GILROY that the estimated amounts will not be adequate to reimburse MORGAN HILL for actual costs and GILROY agrees that an increase in the amount is warranted.

SECTION 4. PAYMENT FOR SERVICES.

MORGAN HILL will invoice GILROY bi-annually for costs incurred to provide staff services for the previous six (6) months by sending GILROY an invoice. Invoices shall be sent out by April 30 (for the January-June period) and by October 31 (for the July – December period) of each year. GILROY shall pay MORGAN HILL the amounts invoiced within forty-five (45) days of their receipt of such invoices.

SECTION 5. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties to this AGREEMENT 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, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

SECTION 6. RECORDS.

MORGAN HILL shall keep itemized and detailed work or job records of all costs incurred and services rendered pursuant to this AGREEMENT. MORGAN HILL shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, following the performance of any services.

SECTION 7. TERMINATION.

- A. MORGAN HILL or GILROY may terminate this AGREEMENT as of the first day of July of any year by giving notice to the other party not less than ninety (90) days prior to the July 1.
- B. If MORGAN HILL fails to perform any of its material obligations under this AGREEMENT, then, in addition to all other remedies available by law, GILROY may terminate this AGREEMENT immediately upon written notice to MORGAN HILL.
- C. The MORGAN HILL City Manager, or his delegatee or designee, is authorized to terminate this AGREEMENT on behalf of MORGAN HILL.
- D. The GILROY City Administrator, or his delegatee or designee, is authorized to terminate this AGREEMENT on behalf of GILROY.
- E. In the event of termination, MORGAN HILL shall deliver to GILROY copies of all reports, documents, or other data generated by MORGAN HILL for or under this AGREEMENT. GILROY shall be responsible for payment to MORGAN HILL of the cost of any services properly rendered in accordance with this Agreement prior to termination within 30 days of termination.

SECTION 8. AMENDMENTS.

This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 9. NONDISCRIMINATION.

No party to this AGREEMENT shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 10. ASSIGNABILITY.

MORGAN HILL acknowledges and understands that the expertise and experience of MORGAN HILL is a material consideration inducing GILROY to enter into this AGREEMENT. MORGAN HILL may not assign nor transfer any interest in this AGREEMENT, nor the performance of any of its duties and responsibilities under this AGREEMENT, without the prior written consent of GILROY. Any attempt by MORGAN HILL to so assign or transfer this AGREEMENT or the performance of any of MORGAN HILL'S duties and responsibilities under this AGREEMENT shall be null and void and of no force or effect.

SECTION 11. NOTICES.

All notices and other communications required or allowed to be given under this AGREEMENT to a party shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective party as follows:

GILROY :	City of Gilroy 7351 Rosanna Street Gilroy, California 95020 Attention: CITY ADMINISTRATOR
MORGAN HILL :	City of Morgan Hill 17575 Peak Avenue Morgan Hill, California 95037 Attention: CITY MANAGER

SECTION 12. GOVERNING LAW.

The law governing this AGREEMENT shall be that of the State of California.

SECTION 13. VENUE.

If suit is brought under this AGREEMENT, venue shall be vested exclusively in the state courts of the State of California, County of Santa Clara, or, if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 14. COMPLIANCE WITH LAWS.

All parties to this AGREEMENT shall comply with all applicable laws, rules, regulations, codes and ordinances of the federal, state and local governments in the performance of the SERVICES and its other duties and obligations under this AGREEMENT.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents, photographs, or other materials generated by MORGAN HILL or other person engaged directly or indirectly by MORGAN HILL to perform the work set forth herein shall be and remain the joint property of GILROY and MORGAN HILL.

SECTION 16. WAIVER.

Each party to this AGREEMENT agrees that the waiver by any party of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition of this AGREEMENT. The acceptance by any party of the performance of the services performed by GILROY

/ / / / / / / / / / / /

or any other work or service under this AGREEMENT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the EFFECTIVE DATE first set forth above.

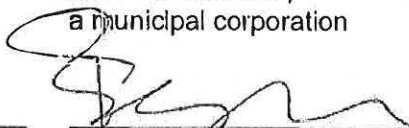
GILROY

APPROVED AS TO FORM:

CITY OF GILROY,
a municipal corporation



Linda Callon A. Feller
City Attorney



Thomas J. Haglund
City Administrator

ATTEST:

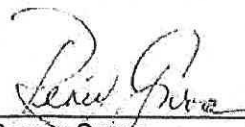


Shawna Freels
City Clerk

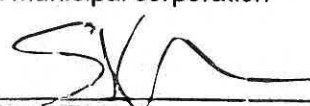
MORGAN HILL

APPROVED AS TO FORM:

CITY OF MORGAN HILL,
a municipal corporation



Renee Gurza
City Attorney



Steve Rymer
City Manager

EXHIBIT A
DESCRIPTION OF STAFF RESOURCES TO BE PROVIDED AND TERMS RELATED
TO ADMINISTERING STAFF RESOURCE

The purpose of this Exhibit is to describe the work anticipated to be conducted under this AGREEMENT and the general terms relating to the employment of the staff resources (STAFF) provided under this AGREEMENT.

1. **Work Locations** - The primary office location for STAFF shall be MORGAN HILL's offices. If desired by GILROY and if GILROY provides a reasonable work location, STAFF shall work in GILROY offices and attend meetings and work directly with customers in GILROY. The scheduling of STAFF's work in GILROY can be designed to provide both regular office hours and flexibility to work in GILROY at additional times as desired. STAFF scheduling shall be arranged through the MORGAN HILL manager.
2. **Management and Supervision** - MORGAN HILL shall provide primary management and supervision of STAFF. MORGAN HILL shall communicate monthly with GILROY to ensure that STAFF is providing expected services to GILROY. Any and all disciplinary activities, if needed, shall be conducted solely by MORGAN HILL with costs thereof shared equally by GILROY.
3. **Recruitment and Hiring** - MORGAN HILL will conduct the recruitment, administer interviews, and complete background analysis to employ STAFF, with costs thereof to be shared equally by GILROY. GILROY shall be invited to participate in the interview and selection process.
4. **General Description of Work Activities** - While it is understood that the work associated with this AGREEMENT is dynamic and may fluctuate over time depending on General Permit requirements and GILROY's interests, the following general work activities are expected to be core activities under the AGREEMENT:
 - a. Track program accomplishments and work activities to develop related reports.
 - b. Evaluate the water quality elements of development plans and provide comments to GILROY staff and development applicants.
 - c. Conduct public education and outreach activities.
 - d. Assist GILROY staff in identifying other General Permit requirements to be completed by other GILROY departments.
5. **Management Services** - MORGAN HILL will provide management services to GILROY relating to solid waste management, stormwater pollution prevention, and environmental services. These services will include, but not be limited to, preparing annual regulatory reports recording solid waste diversion, interacting with state and local representatives on GILROY's behalf, representing GILROY at regional meetings, and responding to queries from GILROY staff on a variety of environmental programs.

**EXHIBIT B
COST ESTIMATE**

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
Total Half Time Staff	\$26,200	\$65,500	\$70,762	\$76,454	\$82,609
Management Staff (12% FTE)	\$27,504	\$28,355	\$29,206	\$30,082	\$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
Total Management	\$28,241	\$29,114	\$29,987	\$30,887	\$31,814
Total	\$54,441	\$94,614	\$100,750	\$107,341	\$114,423

* costs for 14/15 are estimated for 40% of the fiscal year for the staff position and 100% of the fiscal year for the management position

127-04-15-014

DUPLICATE
Original Maintained by
City Clerk's Office

**AGREEMENT FOR PROVIDING STAFF SERVICES FOR THE IMPLEMENTATION
OF STORMWATER PERMITTING REQUIREMENTS AND ENVIRONMENTAL
SERVICES TO THE CITY OF GILROY**

This Agreement ("AGREEMENT") is made and entered into this 16th day of March, 2015 ("EFFECTIVE DATE"), by and between the CITY OF GILROY, a municipal corporation ("GILROY"), and the City of MORGAN HILL, a municipal corporation ("MORGAN HILL").

RECITALS

WHEREAS, MORGAN HILL and GILROY have previously adopted a Joint Regional Storm Water Management Plan (SWMP) which was accepted by the Central Coast Regional Water Quality Control Board as the implementation document for the Joint Phase II Municipal Storm Water Permit and cooperated extensively in the implementation of the SWMP; and

WHEREAS, the State Water Resources Control Board adopted General Permit No. CAS000004 (Waste discharge requirements for storm water discharges from small municipal separate storm sewer systems) (General Permit) on February 5, 2013; and

WHEREAS, the General Permit institutes significant new regulatory requirements that the cities must comply with and both MORGAN HILL and GILROY have budgeted for increased staff resources in order to comply with the General Permit's requirements; and

WHEREAS, MORGAN HILL is hiring a new staff person to implement measures to comply with the General Permit requirements and MORGAN HILL and GILROY agree that it would be most cost efficient for all parties for MORGAN HILL to share the staff person with GILROY; and

WHEREAS, GILROY and MORGAN HILL have agreed that MORGAN HILL will provide one half-time staff position to GILROY and that GILROY will reimburse MORGAN HILL for MORGAN HILL's costs incurred to employ this position and carry out this work in the amount of one-half of the actual costs to MORGAN HILL for the position; and

WHEREAS, GILROY and MORGAN HILL have agreed that MORGAN HILL will provide part-time management services to GILROY in the areas of solid waste management and stormwater pollution prevention and that GILROY will reimburse MORGAN HILL for MORGAN HILL's costs incurred in providing management services.

NOW, THEREFORE, in consideration for the mutual promises and agreements set forth herein, the parties hereby agree as follows:

SECTION 1. PURPOSE; DELEGATION.

The purpose of this AGREEMENT is to promote efficiency and an economy of operations and resources in complying with the requirements of the General Permit adopted by the State of California. To achieve this end, MORGAN HILL will provide a one-half time staff resource to GILROY to support GILROY'S activities to comply with the General Permit and, in addition, shall provide management services relating to solid waste management, stormwater pollution prevention, and environmental services as set forth in Exhibit "A" (which is attached hereto and incorporated herein), subject to and in accordance with this AGREEMENT. Exhibit "A" may be amended from time to time by the written consent of all parties to this AGREEMENT.

SECTION 2. TERM.

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall terminate on June 30, 2019, unless this AGREEMENT is amended or GILROY or MORGAN HILL exercises the right to terminate this AGREEMENT pursuant to Section 7 of this AGREEMENT, below.

SECTION 3. STATEMENT OF COSTS.

GILROY shall reimburse MORGAN HILL for all costs incurred by MORGAN HILL pursuant to this AGREEMENT, which may include, but are not limited to, direct costs for labor and benefits and training and travel expenses. The estimated costs to MORGAN HILL of the resources provided by MORGAN HILL to GILROY pursuant to this AGREEMENT are shown in EXHIBIT "B," which is attached hereto. These estimates are for budgetary purposes only and are not intended to limit the parties' obligations under this AGREEMENT. MORGAN HILL shall use all funds paid to MORGAN HILL by GILROY pursuant to this AGREEMENT solely for providing staff services to GILROY. The contribution of GILROY to MORGAN HILL under this Agreement shall not exceed \$54,441 for FY 2014/2015; \$94,614 for FY 2015/2016; \$100,750 for FY 2016/2017; \$107,341 for FY 2017/18; and \$114,423 for FY 2018/2019 unless MORGAN HILL has notified GILROY that the estimated amounts will not be adequate to reimburse MORGAN HILL for actual costs and GILROY agrees that an increase in the amount is warranted.

SECTION 4. PAYMENT FOR SERVICES.

MORGAN HILL will invoice GILROY bi-annually for costs incurred to provide staff services for the previous six (6) months by sending GILROY an invoice. Invoices shall be sent out by April 30 (for the January-June period) and by October 31 (for the July – December period) of each year. GILROY shall pay MORGAN HILL the amounts invoiced within forty-five (45) days of their receipt of such invoices.

SECTION 5. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties to this AGREEMENT 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, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

SECTION 6. RECORDS.

MORGAN HILL shall keep itemized and detailed work or job records of all costs incurred and services rendered pursuant to this AGREEMENT. MORGAN HILL shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, following the performance of any services.

SECTION 7. TERMINATION.

- A. MORGAN HILL or GILROY may terminate this AGREEMENT as of the first day of July of any year by giving notice to the other party not less than ninety (90) days prior to the July 1.
- B. If MORGAN HILL fails to perform any of its material obligations under this AGREEMENT, then, in addition to all other remedies available by law, GILROY may terminate this AGREEMENT immediately upon written notice to MORGAN HILL.
- C. The MORGAN HILL City Manager, or his delegatee or designee, is authorized to terminate this AGREEMENT on behalf of MORGAN HILL.
- D. The GILROY City Administrator, or his delegatee or designee, is authorized to terminate this AGREEMENT on behalf of GILROY.
- E. In the event of termination, MORGAN HILL shall deliver to GILROY copies of all reports, documents, or other data generated by MORGAN HILL for or under this AGREEMENT. GILROY shall be responsible for payment to MORGAN HILL of the cost of any services properly rendered in accordance with this Agreement prior to termination within 30 days of termination.

SECTION 8. AMENDMENTS.

This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 9. NONDISCRIMINATION.

No party to this AGREEMENT shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 10. ASSIGNABILITY.

MORGAN HILL acknowledges and understands that the expertise and experience of MORGAN HILL is a material consideration inducing GILROY to enter into this AGREEMENT. MORGAN HILL may not assign nor transfer any interest in this AGREEMENT, nor the performance of any of its duties and responsibilities under this AGREEMENT, without the prior written consent of GILROY. Any attempt by MORGAN HILL to so assign or transfer this AGREEMENT or the performance of any of MORGAN HILL'S duties and responsibilities under this AGREEMENT shall be null and void and of no force or effect.

SECTION 11. NOTICES.

All notices and other communications required or allowed to be given under this AGREEMENT to a party shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective party as follows:

GILROY :	City of Gilroy 7351 Rosanna Street Gilroy, California 95020 Attention: CITY ADMINISTRATOR
MORGAN HILL :	City of Morgan Hill 17575 Peak Avenue Morgan Hill, California 95037 Attention: CITY MANAGER

SECTION 12. GOVERNING LAW.

The law governing this AGREEMENT shall be that of the State of California.

SECTION 13. VENUE.

If suit is brought under this AGREEMENT, venue shall be vested exclusively in the state courts of the State of California, County of Santa Clara, or, if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 14. COMPLIANCE WITH LAWS.

All parties to this AGREEMENT shall comply with all applicable laws, rules, regulations, codes and ordinances of the federal, state and local governments in the performance of the SERVICES and its other duties and obligations under this AGREEMENT.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents, photographs, or other materials generated by MORGAN HILL or other person engaged directly or indirectly by MORGAN HILL to perform the work set forth herein shall be and remain the joint property of GILROY and MORGAN HILL.

SECTION 16. WAIVER.

Each party to this AGREEMENT agrees that the waiver by any party of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition of this AGREEMENT. The acceptance by any party of the performance of the services performed by GILROY

/ /
/ /
/ /
/ /
/ /
/ /
/ /
/ /
/ /
/ /
/ /

or any other work or service under this AGREEMENT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the EFFECTIVE DATE first set forth above.

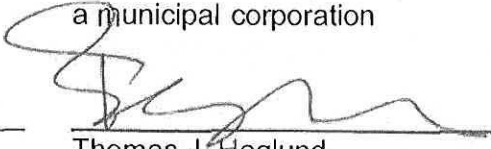
GILROY

APPROVED AS TO FORM:

CITY OF GILROY,
a municipal corporation

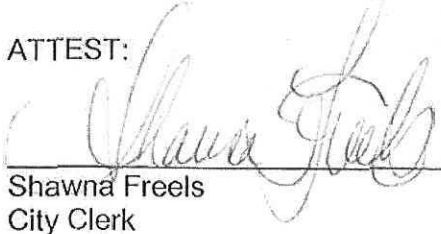


Linda Callon
City Attorney



Thomas J. Haglund
City Administrator

ATTEST:

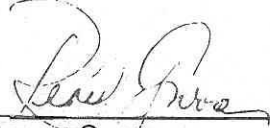


Shawna Freels
City Clerk

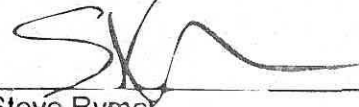
MORGAN HILL

APPROVED AS TO FORM:

CITY OF MORGAN HILL,
a municipal corporation



Renee Gurza
City Attorney



Steve Rymer
City Manager

EXHIBIT A
DESCRIPTION OF STAFF RESOURCES TO BE PROVIDED AND TERMS RELATED
TO ADMINISTERING STAFF RESOURCE

The purpose of this Exhibit is to describe the work anticipated to be conducted under this AGREEMENT and the general terms relating to the employment of the staff resources (STAFF) provided under this AGREEMENT.

1. **Work Locations** - The primary office location for STAFF shall be MORGAN HILL's offices. If desired by GILROY and if GILROY provides a reasonable work location, STAFF shall work in GILROY offices and attend meetings and work directly with customers in GILROY. The scheduling of STAFF's work in GILROY can be designed to provide both regular office hours and flexibility to work in GILROY at additional times as desired. STAFF scheduling shall be arranged through the MORGAN HILL manager.
2. **Management and Supervision** - MORGAN HILL shall provide primary management and supervision of STAFF. MORGAN HILL shall communicate monthly with GILROY to ensure that STAFF is providing expected services to GILROY. Any and all disciplinary activities, if needed, shall be conducted solely by MORGAN HILL with costs thereof shared equally by GILROY.
3. **Recruitment and Hiring** - MORGAN HILL will conduct the recruitment, administer interviews, and complete background analysis to employ STAFF, with costs thereof to be shared equally by GILROY. GILROY shall be invited to participate in the interview and selection process.
4. **General Description of Work Activities** - While it is understood that the work associated with this AGREEMENT is dynamic and may fluctuate over time depending on General Permit requirements and GILROY's interests, the following general work activities are expected to be core activities under the AGREEMENT:
 - a. Track program accomplishments and work activities to develop related reports.
 - b. Evaluate the water quality elements of development plans and provide comments to GILROY staff and development applicants.
 - c. Conduct public education and outreach activities.
 - d. Assist GILROY staff in identifying other General Permit requirements to be completed by other GILROY departments.
5. **Management Services** - MORGAN HILL will provide management services to GILROY relating to solid waste management, stormwater pollution prevention, and environmental services. These services will include, but not be limited to, preparing annual regulatory reports recording solid waste diversion, interacting with state and local representatives on GILROY's behalf, representing GILROY at regional meetings, and responding to queries from GILROY staff on a variety of environmental programs.

**EXHIBIT B
COST ESTIMATE**

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
Total Half Time Staff	\$26,200	\$65,500	\$70,762	\$76,454	\$82,609
Management Staff (12% FTE)	\$27,504	\$28,355	\$29,206	\$30,082	\$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
Total Management	\$28,241	\$29,114	\$29,987	\$30,887	\$31,814
Total	\$54,441	\$94,614	\$100,750	\$107,341	\$114,423

* costs for 14/15 are estimated for 40% of the fiscal year for the staff position and 100% of the fiscal year for the management position

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

APPROVE THE CLOSEOUT ANALYSIS REPORT FOR THE REASSESSMENT DISTRICT 2015-1 (MORGAN HILL RANCH)

RECOMMENDATION(S)

1. Adopt resolution declaring the remaining reassessment revenue fund balance to be surplus, ordering the disposition of such surplus; and
2. Approve the Closeout Analysis Report for the Reassessment District 2015-1 (Morgan Hill Ranch).

COUNCIL PRIORITIES, GOALS & STRATEGIES

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

In 1998, the City formed the Assessment District No. 1998-1 (Morgan Hill Ranch). Limited Obligation Improvement Bonds (Prior Bonds) were issued to finance the acquisition and construction of street improvements and a storm drain system within the assessment district. The Construction Fund associated with the Prior Bonds was closed as all improvements were completed.

In 2015, due to significantly lower interest rates, parcels within the assessment district were reassessed, and the Prior Bonds were refunded. The City issued Limited Obligation Reassessment Refunding Bonds, Series 2015 (the "Refunding Bonds") for Reassessment District No. 2015-1 (Morgan Hill Ranch) (the "Reassessment District"). The Refunding Bonds matured in 2023. After the retirement of all debt, a surplus remains in the Reassessment Revenue Fund. The City retained NBS to review and prepare a District Closeout Analysis Report for the Reassessment District.

Pursuant to Section 5.03 of the Fiscal Agent Agreement by and between the City of Morgan Hill and Zions First National Bank in connection with the issuance of the Refunding Bonds, any money remaining in the Reassessment Revenue Fund after all the transfers and payments have been made as directed shall be retained by the City. To effectuate the closeout of the Reassessment District and transfer the remaining funds to the City's General Fund, staff recommend the Council approve the Closeout

Analysis Report prepared by NBS and adopt a resolution declaring the remaining reassessment revenue fund to be surplus and ordering the transfer of such surplus to the City's General Fund.

COMMUNITY ENGAGEMENT:

This staff report serves to inform the community of the Closeout Analysis Report for the Reassessment District 2015-1 (Morgan Hill Ranch) and the transfer of the surplus in the Reassessment Revenue Fund to the City's General Fund.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 1998, the City formed the Assessment District No. 1998-1 (Morgan Hill Ranch) and issued Limited Obligation Improvement Bonds. In 2015, the City Council approved the refunding of the bonds.

FISCAL AND RESOURCE IMPACT:

The remaining surplus of approximately \$16,000 has been programmed and accounted for in the adopted budget.

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

Closeout Analysis Report For:

Reassessment District No. 2015-1

Morgan Hill Ranch

May 2024

TABLE OF CONTENTS

1. Executive Summary	1
2. Funds Analysis	2
3. Disposition of Funds	3
4. Delinquencies	4
5. Notice of Completion	5
6. Resolution	7
7. Levy and Collection Summary	10
8. Final Debt Service Schedule	11

1. EXECUTIVE SUMMARY

In 1998, the City of Morgan Hill (the “City”) formed Assessment District No. 1998-1 (Morgan Hill Ranch) (the “Prior District”). Limited Obligation Improvement Bonds (the “Prior Bonds”) were issued to finance the acquisition and construction of street improvements and a storm drain system within the Prior District. The Construction Fund associated with the Prior Bonds was closed as all improvements were completed.

In 2015, due to significantly lower interest rates, parcels within the Prior District were reassessed and the Prior Bonds were refunded. The City issued Limited Obligation Reassessment Refunding Bonds, Series 2015 (the “Refunding Bonds”) for Reassessment District No. 2015-1 (Morgan Hill Ranch) (the “Reassessment District”). The Refunding Bonds matured in 2023.

After the retirement of all debt, a surplus remains in Reassessment Revenue Fund. The City retained NBS to review and prepare a District Closeout Analysis Report (the “Closeout Report”) for the Reassessment District. The Closeout Report summarizes the recommendations for the disposition of the remaining funds in accordance with applicable laws.

Prior to the final levy, to minimize excess funds after the closeout of the district, a levy credit of \$290,000 was applied to the Fiscal Year 2022/23 levy, which significantly reduced the assessments.

Following a review of the City’s fund balances as of April 30, 2024, and pursuant to Section 5.03 of the Fiscal Agent Agreement of the Bonds dated October 21, 2015 (the “Agreement”), the City has elected to transfer the surplus funds, net of all expenses and anticipated costs, to the General Fund.

As a part of the Closeout Report, NBS also conducted an analysis of the assessment payments to determine any District delinquencies. Per Santa Clara County’s property tax records, one parcel is delinquent in the payment of District assessments.

2. FUNDS ANALYSIS

The following table shows the funds analysis prepared for the Reassessment District. The analysis reflects the April 30, 2024, fund balances and account balances associated with the Reassessment District.

Reassessment Revenue Fund	
Reassessment Revenue Fund Balance as of 4/30/2024	\$38,692.00
Ending Balance	\$38,692.00
Administrative Expense Fund	
Administrative Expense Fund Balance as of 4/30/2024	\$0.00
Ending Balance	\$0.00
Redemption Fund	
Pursuant to Section 8784 of the California Streets and Highways Code	
Redemption Fund Balance as of 4/30/2024	\$0.00
Ending Balance	\$0.00
Reserve Fund	
Pursuant to Section 8885 of the California Streets and Highways Code	
Reserve Fund Balance as of 4/30/2024	\$0.00
Ending Balance	\$0.00
Cost of Issuance Fund	
Cost of Issuance Fund Balance as of 4/30/2024	\$0.00
Ending Balance	\$0.00
Rebate Fund	
Rebate Fund Balance as of 4/30/2024	\$0.00
Ending Balance	\$0.00
Expenditures	
NBS Fee for District Closeout	\$12,500.00
City Administration	10,000.00
Less: Total Funds Available	(38,692.00)
Balance	\$16,192.00
Transfer to City's General Fund	(\$16,192.00)
Ending Balance	\$0.00

3. DISPOSITION OF FUNDS

Reassessment Revenue Fund

Pursuant to Section 5.03 of the Agreement, any moneys remaining in the Reassessment Revenue Fund after all transfers and payments have been made as directed shall be retained by the City.

In accordance with the above stated section, the City has elected to transfer the surplus funds, net of all expenses and anticipated costs, to the General Fund.

4. DELINQUENCIES

As of May 6, 2024, there was one delinquent parcel within the District. The total delinquent amount is approximately \$278, not including penalties, interest or fees. Any remaining funds that may be collected from the delinquent installments shall be disposed of in the same manner as the funds discussed in section 3 of this Closeout Report.

5. NOTICE OF COMPLETION

The following page contains the Notice of Completion of Public Improvements signed by the Public Services Director.

NOTICE OF COMPLETION OF PUBLIC IMPROVEMENTS

**City of Morgan Hill
Reassessment District No. 2015-1
Morgan Hill Ranch**

Notice is hereby given that the public improvements financed by Reassessment District No. 2015-1 Morgan Hill Ranch of the City of Morgan Hill as fully described in the Assessment District No. 1998-1 (Morgan Hill Ranch) Engineer's Report (the "Engineer's Report") dated July 22, 1998 (Amended September 1, 1998), have been completed. Per the Engineer's Report, the following describes the original project to include proposed improvements to be constructed:

- A. The construction and/or acquisition of improvements for:
Certain rights of way improvements and continuous public service easements including clearing, grubbing, grading, base, pavement, curbs, gutters, sidewalks, decorative pavement, street monuments, street signs, striping, street lighting, joint trench facilities, storm drainage system, sanitary sewers, landscaping, and water facilities, together with all appurtenances to any of the above.
- B. The construction and/or acquisition of Cochrane Road improvements including the widening of Cochrane Road, the construction and modification of medians, the installation of a traffic signal, including clearing, grubbing, grading, base, pavement, curbs, gutters, sidewalk, street signs, striping, street lighting, storm drainage system, sanitary sewers, and landscaping, together with all appurtenances to any of the above.
- C. The construction and/or acquisition of an interim/ultimate storm drain system including pipes, structures, ditches, a retention pond, detention area and a pump station including clearing, grubbing, grading, access road, fencing, and landscaping, together with all appurtenances to any of the above.
- D. The acquisitions of all lands, easements and rights-of-way and all work auxiliary to any of the above necessary to complete the same, including approximately 6 acres for a retention pond.
- E. The payment in full of all amounts necessary to eliminate all fixed special assessment liens previously imposed upon any parcel included in the assessment district.

Reference is made to the Engineer's Report dated July 22, 1998 (Amended September 1, 1998), for a complete description of the improvements constructed.

The Public Services Director certifies that the above recitals are true and correct.



Chris Ghione, Public Services Director
City of Morgan Hill

5/13/24

Date

6. RESOLUTION

The following pages contain the Resolution Declaring Surplus, Ordering Disposition of the Surplus, and Approving the Closeout Report to be approved by the City Council.

**MORGAN HILL CITY COUNCIL
RESOLUTION 2024-___**

**RESOLUTION DECLARING THE REMAINING REASSESSMENT REVENUE FUND BALANCE TO BE
SURPLUS, ORDERING THE DISPOSITION OF SUCH SURPLUS, AND APPROVING THE
CLOSEOUT ANALYSIS REPORT PREPARED BY NBS FOR THE
REASSESSMENT DISTRICT 2015-1 (MORGAN HILL RANCH)**

WHEREAS, the City Council of the City of Morgan Hill (the “City”) has, by previous resolution and related actions, undertaken proceedings pursuant to the *Municipal Improvement Act of 1913* to form the Reassessment District 2015-1 Morgan Hill Ranch (the “Reassessment District”); and,

WHEREAS, the City Council authorized the issuance of the City of Morgan Hill Limited Obligation Refunding Bonds Reassessment District No. 2015-1 (Morgan Hill Ranch) (the “Bonds”), pursuant to the *Improvement Bond Act of 1915* to finance certain public improvements; and,

WHEREAS, the Reassessment District has undertaken such public improvements as are described in the Engineer’s Report; and,

WHEREAS, the City Council is satisfied that the public improvements for the Reassessment District have been fully completed; and,

WHEREAS, there exists an encumbered balance in the Reassessment Revenue Fund for the Reassessment District; and,

WHEREAS, the City Council now wishes to make provision for the determination of surplus funds for their appropriate disposition pursuant to the Fiscal Agent Agreement of the Bonds dated October 21, 2015.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

Section 1. The above recitals are true and correct.

Section 2. A Notice of Completion of Public Improvements was completed and signed by the Public Services Director.

Section 3. The City Council hereby declares the remaining balance of the Reassessment Revenue Fund of the Reassessment District to be surplus.

Section 4. The City Council hereby orders the disposition of said surplus funds according to the Fiscal Agent Agreement of the Bonds dated October 21, 2015, as specified in the Closeout Analysis Report prepared by NBS for the Reassessment District.

Section 5. The City Council hereby approves the District Closeout Analysis Report prepared by NBS for the Reassessment District and agrees to transfer surplus funds to the City’s General Fund.



PASSED AND ADOPTED THIS _____ day of _____, 2024, by the following vote of the City Council of the City of Morgan Hill:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk
City of Morgan Hill

7. LEVY AND COLLECTION SUMMARY

The following pages provide a summary of the levies and collections for the Reassessment District.

City of Morgan Hill
Delinquency Summary Report
As of: 05/06/2024

District	Due Date	Billed Amount	Paid Amount	Delinquent Amount	Delinquent Amount %	Billed Installments	Paid Installments	Delinquent Installments	Delinquent Installments %
RAD 2015-1 - RAD No. 2015-1 (Morgan Hill Ranch)									
08/01/2016 Billing:									
	12/10/2016	\$371,840.61	\$371,840.61	\$0.00	0.00%	281	281	0	0.00%
	04/10/2017	\$371,840.61	\$371,840.61	\$0.00	0.00%	281	281	0	0.00%
	Subtotal:	\$743,681.22	\$743,681.22	\$0.00	0.00%	562	562	0	0.00%
08/01/2017 Billing:									
	12/10/2017	\$371,052.22	\$371,052.22	\$0.00	0.00%	280	280	0	0.00%
	04/10/2018	\$371,052.22	\$371,052.22	\$0.00	0.00%	280	280	0	0.00%
	Subtotal:	\$742,104.44	\$742,104.44	\$0.00	0.00%	560	560	0	0.00%
08/01/2018 Billing:									
	12/10/2018	\$371,628.32	\$371,628.32	\$0.00	0.00%	280	280	0	0.00%
	04/10/2019	\$371,628.32	\$371,628.32	\$0.00	0.00%	280	280	0	0.00%
	Subtotal:	\$743,256.64	\$743,256.64	\$0.00	0.00%	560	560	0	0.00%
08/01/2019 Billing:									
	12/10/2019	\$369,012.48	\$369,012.48	\$0.00	0.00%	280	280	0	0.00%
	04/10/2020	\$369,012.48	\$369,012.48	\$0.00	0.00%	280	280	0	0.00%
	Subtotal:	\$738,024.96	\$738,024.96	\$0.00	0.00%	560	560	0	0.00%
08/01/2020 Billing:									
	12/10/2020	\$370,650.73	\$370,650.73	\$0.00	0.00%	288	288	0	0.00%
	04/10/2021	\$370,650.73	\$370,650.73	\$0.00	0.00%	288	288	0	0.00%
	Subtotal:	\$741,301.46	\$741,301.46	\$0.00	0.00%	576	576	0	0.00%
08/01/2021 Billing:									
	12/10/2021	\$274,623.41	\$274,623.41	\$0.00	0.00%	284	284	0	0.00%
	04/10/2022	\$274,623.41	\$274,623.41	\$0.00	0.00%	284	284	0	0.00%
	Subtotal:	\$549,246.82	\$549,246.82	\$0.00	0.00%	568	568	0	0.00%
08/01/2022 Billing:									
	12/10/2022	\$27,585.84	\$27,446.98	\$138.86	0.50%	284	283	1	0.35%
	04/10/2023	\$27,585.84	\$27,446.98	\$138.86	0.50%	284	283	1	0.35%
	Subtotal:	\$55,171.68	\$54,893.96	\$277.72	0.50%	568	566	2	0.35%

City of Morgan Hill
Delinquency Summary Report

As of: 05/06/2024

District	Due Date	Billed Amount	Paid Amount	Delinquent Amount	Delinquent Amount %	Billed Installments	Paid Installments	Delinquent Installments	Delinquent Installments %
RAD 2015-1 - RAD No. 2015-1 (Morgan Hill Ranch)									
RAD 2015-1	Total:	\$4,312,787.22	\$4,312,509.50	\$277.72	0.01%	3,954	3,952	2	0.05%

8. FINAL DEBT SERVICE SCHEDULE

The following page provides a summary of the final debt service schedule for the Reassessment District, which shows the final debt service payment made on September 2, 2023.

City of Morgan Hill
RAD No. 2015-1 (Morgan Hill Ranch)
Current Debt Service Schedule

Bonds Dated: 11/05/2015
Bonds Issued: \$4,415,000.00

Payment Date	CUSIP	Interest Rate	Balance	Principal	Interest	Payment Total	Annual Total	Call Premium	Status
03/02/2016		.0000%	\$4,415,000.00	\$0.00	\$38,454.65	\$38,454.65	\$0.00	3.0000%	Paid
09/02/2016		2.6800	4,415,000.00	159,000.00	59,161.00	218,161.00	256,615.65	3.0000	Paid
03/02/2017		0.0000	4,256,000.00	.00	57,030.40	57,030.40	.00	3.0000	Paid
09/02/2017		2.6800	4,256,000.00	615,000.00	57,030.40	672,030.40	729,060.80	3.0000	Paid
03/02/2018		0.0000	3,641,000.00	.00	48,789.40	48,789.40	.00	3.0000	Paid
09/02/2018		2.6800	3,641,000.00	630,000.00	48,789.40	678,789.40	727,578.80	3.0000	Paid
03/02/2019		0.0000	3,011,000.00	.00	40,347.40	40,347.40	.00	3.0000	Paid
09/02/2019		2.6800	3,011,000.00	648,000.00	40,347.40	688,347.40	728,694.80	3.0000	Paid
03/02/2020		0.0000	2,363,000.00	.00	31,664.20	31,664.20	.00	3.0000	Paid
09/02/2020		2.6800	2,363,000.00	660,000.00	31,664.20	691,664.20	723,328.40	3.0000	Paid
03/02/2021		0.0000	1,703,000.00	.00	22,820.20	22,820.20	.00	3.0000	Paid
09/02/2021		2.6800	1,703,000.00	681,000.00	22,820.20	703,820.20	726,640.40	0.0000	Paid
03/02/2022		0.0000	1,022,000.00	.00	13,694.80	13,694.80	.00	0.0000	Paid
09/02/2022		2.6800	1,022,000.00	700,000.00	13,694.80	713,694.80	727,389.60	0.0000	Paid
03/02/2023		0.0000	322,000.00	.00	4,314.80	4,314.80	.00	0.0000	Paid
09/02/2023		2.6800	322,000.00	322,000.00	4,314.80	326,314.80	330,629.60	0.0000	Paid
Grand Total:				\$4,415,000.00	\$534,938.05	\$4,949,938.05	\$4,949,938.05		

RESOLUTION NO. 24-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
DECLARING THE REMAINING REASSESSMENT REVENUE FUND BALANCE
TO BE SURPLUS, ORDERING THE DISPOSITION OF SUCH SURPLUS, AND
APPROVING THE CLOSEOUT ANALYSIS REPORT PREPARED BY NBS FOR
THE REASSESSMENT DISTRICT 2015-1 (MORGAN HILL RANCH)**

WHEREAS, the City Council of the City of Morgan Hill (the “City”) has, by previous resolution and related actions, undertaken proceedings pursuant to the *Municipal Improvement Act of 1913* to form the Reassessment District 2015-1 Morgan Hill Ranch (the “Reassessment District”); and,

WHEREAS, the City Council authorized the issuance of the City of Morgan Hill Limited Obligation Refunding Bonds Reassessment District No. 2015-1 (Morgan Hill Ranch) (the “Bonds”), pursuant to the *Improvement Bond Act of 1915* to finance certain public improvements; and,

WHEREAS, the Reassessment District has undertaken such public improvements as are described in the Engineer’s Report; and,

WHEREAS, the City Council is satisfied that the public improvements for the Reassessment District have been fully completed; and,

WHEREAS, there exists an encumbered balance in the Reassessment Revenue Fund for the Reassessment District; and,

WHEREAS, the City Council now wishes to make provision for the determination of surplus funds for their appropriate disposition pursuant to the Fiscal Agent Agreement of the Bonds dated October 21, 2015.

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

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

Section 2. A Notice of Completion of Public Improvements was completed and signed by the Public Services Director.

Section 3. The City Council hereby declares the remaining balance of the Reassessment Revenue Fund of the Reassessment District to be surplus.

Section 4. The City Council hereby orders the disposition of said surplus funds according to the Fiscal Agent Agreement of the Bonds dated October 21, 2015, as specified in the Closeout Analysis Report prepared by NBS for the Reassessment District.

Section 5. The City Council hereby approves the District Closeout Analysis Report prepared by NBS for the Reassessment District and agrees to transfer surplus funds to the City's General Fund.

Section 6. 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 26th 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. 24-_____ adopted by the City Council at the meeting held on the 26th day of June, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



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 19, 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 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 shared that he has received many communications from members in his district regarding the Little Llagas Creek not being completed. Thanks to Chris Ghione, he was able to provide information to his constituents. He shared some of those details. He shared that the Santa Clara County Library District meeting was very interesting and mentioned that they are developing an automated handling system for other returned books.

CITY MANAGER'S REPORT

City Manager Christina Turner recognized today as Juneteenth and shared information about the holiday's importance and symbolism. The Law Enforcement Torch Run will take place next Thursday, June 27th, at 11:00 a.m. from Vineyard Blvd to Cochrane Road.

CITY ATTORNEY'S REPORT

No report.

OTHER REPORTS

Council Member Martinez Beltran shared that she attended a Sister Cities Olive Oil tasting. She also attended events at Cisco and a fundraiser for the League of Cities. She mentioned that there is a mandate to clean some of the waterways. There are about 1,000 unhoused residents living in the waterways. Due to her relationships with the Latino Caucus, she was able to work with the San Jose City Council to continue to preserve the Coyote area.

Mayor Turner thanked Council Member Martinez Beltran for her time and representation on the unhoused site issue. He shared that he received a letter from Congresswoman Zoe Lofgren and an American flag that flew over the U.S. Capitol for the Morgan Hill Veterans Memorial.

PUBLIC COMMENT

Public comment opened at 6:14 p.m. The following people were called to speak:

Rigo Gallardo

Eli Robles

Mattie Scariot

Sharon Luna

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.

MOTION:

Approving the consent calendar.

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

Public comment opened at 6:27 p.m.

Brian Sullivan provided comments on Item 2.

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

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.

Public Services Director Chris Ghione provided the report.

Public comment opened at 6:36 p.m.

Nick Gaich was called to speak.

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

MOTION:

Approving the recommended actions.

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

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.

City Manager Christina Turner provided the report.

Public comment opened at 6:52 p.m. The following people were called to speak:

Brian Sullivan

Ron Foltz

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

MOTION:

Approving amended Policy 97-01.

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

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.

Budget Manager Monica Delgado and Finance Director Dat Nguyen provided a presentation and report.

The meeting recessed at 8:04 p.m. and reconvened at 8:10 p.m.

The public hearing opened at 8:10 p.m. The following people were called to speak:

Mattie Scariot

Suman Ganapathy

Armando Benavides (Zoom)

There being no further requests to speak, the public hearing closed.

MOTION:

Approving the recommended actions.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Martinez Beltran would like to review the City agreement with the Historical Society and help establish funding terms.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 8:33 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

AUTHORIZE EXECUTION OF COST SHARING AGREEMENT WITH VALLEY WATER FOR THE UPPER LLAGAS FLOOD CONTROL PROJECT PHASE 2B

RECOMMENDATION(S)

1. Authorize the City Manager to execute and administer a cost-share agreement with Valley Water for the construction of improvements supporting the Upper Llagas Creek Flood Control Project for up to \$4.5 million; and
2. Authorize the City Manager to make minor modifications to the agreement as necessary with the approval of the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land
Maintaining and Enhancing Infrastructure

Guiding Documents

Storm Drain Master Plan

REPORT NARRATIVE:

For decades, the City has supported Valley Water in efforts to complete the Upper Llagas Creek Flood Protection Project. Completing this project will provide flood control for the West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. Valley Water has recently bid Phase 2B, which is the project's final phase. This phase includes areas adjacent to West Little Llagas Creek between Watsonville Road and Ciolino Avenue and Main Avenue to Llagas Road and areas along Llagas Creek south of Morgan Hill. Once complete, the Flood Protection Project will be interconnected with the City's infrastructure. At this point, Valley Water intends to fund the primary elements of the project for flood control. The City intends to construct adjacent infrastructure improvements associated with the roadways, utilities, and trails adjacent to the project. The most significant improvements will be constructed on Hale Avenue just north of Main Avenue to Hillwood Lane, which includes roadway, lighting, and sidewalk construction/reconstruction/relocation intended to make the City infrastructure whole and up to current City standards. This will also include a traffic

signal at Hale and Wright Avenues.

It is anticipated that this final phase of the Flood Control Project will begin later this year and take over three years to construct, with significant portions of the work required to occur over the summer. This will require the closure of Hale Avenue north of Main Avenue for some period of time. The City will work to mitigate traffic impacts on residents, as has been done during previous phases of the work. Attachment 1 provides an overall map of Valley Water's Project. On the map, the sections noted as Reach 8 and Reach 7b are the sections for which the City will be cost-sharing.

It is estimated that the improvements will cost approximately \$4.1 million to construct, with exact pricing known after bids are received. The City has \$4.5 million allocated in the Capital Improvement Program for this project in Fiscal Years 24/25, 25/26, and 26/27. The cost-sharing agreement is included as Attachment 2. The project plans and specifications are available on the Valley Water website:

- [Valley Water Staff Report, Plans, Specifications](#)

COMMUNITY ENGAGEMENT:

Inform

Significant communications and engagement have occurred on the previous phases of this project and Valley Water and the City intend to continue ongoing joint communication planning to inform residents of the timing of impacts associated with construction. The largest impacts related to the Flood Control Project will be construction on Hale Avenue north of Main Avenue intersection.

ALTERNATIVE ACTIONS:

The City could choose not to move forward with the cost sharing agreement and no associated improvements would be made with the work as Valley Water moves forward with the Flood Control Project. The City would need to implement a smaller project to make some improvements to ensure basic infrastructure integration is achieved.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has taken numerous actions over the last several decades to support the Upper Llagas Creek Flood Protection Project. On March 6, 2019, the city council received an update report on the Project from Valley Water.

The City Council approved design consultant work with Woodard and Curran, Inc., on June 26, 2019, for \$457,271 to design City improvements associated with Valley Water's Flood Protection Project and an amendment for additional scope on September 23, 2020, for an additional \$71,697.

The City Council approved a \$748,000 cost-sharing agreement for Phase 1 of the Project on September 23, 2020, and a \$3.5 million cost-sharing agreement for Phase 2A of the Project on November 18, 2020.

On April 6, 2022, the City Council approved design consultant work with Mark Thomas and Company for \$246,000 for consultant work associated with City improvements.

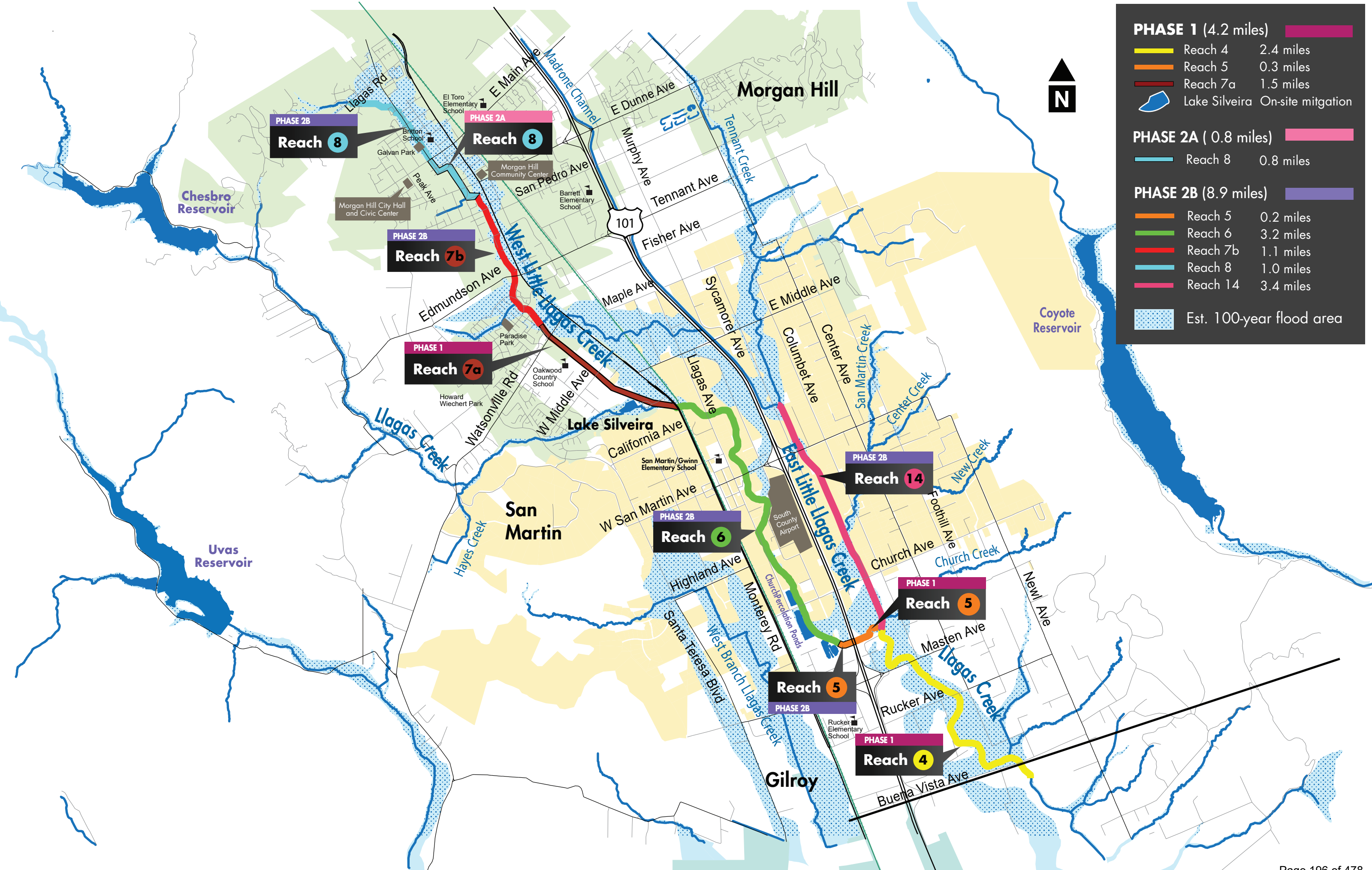
FISCAL AND RESOURCE IMPACT:

Funding for this project is allocated within the approved Capital Improvement Program in the Llagas Flood Control Project/Fund 303 (\$3.5 million) and the Traffic Signal and Intersection Improvements Project/Fund 309 (\$1.0 million). Expenses are not expected to be incurred until Fiscal Years 25/26 and 26/27.

CEQA (California Environmental Quality Act):

Environmental Impact Report & Categorical Exemption

An Environmental Impact Report (EIR) was certified for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project in accordance with the California Environmental Quality Act (CEQA). Valley Water certified an Environmental Impact Report for the Flood Control Project. Additionally, relocation of infrastructure and utility work along existing roadways and associated with the Valley Water Project is exempt from CEQA per categorical exemption of Class 1, Existing Facilities.



PHASE 1 (4.2 miles)

- Reach 4 2.4 miles
- Reach 5 0.3 miles
- Reach 7a 1.5 miles
- Lake Silveira On-site mitigation

PHASE 2A (0.8 miles)

- Reach 8 0.8 miles

PHASE 2B (8.9 miles)

- Reach 5 0.2 miles
- Reach 6 3.2 miles
- Reach 7b 1.1 miles
- Reach 8 1.0 miles
- Reach 14 3.4 miles
- Est. 100-year flood area

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT, PHASE 2B**

This agreement (AGREEMENT) is made and entered into as of the date it is fully executed, by and between the CITY OF MORGAN HILL (CITY), a municipal corporation of the State of California and the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a special district of the State of California. CITY and DISTRICT may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS, DISTRICT is currently proceeding with the design and construction phases of its Upper Llagas Creek Flood Protection Project (DISTRICT PROJECT), for which a Final Environmental Impact Report was certified by the DISTRICT'S Board of Directors and the DISTRICT PROJECT was approved on June 10, 2014. The design phase for Phase 2B is completed, and the DISTRICT is currently advertising for bids, and will subsequently award a contract for Phase 2B construction (DISTRICT IMPROVEMENTS) of the DISTRICT PROJECT; and

WHEREAS, Parties have previously executed on October 29, 2020, a Cost Sharing Agreement (#A4406S) for the construction of CITY IMPROVEMENTS in cooperation with Phase 1 construction of the DISTRICT PROJECT which shall remain in full effect; and

WHEREAS, Parties have previously executed on April 21, 2021, a Cost Sharing Agreement (#A4448S) for the construction of CITY IMPROVEMENTS in cooperation with Phase 2A construction of the DISTRICT PROJECT which shall remain in full effect; and

WHEREAS, CITY has proposed improvements (CITY IMPROVEMENTS) be included in the DISTRICT IMPROVEMENTS, as generally defined within the City of Morgan Hill Capital Improvement Program, including infrastructure improvements associated with the Upper Llagas Flood Control project (CITY PROJECT); and

WHEREAS, the Parties mutually agree it is in the public's best interests to achieve the economic benefits and efficiencies resulting from combining the design and construction of the Parties' public improvement projects; and

WHEREAS, the DISTRICT is willing to include CITY IMPROVEMENTS in its DISTRICT IMPROVEMENTS, at CITY'S expense and in accordance with the terms and conditions set forth in this AGREEMENT.

WHEREAS, the DISTRICT and the CITY have jointly planned and designed the DISTRICT IMPROVEMENTS and CITY IMPROVEMENTS along existing West Little Llagas Creek between approximately Watsonville Avenue upstream to Llagas Road and Llagas Creek Drive intersection; and

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties hereto agree as follows:

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

AGREEMENT

1. DISTRICT - CITY IMPROVEMENTS DESCRIPTION

1.1. The DISTRICT IMPROVEMENTS scope of work:

- 1.1.1. Prepare complete design and construction documents for Phase 2B of the DISTRICT PROJECT, including incorporating the proposed CITY IMPROVEMENTS into the proposed DISTRICT IMPROVEMENTS;
- 1.1.2. Phase 2B consists of construction of Reach 6 of Llagas Creek from Highway 101 to Llagas Avenue, Reach 7B of West Little Llagas Creek from Watsonville Road to Ciolino Avenue, a portion of Reach 8 from approximately 200 feet north of the West Main Avenue and Hale Avenue intersection along West Little Llagas Creek to Llagas Road and Llagas Creek Drive intersection, and Reach 14 from the existing East Little Llagas Creek – Llagas Creek confluence upstream along East Little Llagas Creek to Sycamore Avenue;
- 1.1.3. Construction of the proposed approximately 14,800 linear feet of channel improvements (Reach 6), approximately 8,000 linear feet of channel improvements (Reach 7B), including construction of several new reinforced box culverts under-crossings at Spring Avenue, Cosmo Avenue, and Edes Street, approximately 3,200 linear feet of channel improvements (Reach 8), and construction of 12,200 linear feet of channel improvements (Reach 14);
- 1.1.4. Construct approximately 1,900 linear feet of twin reinforced concrete box culverts downstream of the proposed concrete inlet structure near the intersection of Wright Avenue and Hale Avenue;
- 1.1.5. Construction will include traffic control, detours, road work, utility relocations and coordination, fencing, soil testing as required for off-site disposal, concrete and other miscellaneous work, community outreach and coordination.

1.2. CITY'S IMPROVEMENTS scope of work:

- 1.2.1. Primary Scope of Work is the relocation, construction, and improvement of infrastructure within the City limits and adjacent to the DISTRICT IMPROVEMENTS and shall be referred to as the CITY PROJECT.
- 1.2.2. CITY PROJECT shall include:
 - a. Utility relocations by PG&E, primarily relocating the existing overhead utility facilities to proposed underground facilities along the west side of Hale Avenue between West Main to Wright Avenue;
 - b. Roadway and sidewalk re-construction/construction along Hale Avenue north of Main Avenue;
 - c. Multi-use pathway construction in various areas of the project;
 - d. Construction/reconstruction of curb, gutter, and sidewalks along Hale Avenue;
 - e. Installation/relocation of Streetlights along Hale Avenue;

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- f. Traffic Signal at intersection of Hale Avenue and Wright Avenue;
- g. Sound wall/retaining walls;
- h. Utility relocations, including installation of new vaults, pull boxes, and etc.;
- i. Traffic control, detours, road work, fencing, irrigation infrastructure for future City irrigation and landscape project, and other miscellaneous work along Hale Avenue, including community outreach and coordination.

2. DISTRICT PROJECT LOCATION

- 2.1. The DISTRICT PROJECT is located from Llagas Creek at Buena Vista Avenue within the City of Gilroy, upstream and northerly along a portion of East Little Llagas Creek and northwesterly along a portion West Little Llagas Creek to Llagas Road within the northern portion of the City of Morgan Hill, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.
- 2.2. The DISTRICT IMPROVEMENTS, Phase 2B, consists of construction of flood protection improvements, including installation of mitigation plantings along Reach 6 of existing Llagas Creek from Highway 101 to Llagas Avenue, Reach 7B of existing West Little Llagas Creek from Watsonville Road to Ciolino Avenue, a portion of Reach 8 from approximately 200 feet north of the West Main Avenue and Hale Avenue intersection along West Little Llagas Creek to the Llagas Road and Llagas Creek Drive intersection, and Reach 14 from the existing East Little Llagas Creek – Llagas Creek confluence upstream along East Little Llagas Creek to Sycamore Avenue.
- 2.3. The proposed CITY IMPROVEMENTS are located along the DISTRICT PROJECT, all within the City of Morgan Hill, all within a portion of Reach 8 of the DISTRICT PROJECT, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.

3. SCOPE OF WORK

- 3.1. DISTRICT will perform the following:
 - 3.1.1. Administer, design, and contract the construction of its DISTRICT IMPROVEMENTS, including incorporating the CITY IMPROVEMENTS, and coordination with appropriate local, state, federal, and regulatory agencies.
 - 3.1.2. DISTRICT, as Lead Agency for its DISTRICT PROJECT, pursuant to the requirements of the California Environmental Quality Act (CEQA), will proceed with construction of the DISTRICT IMPROVEMENTS in accordance with the DISTRICT's Final Environmental Impact Report certified on June 10, 2014, and permits, as authorized by appropriate regulatory agencies.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 3.1.3. Ensure its obligations are met as Lead Agency under CEQA.
- 3.1.4. Construction of the proposed CITY IMPROVEMENTS will be completed as part of the DISTRICT IMPROVEMENTS. The DISTRICT will officially transfer the operations and maintenance responsibilities for the CITY IMPROVEMENTS to the CITY upon the construction completion of said CITY IMPROVEMENTS and after written acceptance by both the CITY and the DISTRICT. The CITY will own the CITY IMPROVEMENTS and is responsible for their sustained operations and maintenance responsibilities in perpetuity.
- 3.2. CITY will perform the following:
 - 3.2.1. CITY, as Lead Agency for its CITY PROJECT, certified an Environmental Impact Report on August 23, 2017, pursuant to the requirements of the California Environmental Quality Act (CEQA) and as authorized by the appropriate agencies.
 - 3.2.2. Provide DISTRICT with all documentation and information regarding its proposed CITY IMPROVEMENTS, so the DISTRICT PROJECT team preparing the DISTRICT IMPROVEMENTS design and construction documents, can include the design of these CITY IMPROVEMENTS in its DISTRICT IMPROVEMENTS per CITY'S requirements.
 - 3.2.3. Promptly review the DISTRICT'S design team's documents prepared for public bidding and award and provide input to DISTRICT confirming acceptance of the design and construction documents prior to DISTRICT proceeding with construction advertisement and bidding.
 - 3.2.4. CITY shall coordinate with PG&E and the other utility owners on the planning, design, and construction, execute the necessary agreements, and pay in full for the work associated with the CITY-PG&E Rule 20 overhead to underground project proposed along Hale Avenue between West Main Avenue and Wright Avenue. CITY further acknowledges the Rule 20 project does not provide any benefit to the DISTRICT PROJECT, therefore the Rule 20 associated costs are CITY sole responsibility.
- 3.3. Designees:
 - 3.3.1. The designated project manager for DISTRICT for the duration of the DISTRICT IMPROVEMENTS construction is Mr. Stephen M. Ferranti. Except as superseded by existing DISTRICT Board of Directors, the DISTRICT Act, rule or practice, DISTRICT's project manager has all the necessary authority to direct technical and professional work within the scope of the AGREEMENT and will serve as the principal point of contact with CITY.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

3.3.2. The designated project manager for CITY for the duration of the DISTRICT IMPROVEMENTS, including CITY IMPROVEMENTS construction is Mr. Chris Ghione. Except as superseded by existing CITY law, rule or practice, CITY's project manager had all the necessary authority to review, approve, and accept technical and professional work within the scope of the AGREEMENT and served as the principal point of contact with DISTRICT.

4. COST-SHARING OF CITY IMPROVEMENTS CONSTRUCTED BY DISTRICT

4.1. DISTRICT advertised Phase 2B of the DISTRICT PROJECT on May 14, 2024 and publicly bid its DISTRICT IMPROVEMENTS and included the CITY IMPROVEMENTS as separate bid items. in order to ascertain the bidders' proposed prices for the CITY IMPROVEMENTS.

4.2. CITY total costs based on the construction cost estimates associated with the CITY IMPROVEMENTS, is estimated at \$4,100,000 for improvements noted in section 1.2.

4.3. DISTRICT will provide to the CITY the summary of bids submitted to the DISTRICT by the apparent low bidder (CONTRACTOR) for their review and their acceptance of the bid item costs for the CITY IMPROVEMENTS within two (2) working days after DISTRICT's public bid opening which is anticipated to occur on or about June 26, 2024.

4.4. CITY will review the bid item costs for the CITY IMPROVEMENTS within five (5) working days and provide the DISTRICT with their decision of acceptance or not on each bid items identified above.

4.5. DISTRICT shall submit an invoice to the CITY for those CITY IMPROVEMENT Bid Items accepted by the CITY in approximately ninety (90) days after construction completion and City acceptance of the CITY IMPROVEMENTS, and CITY agrees to pay the DISTRICT in full within sixty (60) days upon receipt of the DISTRICT invoice. DISTRICT further agrees to invoice CITY within 90 calendar days after construction completion and City acceptance of the Project for those shared bid items involving both CITY IMPROVEMENTS and DISTRICT IMPROVEMENTS, including CITY's prior written approved modifications, revisions, change orders, and/or extra work required in association with the CITY IMPROVEMENTS (Section 1.2). CITY agrees to pay the DISTRICT in full within sixty (60) days upon receipt of the DISTRICT invoice. DISTRICT agrees to provide to the CITY the supporting documentation with each DISTRICT invoice.

4.6. Modifications to DISTRICT'S contract with its CONTRACTOR.

4.6.1. DISTRICT agrees to provide CITY with written notice and documentation regarding any modifications, revisions, change orders, and/or extra work required in association with the CITY IMPROVEMENTS to CITY within seven (7) calendar days of DISTRICT becoming aware of or initiating such

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

matter, so CITY can provide direction to DISTRICT, if necessary and appropriate.

4.6.2. CITY will respond to DISTRICT regarding such matters within seven (7) calendar days of receipt of such information and provide written direction to DISTRICT, if necessary and appropriate.

4.6.3. If CITY's approval(s) results in an expense above the bid items amounts, CITY agrees to remit payment in full to DISTRICT within 60 calendar days of receipt of DISTRICT invoice, along with any supporting documentation for said additional costs associated with the CITY IMPROVEMENTS.

5. INSURANCE AND INDEMNIFICATION

5.1. 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, DISTRICT and CITY 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 or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of 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 AGREEMENT. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the 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 AGREEMENT.

5.2. The rights, duties, and obligations of the Parties as set forth above in this Section 5 of this AGREEMENT will survive termination, suspension, completion, and expiration of this AGREEMENT.

6. ADDITIONAL PROVISIONS

6.1. A Party's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach of any other term, condition, or covenant.

6.2. This AGREEMENT contains the entire AGREEMENT between DISTRICT and CITY relating to the DISTRICT'S IMPROVEMENTS and CITY'S IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 6.3. If any term, condition, or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on DISTRICT and CITY.
- 6.4. This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.
- 6.5. This AGREEMENT may be executed in counterparts and will be binding as executed.
- 6.6. The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both Parties and terminate upon completion of the DISTRICT IMPROVEMENTS, notification of completion by DISTRICT to CITY, and receipt by DISTRICT of payment in full by CITY.
- 6.7. All changes or extensions to this AGREEMENT must be in writing in the form of an amendment approved by both Parties.
- 6.8. Claims related to the design of DISTRICT'S IMPROVEMENTS will be administered by DISTRICT and Claims related to the design of CITY'S IMPROVEMENTS will be administered by the CITY. The obligations of both Parties, as stated in this paragraph, will survive termination, completion, suspension, and expiration of this AGREEMENT.
- 6.9. This AGREEMENT is entered into only for the benefit of the Parties executing this AGREEMENT and not for the benefit of any other individual, entity, or person.

7. TERMINATION

- 7.1. This AGREEMENT will terminate upon completion of the DISTRICT IMPROVEMENTS, notification of completion by DISTRICT to CITY, and receipt by DISTRICT of payment in full by CITY, or by mutual written consent and terms acceptable to both Parties.

8. NOTICES

- 8.1 All correspondence relating to the DISTRICT IMPROVEMENTS, including all written notices required by the terms and conditions of this AGREEMENT may be delivered by first class mail addressed to the appropriate Party at the following addresses:

DISTRICT:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Mr. Stephen M. Ferranti, P.E., Engineering Unit Manager
Phone: (408) 630-2677

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

E-mail: sferranti@valleywater.org

CITY:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Mr. Chris Ghione, Public Services Director
Phone: (408) 782-9154
E-mail: chris.ghione@morganhill.ca.gov

IN WITNESS WHEREOF, this AGREEMENT becomes effective upon full execution by the Parties as set forth below.

"CITY"

CITY OF MORGAN HILL
A Municipal corporation of the County of Santa Clara

"DISTRICT"

SANTA CLARA VALLEY WATER DISTRICT
a Special District, created by the California Legislature

By: _____
Christina Turner
City Manager

By: _____
Rick L. Callender, Esq.
Chief Executive Officer

Date: _____

Date: _____

ATTEST:

ATTEST:

Michelle Bigelow
City Clerk

Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Donald Larkin
City Attorney

Brian Hopper
Senior Assistant District Counsel

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

David Gittleson, Associate Engineer

APPROVED BY: City Manager

AWARD THE EAST DUNNE HILLSIDE WATER RESERVOIR PROJECT TO AZUL WORKS, INC. IN THE AMOUNT OF \$8,296,000 AND APPROVE CONSULTANT AGREEMENT WITH KENNEDY/JENKS CONSULTANTS FOR CONSTRUCTION SUPPORT SERVICES FOR A NOT TO EXCEED AMOUNT OF \$300,000

RECOMMENDATION(S)

1. Approve the East Dunne Hillside Water Reservoir Project plans and specifications;
2. Award contract to Azul Works, Inc. for the East Dunne Hillside Water Reservoir Project in the amount of \$8,296,000;
3. Authorize expenditures of construction contingency not to exceed \$829,600;
4. Approve consultant agreement with Kennedy/Jenks Consultants for Construction Support Services for a not to exceed amount of \$300,000; and
5. Authorize the City Manager to execute and administer the construction contract with Azul Works, Inc. and consultant agreement with Kennedy/Jenks Consultants.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Fire Services Standards of Coverage

Water System Master Plan

REPORT NARRATIVE:

The East Dunne Hillside Water Reservoir Project involves the construction of an 850,000-gallon above-ground welded steel water supply reservoir (tank). The new reservoir will be located on the hillside adjacent to East Dunne Avenue (See attachment

1). The Project also includes the installation of new piping, an access road, stormwater catchment, and treatment, concrete retaining walls, fencing, landscaping/irrigation, etc. In addition, two existing water pumps currently in use at the East Dunne Booster Station will be replaced with larger water pumps to fill the new reservoir. The construction of the new reservoir will improve fire protection, provide water system redundancy and enhance the domestic water supply for the eastern side of Morgan Hill. To screen the reservoir as best as possible, the reservoir will be notched into the hillside and trees will be strategically placed to block views from neighboring homes. The Project is included in the City's Water Master Plan as well as the Capital Improvement Program.

The East Dunne Hillside Reservoir design was initially approved by the City Council in January 2016. A Draft Initial Study was also completed by Geier & Geier Consulting in November 2016. The project reached substantial completion in December 2018. However, staffing levels and funding to construct the project were not in place, so the project was put on hold. In June 2023, the City Council approved a professional services agreement with Kennedy/Jenks Consultants to revise the plans and add stormwater compliance requirements in order to finalize the design. In 2024, the City was awarded a \$4 million grant from the State Department of Water Resources to support the project.

The Plans and Specifications were completed by Kennedy/Jenks Consultants in April 2024. The bid period was held between May 3rd and May 29th, 2024. The bid opening was held on May 29, 2024, and three (3) bids were received as listed below:

1. Azul Works, Inc	\$8,296,000
2. Anvil Builders, Inc.	\$9,459,702
3. Shimmick Construction Company, Inc.	\$10,125,900

The lowest responsible bidder was Azul Works, Inc. at \$8,296,000. The low bidder's bid amount of \$8,296,000 is approximately 3.7% higher than the engineer's estimate of \$8.0 million. The low bidder, Azul Works, Inc., has 24 years of experience as a public contractor and has constructed public works projects for the City of San Jose, the City of Napa, the City of Petaluma, and the East Bay Regional Parks District. Azul Works, Inc. has constructed two smaller water tanks within the last 6 years; however, a subcontractor specializing in constructing steel tanks (Crosno Construction) will be constructing this tank under the Azul Works, Inc. contract if awarded. Staff recommends the award of the contract to Azul Works, Inc. in the amount of \$8,296,000. Due to possible unforeseen conditions, staff is requesting a ten (10) percent construction contingency for the project of \$829,600.

Due to the complexity of the project and the specialized work involved in building a welded steel tank, staff is requesting approval from the City Council for construction support services from the design firm Kennedy/Jenks Consultants in an amount not to exceed \$300,000. Services would include reviewing submittals, responding to Requests for Information (RFIs), design clarifications, change order assistance, meetings, site inspections, and producing as-built drawings, all on an as-needed basis (see

attachment 2).

This project is scheduled to start in late July 2024 and be completed and operational within three years. The plans and specifications are available on the City's web page under the Government tab and on the Community Projects site.

[Plans and Specifications](#)

COMMUNITY ENGAGEMENT:

Inform: Staff has provided presentations regarding the project to the communities of Jackson Oaks and Holiday Lake Estates multiple times since 2015, but most recently on January 30, 2024. The presentations provide design elements and updates on the status of the project. Staff will continue community engagement prior to the start of the project and during the project.

ALTERNATIVE ACTIONS:

City Council could decide not to award the construction contract. The project could be value engineered and rebid in hopes of receiving lower bids. However, doing so will delay the construction of the project and may not result in lower costs. Council could also decide not to enter into a construction contract with Kennedy/Jenks for construction support services. However, it is common practice to have the design firm involved in the construction process to address design and constructability issues and review critical submittals.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 20, 2016, the City Council approved a Professional Service Agreement with Kennedy Jenks Consultants to design the East Dunne Avenue Reservoir project for \$390,278.

On August 24, 2016, the City Council approved a Second Amendment with Kennedy Jenks Consultants for a total contract price of \$526,074.

On June 7, 2023, City Council approved a professional services agreement with Kennedy Jenks Consultants to complete the design for the East Dunne Avenue Hillside Water Reservoir project not to exceed \$240,187.

On May 15, 2024, the City Council Adopted and certified the project Mitigated Negative Declaration and approved the Mitigation Monitoring and Reporting Program for the project.

On June 19, 2024, the City Council adopted the Fiscal Year 2024-25 and 2025-2026 Operating Budget and FY 2024-2025 through 2029-2030 Capital Improvement Program Budget.

FISCAL AND RESOURCE IMPACT:

Fiscal:

If approved, the total construction authorization for this project shall be \$9,125,600

which includes a 10% contingency of \$829,600. The City received \$4 million from the Urban Community Drought Relief Grant program through the State of California's Department of Water Resources for this project. The construction (\$9,125,600) and support services (\$300,000) were budgeted in the FY 24/25 through 2029/2030 Capital Improvement Budget, presented to the City Council on June 19, 2024.

CEQA (California Environmental Quality Act):

Project: An Initial Study (IS) and Mitigated Negative Declaration was updated by Raney Planning & Management to identify and mitigate all environmental impacts from the project. The Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Plan were approved by City Council on May 15, 2024 and incorporated into the project specifications. The Mitigated Negative Declaration was filed with the County Recorder's Office on May 29, 2024.



CITY OF MORGAN HILL
Engineering Division

Path: G:\R-14\PROJ\GIS\Marks\SITE MAPS\SiteMap_EDunne_HillsideReservoir.mxd

SITE MAP East Dunne Hillside Water Reservoir

0 35 70 140 210 280
Feet



CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS

Kennedy/Jenks Consultants

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Kennedy/Jenks Consultants 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 June, 19, 2024.
2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until July 15, 2027 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 to provide construction support services as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$300,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Three 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 CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Don Barraza, Project Manager
Kennedy/Jenks Consultants
2350 Mission College Boulevard, Suite 525
Santa Clara, CA 95054
Address of CITY is as follows:

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

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

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

16. **Maintenance of Records.**

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

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

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

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

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**
- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence, or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under

this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

25. **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.

///

///

///

///

///

///

///

///

///

[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

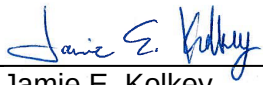
Date: _____

Date: _____

APPROVED AS TO FORM:

Kennedy/Jenks Consultants

City Attorney

By:  Jamie E. Kolkey

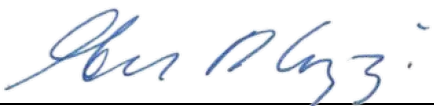
Donald A. Larkin
Print Name

Vice President and Operations Manager

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

Date: _____

Date: June 24, 2024

By:  Gerard P. Cavaluzzi

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

Date: June 24, 2024

EXHIBIT A
SCOPE OF SERVICES



303 Second Street, Suite 300 South
San Francisco, California 94107
415-243-2150
FAX: 415-896-0999

7 June 2024

Mr. David Gittleston, P.E.
Associate Engineer
Utilities & Engineering Department
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, California 95037

Subject: Proposal for As-Needed Engineering Services During Construction for the East Dunne Hillside Water Reservoir and Booster Pump Station Project

Dear Mr. Gittleston:

Kennedy/Jenks Consultants, Inc. (Kennedy Jenks) is pleased to submit this proposal to provide professional services for as-needed engineering services during construction (ESDC) for the East Dunne Hillside Water Reservoir and Booster Pump Station Project (Project). As requested by the City of Morgan Hill (City), these services will be provided on an as-needed basis for items pertaining to the facilities including the reservoir and the retaining walls on the reservoir and pump station sites.

It is understood that these services will be performed as a new contract between Kennedy Jenks and the City. The Scope of Work, assumptions, summary of tasks to be performed by the City, basis of compensation, schedule and terms and conditions for this proposal are included below.

Scope of Work

Kennedy Jenks will provide professional services for as-needed ESDC for the Project, working closely with City staff. Kennedy Jenks' work is organized in four tasks as described in the following sections.

Phase 1 – Project Management and Quality Control

Task 1.1 – Project Management

Kennedy Jenks will set up the project within Kennedy Jenks' accounting system, prepare subconsultant agreements, provide management and oversight of in-house project personnel and subconsultants

Mr. David Gittleston, P.E.
City of Morgan Hill
7 June 2024
Page 2

throughout the project, and will review and monitor project budget and progress on a regular basis. Kennedy Jenks will prepare and submit monthly invoices electronically to the City in accordance with the Agreement. This task assumes a construction duration of 35 months from Notice to Proceed (NTP).

Task 1.1 Deliverables:

1. Monthly invoices (electronic, PDF format)

Task 1.2 - Quality Assurance and Quality Control (QA/QC)

Each deliverable will receive a quality control review prior to submission to the City from a senior Kennedy Jenks engineer, not directly associated with the project. This includes QA/QC of all Submittal responses, Requests for Information (RFI) responses, design clarifications, and change order assistance.

Phase 2 – As-Needed ESDC

This Scope of Work and Fee Estimate provides an estimate of ESDC in support of Project elements including the reservoir and retaining walls for the Project.

Task 2.1 – Preconstruction Meeting

Kennedy Jenks will attend one, 2-hour virtual preconstruction meeting with the selected Contractor and City construction personnel to review construction project organization, roles and responsibilities associated with construction administration, construction related correspondence, observations and inspections, contract change orders, monthly progress estimates and payments, material testing, disinfection testing, project closeout, and record documents. The meeting will be attended by up to three Kennedy Jenks staff. This City will be responsible for facilitating the meeting and preparing the agenda and meeting minutes.

Task 2.2 – Construction Progress Meetings

Kennedy Jenks will attend up to 35 construction progress meetings (assuming one per month of construction) at the request of the City. Each progress meeting is anticipated to be held virtually, have a 1-hour duration, and will be attended by up to two Kennedy Jenks staff. The City will be responsible for facilitating the meeting and preparing the agenda and meeting minutes.

Task 2.3 – RFI Responses

Kennedy Jenks will assist City staff with preparing responses to Requests for Information (RFIs) related to structural specifications and drawings as requested by the City. Kennedy Jenks' standard construction administration forms will be used for all RFI responses. It is the responsibility of the City to provide RFIs

Mr. David Gittleston, P.E.
City of Morgan Hill
7 June 2024
Page 3

received from the Contractor and to distribute all RFI responses to the Contractor. For budgeting purposes, this proposal assumes a total labor estimate of 80 hours based on assuming 4 hours per RFI response and a total of 20 RFIs. Budget for a senior level engineer to conduct a QA/QC review of each RFI is included under Task 1.2.

Task 2.3 Deliverables:

1. Responses to RFIs (Electronic, PDF format)

Task 2.4 – Design Clarifications

Kennedy Jenks will issue up to 2 Design Clarifications as requested by the City at approximately 16 hours per Design Clarification on average for reviewing and preparing a written response or clarification. Budget for a senior level engineer to conduct a QA/QC review of each Design Clarification is included under Task 1.2

Task 2.4 Deliverables:

1. Design Clarifications (Electronic, PDF format)

Task 2.5 – Submittal Responses

Kennedy Jenks will review Contractor Submittals pertaining to the retaining walls and reservoir drawings and structural technical specifications as requested by the City for conformance with the Contract Documents. This task includes the review of up to 64 Submittals, including re-Submittals. The term Submittal used herein includes technical submittals, shop drawings, samples, operations and maintenance manuals, and product data required to be submitted by the Contractor. Review will be for substantial conformity with the intent of the Contract drawings and specifications. Such review shall be only for conformance with the design concepts and general compliance with the project's Contract Documents. It shall not include review of quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination with the work of other trades, or construction safety precautions, all of which are the sole responsibility of the Contractor. Submittals lacking in clarity or completeness will be returned to the Contractor with appropriate comments.

Kennedy Jenks will prepare a review letter for each Submittal with the recommended disposition and review comments. Kennedy Jenks' standard construction administration forms will be used for all submittal responses. Kennedy Jenks will provide submittal responses to the City and the City will be responsible for distribution of these documents to the Contractor. For budgeting purposes, this proposal assumes a total labor estimate of 320 hours for this task based on assuming 5 hours per Submittal response. Budget for a senior level engineer to conduct a QA/QC review of each Submittal is included under Task 1.2.

Mr. David Gittleston, P.E.
City of Morgan Hill
7 June 2024
Page 4

Task 2.5 Deliverables:

1. Shop Drawing Review Letters responding to submittals (Electronic, PDF format)

Task 2.6 – Change Order Assistance

Kennedy Jenks will review and consult with the City on change orders to the contract documents. For budgeting purposes, this proposal assumes a total labor estimate of 16 hours based on assuming 8 hours per change order assistance and a total of 2 change orders. Budget for a senior level engineer to conduct a QA/QC review of each submittal is included under Task 1.2.

Task 2.7: Record Drawings

Kennedy Jenks will prepare Record Drawings for the Project using the as-built drawing markups of construction changes provided by the Contractor. For estimating purposes, it is assumed that 76 drawings will be updated, each requiring on average 4 hours. Kennedy Jenks will provide one electronic and one full sized (22"x34") paper hard copy of the Record Drawing set.

Task 2.5 Deliverables:

1. One full sized (22"x34") paper hard copy of the Record Drawing set
2. Electronic files of Record Drawing set (AutoCAD and PDF format)

Assumptions

The following assumptions were developed when preparing the Scope of Work, schedule, and estimated fee for the project.

1. Per discussions with the City, Kennedy Jenks's schedule and compensation are based on providing the above services for a period of 35 months. If the schedule is extended beyond this period and project management funds are exhausted, a written request will be provided for additional funds.
2. Inspection services are not included as part of this scope of work.
3. It is assumed that Kennedy Jenks will be assisting the City with the ESDC services described above and Kennedy Jenks will not be responsible for distribution of materials to the Contractor.
4. Construction Management services, including construction management software for document control, are not included in this proposal.

Mr. David Gittleston, P.E.
City of Morgan Hill
7 June 2024
Page 5

5. This Scope of Work is based on quantities for reviews identified in the tasks. Additional reviews will require City authorization and an amendment to this contract.

Tasks Performed by City

The following tasks will be provided by the City:

1. The City is responsible for direct communication and coordination with the Contractor, as well as distribution of all materials to the Contractor.
2. The City will be responsible for all inspection services required for the Project
3. The City is responsible for tracking all Submittals and RFIs in a Master Log.
4. It is assumed that the City will be contracting a third party Construction Manager for this Project.
5. Participate in decision-making and provide a best-faith effort to make key decisions in a timely manner.
6. Monitor and manage communications with the residents and stakeholders including any public outreach efforts.

Basis of Compensation

Kennedy Jenks' proposes that compensation this Scope of Work be on a time and expense reimbursement basis in accordance with the January 1, 2024 Schedule of Charges enclosed. Payments will be made monthly based on invoices, which describe services and list actual costs and expenses. A fee budget of \$300,000 is proposed for the as-needed ESDC services of the reservoir and retaining walls. This amount will not be exceeded without prior written authorization from the City.

A summary of the proposed budget by phase is provided below. The budget may be increased, if necessary, to provide additional services requested by the City.

Phase	Estimated Fee Budget
Phase 1 – Project Management and Quality Control	\$80,467
Phase 2 – As-Needed Engineering Services During Construction	\$219,533
Total Contract Amount	\$300,000

 Kennedy Jenks

Proposal/Job Number: _____ **Date:** 6/7/2024

© 2019 Kennedy/Jenks Consultants, Inc.

Mr. David Gittleson, P.E.
City of Morgan Hill
7 June 2024
Page 6

Schedule

Kennedy Jenks proposes to complete the overall scope of work described above in accordance with the enclosed estimated construction schedule.

Terms and Conditions

This proposal is based on current projections of staff availability and costs and, therefore, is valid for 90 days following the date of this letter. Unless noted otherwise the terms and conditions of the Service Agreement for Design Professionals for the East Dunne Hillside Water Reservoir Project between Kennedy Jenks and the City dated 4 July 2023 are acceptable for use in a new agreement. If this proposal meets your approval, please forward an amended service agreement for design professionals for this work.

If you have any questions regarding this proposal, please contact Don Barraza at (415) 243-2483 or Rachel Druffel-Rodriguez at (858) 676-7532.

Very truly yours,

KENNEDY/JENKS CONSULTANTS, INC.



Donald L. Barraza, P.E.
Vice President, Principal Engineer



Rachel Druffel-Rodriguez, P.E.
Project Manager

AUTHORIZATION:

City of MORGAN HILL

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

- Enclosure
- 1. Estimated Construction Schedule
 - 2. Professional Services Schedule of Charges
 - 3. Proposal Fee Estimate

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Client/Address: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, California 95037

Contract/Proposal Date: June 7, 2024

Schedule of Charges

June 7, 2024

PERSONNEL COMPENSATION

Classification	Hourly Rate
Engineer-Scientist-Specialist 1.....	\$155
Engineer-Scientist-Specialist 2.....	\$190
Engineer-Scientist-Specialist 3.....	\$210
Engineer-Scientist-Specialist 4.....	\$230
Engineer-Scientist-Specialist 5.....	\$250
Engineer-Scientist-Specialist 6.....	\$275
Engineer-Scientist-Specialist 7.....	\$300
Engineer-Scientist-Specialist 8.....	\$320
Engineer-Scientist-Specialist 9.....	\$335
Senior CAD-Designer	\$195
CAD-Designer	\$180
Senior CAD-Technician	\$165
CAD-Technician	\$145
Project Assistant.....	\$145
Administrative Assistant.....	\$130
Aide.....	\$105

In addition to the above Hourly Rates, an Associated Project Cost charge of \$9.74 per hour will be added to Personnel Compensation for costs supporting projects including telecommunications, software, information technology, internal photocopying, shipping, and other support activity costs related to the support of projects.

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- Maps, photographs, 3rd party reproductions, 3rd party printing, equipment rental, and special supplies related to the work.
- Consultants, soils engineers, surveyors, contractors, and other outside services.
- Rented vehicles, local public transportation and taxis, travel and subsistence.
- Project specific telecommunications and delivery charges.
- Special fees, insurance, permits, and licenses applicable to the work.
- Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

If prevailing wage rates apply, the above billing rates will be adjusted as appropriate.

Overtime for non-exempt employees will be billed at one and a half times the Hourly Rates specified above.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Excise and gross receipts taxes, if any, will be added as a direct expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2024 through December 31, 2024. After December 31, 2024, invoices will reflect the Schedule of Charges currently in effect.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Estimated Construction duration: 3 years max.
Estimated start date: July 27, 2024 Estimated
Completion Date: May 20, 2027

City of Morgan Hill
East Dunne Hillside Water Reservoir and Booster Pump Station
Estimated Construction Schedule

ID	Task Name	Duration	Start	Finish	2024												2025												2026																							
					Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun											
1	Notice-to-Proceed	0 days	Mon 6/17/24	Mon 6/17/24	◆ 6/17																																															
2	Construction Phase	764 days	Mon 6/17/24	Thu 5/20/27	▶																																															
3		Submittal Reviews	60 days	Mon 6/17/24	Fri 9/6/24																																															
4		Mobilization	8 days	Mon 9/9/24	Wed 9/18/24																																															
5		Demolition	20 days	Thu 9/19/24	Wed 10/16/24																																															
6		Grading	120 days	Thu 10/17/24	Wed 4/2/25																																															
7		Soil Nail Wall	60 days	Thu 4/3/25	Wed 6/25/25																																															
8		Concrete Wall	60 days	Thu 6/26/25	Wed 9/17/25																																															
9		Site Utilities	90 days	Thu 9/18/25	Wed 1/21/26																																															
10		Site Electrical	30 days	Thu 1/22/26	Wed 3/4/26																																															
11		Tank Construction	120 days	Thu 3/5/26	Wed 8/19/26																																															
12		Tank Lining and Coating	30 days	Thu 8/20/26	Wed 9/30/26																																															
13		Connect to Existing Lines	7 days	Thu 10/1/26	Fri 10/9/26																																															
14		Paving	50 days	Mon 10/12/26	Fri 12/18/26																																															
15		Irrigation	40 days	Mon 12/21/26	Fri 2/12/27																																															
16		Pump Station Modifications	35 days	Mon 2/15/27	Fri 4/2/27																																															
17		Test System	7 days	Mon 4/5/27	Tue 4/13/27																																															
18		Start Up	20 days	Wed 4/14/27	Tue 5/11/27																																															
19		Cleanup & Demobilize	7 days	Wed 5/12/27	Thu 5/20/27																																															
20		Construction Completion	0 days	Thu 5/20/27	Thu 5/20/27	◆ 5/20																																														

Date: Wed 6/5/24

Task	Milestone	Project Summary	External Milestone	Deadline
Split	Summary	External Tasks	Progress	

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND MAY 2024 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Fiscal Sustainability

Community Engagement

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the May 2024 financial and investment reports.

May 2024 Financial Report

The Revenue and Expense Summary through May 2024 is included on the first page of the monthly financial report. Overall, General Fund revenues totaled \$43.1 million, or about 81% of the budget. This represents an increase of \$2.3 million or about 6% from the prior year to date, mainly from higher property tax and recreation services revenues. Expenditures, including encumbrances, amounted to \$53.5 million, of which approximately \$3.0 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$49.5 million. This represents an increase of \$4.0 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$3.2 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on June 19, 2024. For water revenue, Morgan Hill residents consumed about 3% less water through May compared to the prior three-year average. As such,

no revenue stabilization water rate was implemented.

COMMUNITY ENGAGEMENT:

Inform

Finance staff prepares these financial reports to inform City officials, the Council, the Community, and various lenders and stakeholders about the organization's financial health. This assists each interested party in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report each month. The Council receives monthly financial and investment reports under the Consent Agenda, and quarterly financial and investment reports are presented to the Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project

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

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
May 31, 2024 - 92% of Year Complete



CITY OF MORGAN HILL

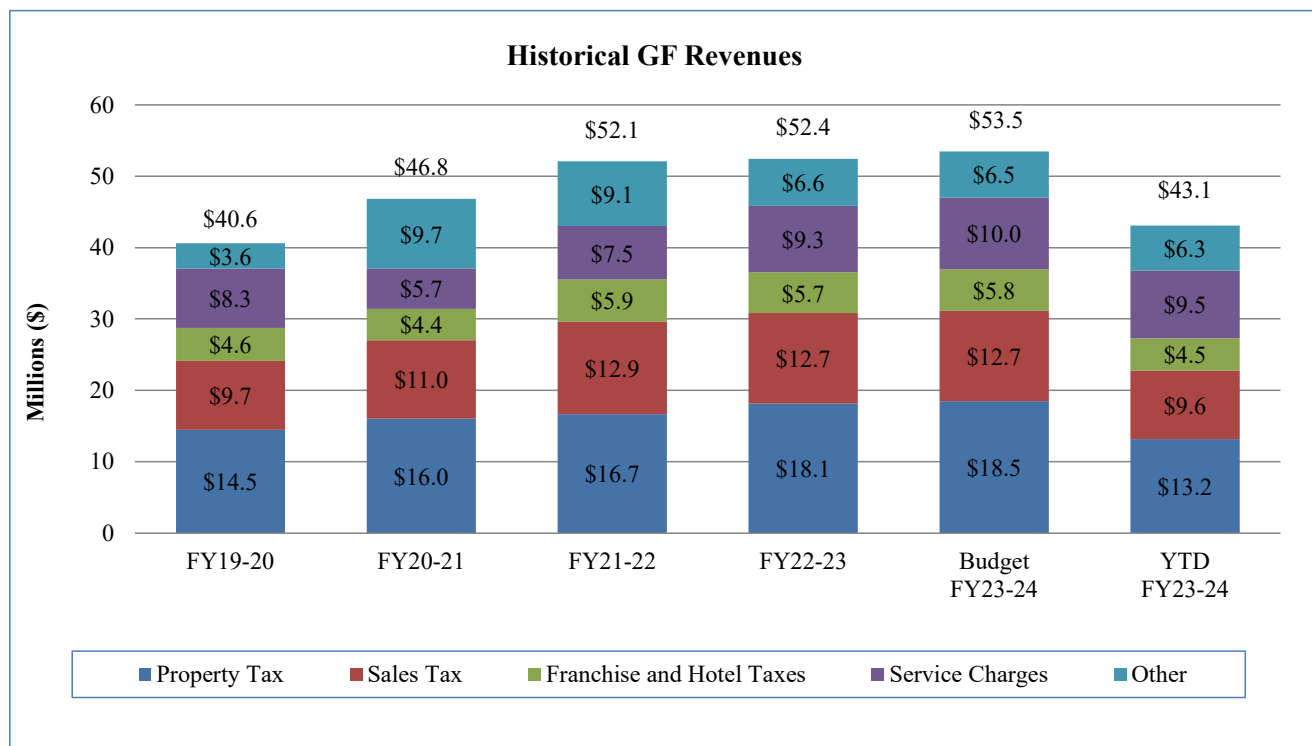
Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED MAY 2024 – 92% OF YEAR COMPLETE

- **General Fund** – Revenues through May totaled \$43.1 million, or about 81% of the budgeted amount. This represents an increase of \$2.3 million or about 6% from the prior year to date, mainly from higher property tax and recreation services revenues. With respect to the property tax revenue forecast, the County estimates the City will receive approximately \$19.0 million in property tax revenue for the current fiscal year, about \$0.5 million more than the budget of \$18.5 million. As for sales tax, HdL, the City's sales tax consultant revised the City's current fiscal year sales tax revenue estimate, before tax rebates, to \$12.6 million, a slight improvement from prior estimate but still below the current budget by about \$0.1 million.

The chart below shows historical General Fund revenues by major revenue category from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of May 31, 2024.



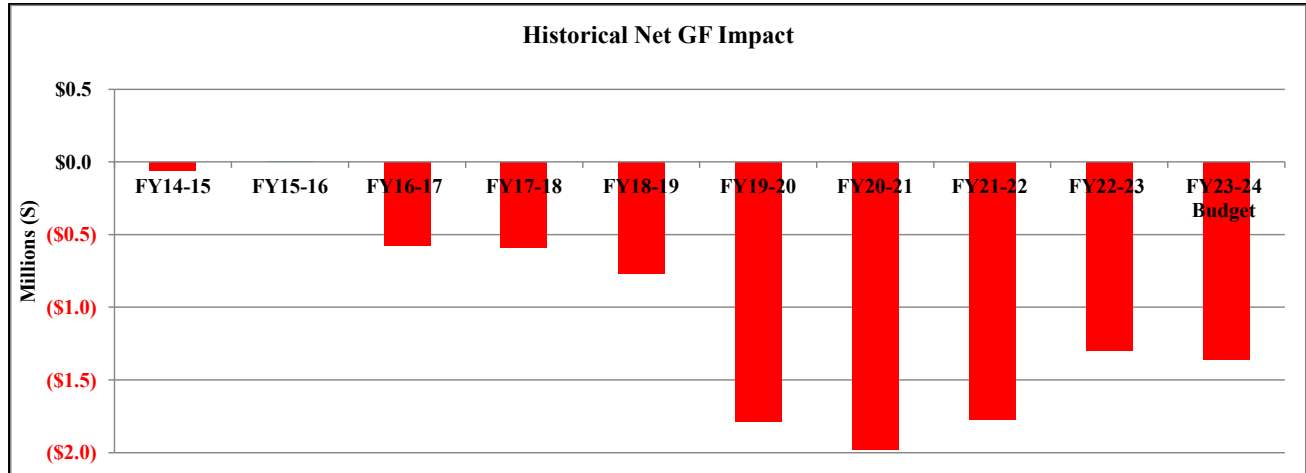
General Fund expenditures and encumbrances through May totaled \$53.5 million, of which approximately \$3.0 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$49.5 million. This represents an increase of \$4.0 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$3.2 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

- **Community Services** – The Community Services Department’s recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.2 million as of May 31, 2024. Recreation Services revenues continue to recover from the pandemic and are on target with budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED MAY 2024 – 92% OF YEAR COMPLETE

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



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

- **Development Services Fund** – Revenues through May totaled \$4.7 million compared to the prior year to date amount of approximately \$5.3 million. Expenditures, including encumbrances, totaled \$5.4 million.
- **Debt Service Funds** – Expenditures through May totaled \$0.7 million. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED MAY 2024 – 92% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues through May 31, 2024 totaled \$12.6 million. Expenditures and outstanding encumbrances totaled \$12.5 million or 80% of the budget. The table below shows historical Wastewater Operations revenues and expenditures from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of May 31, 2024.

(amount in millions)	FY19-20	FY20-21	FY21-22	FY22-23	Budget FY23-24	YTD FY23-24
Revenues	11.9	13.3	14.9	15.3	15.6	12.6
Expenditures	12.3	13.3	14.8	16.0	15.6	12.5
Operating Margin	(0.4)	-	0.1	(0.7)	-	0.1
Operating Margin without Encumbrances	(0.1)	-	0.1	(0.7)	-	0.2

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues through May 31, 2024 totaled \$15.3 million. Water Operations expenditures, including outstanding encumbrances, totaled \$17.9 million. Morgan Hill residents consumed about 3% less water through May compared to the prior three-year average. As such, no revenue stabilization water rate was implemented. The table below shows Water Operations revenues and expenditures from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of May 31, 2024.

(amount in millions)	FY19-20	FY20-21	FY21-22	FY22-23	Budget FY23-24	YTD FY23-24
Revenues	15.3	16.5	16.0	18.1	19.8	15.3
Expenditures	16.4	16.5	15.2	18.0	20.3	17.9
Operating Margin	(1.1)	-	0.8	0.1	(0.5)	(2.6)
Operating Margin without Encumbrances	(0.1)	-	0.8	0.1	(0.5)	(2.0)

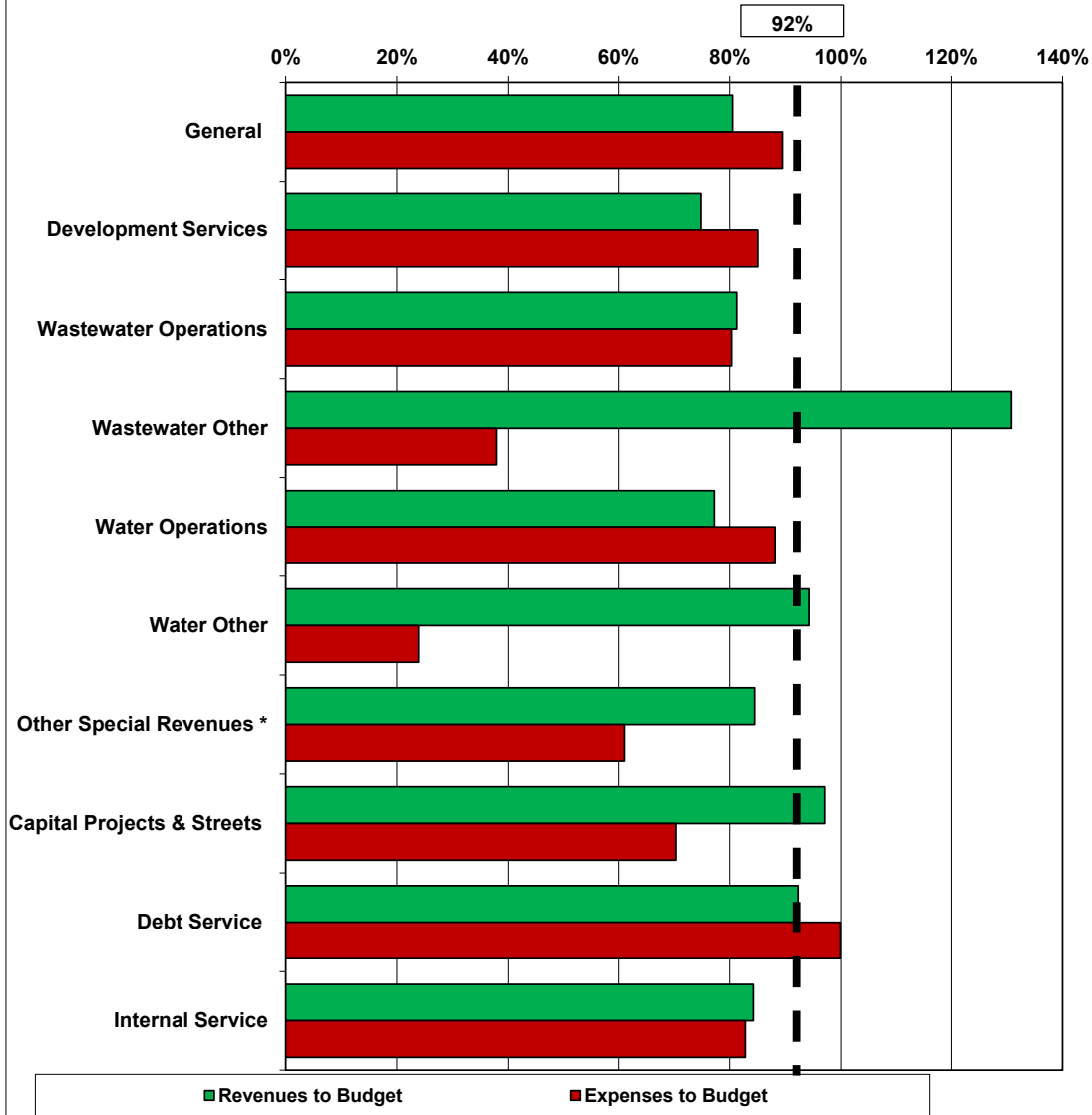
- **Investments** – One security was called, and one new security was purchased. Total interest earnings received on investments were \$349,000 during the month.



Morgan Hill YTD Revenue & Expense Summary

May 31, 2024 - 92% of Year Complete

Percentage of Actual to Budget



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 43,070,454	81%	\$ 53,450,546	89%
Development Services	4,737,241	75%	5,431,254	85%
Wastewater Operations	12,647,446	81%	12,495,118	80%
Wastewater Other	12,851,519	131%	16,557,619	38%
Water Operations	15,276,421	77%	17,906,089	88%
Water Other	8,198,742	94%	4,422,371	24%
Other Special Revenues *	7,584,838	84%	5,747,643	61%
Capital Projects & Streets	14,019,446	97%	31,957,646	70%
Debt Service	626,489	92%	678,016	100%
Internal Service	10,758,302	84%	11,293,088	83%
TOTAL FOR ALL FUNDS	\$ 129,770,900	86%	\$ 159,939,391	69%

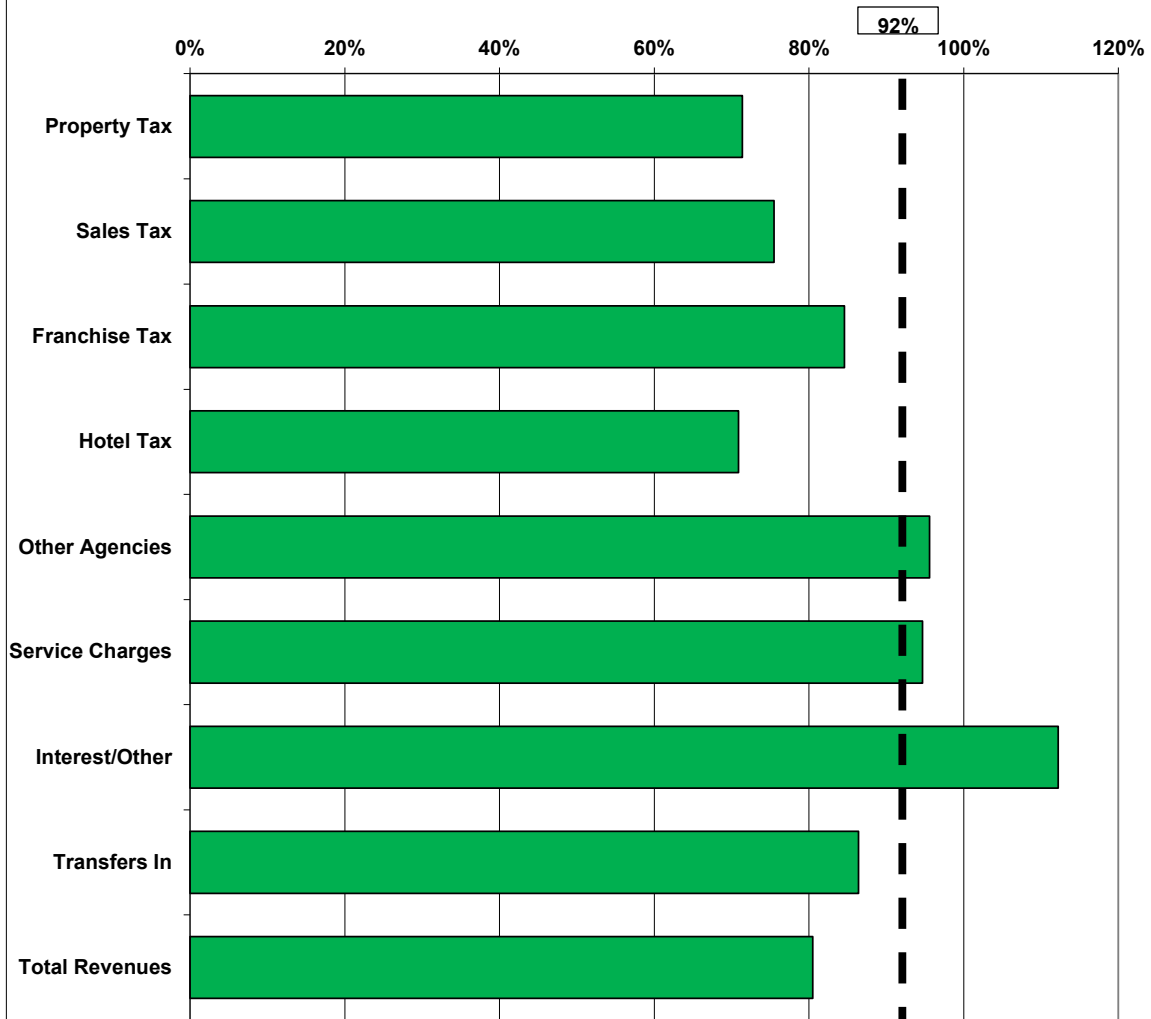
* Includes all Special Revenue Funds except Development Services Fund and Street Funds.



Morgan Hill YTD General Fund Revenues

May 31, 2024 - 92% of Year Complete

Percent of Actual to Budget

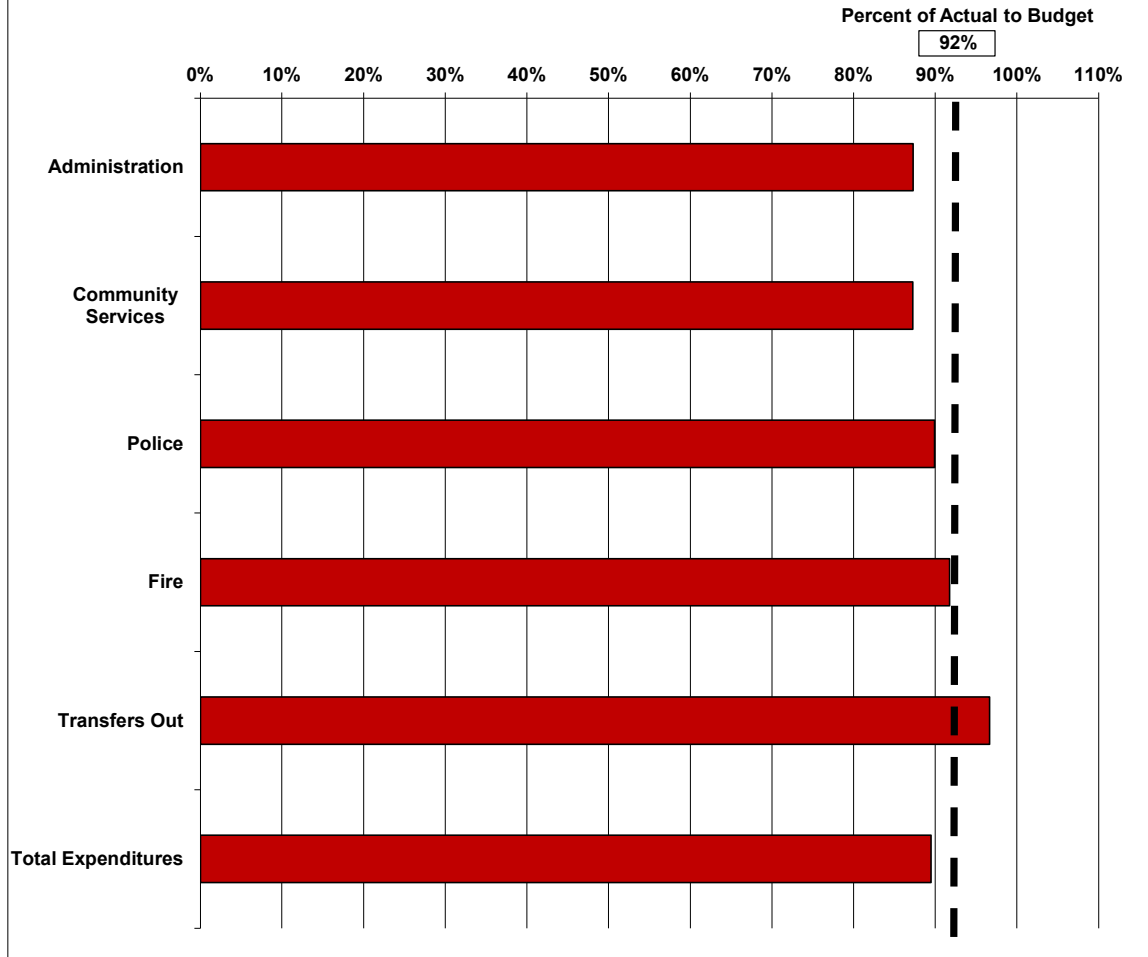


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 18,472,000	\$ 13,181,551	71%	\$ 12,566,200	5%
Sales Tax	12,673,967	9,570,796	76%	9,603,643	0%
Franchise Tax	3,005,800	2,543,636	85%	2,204,302	15%
Hotel Tax	2,800,000	1,985,712	71%	2,094,179	-5%
Other Agencies	1,001,233	957,083	96%	1,085,449	-12%
Service Charges	10,036,079	9,503,295	95%	8,296,745	15%
Interest/Other	2,174,032	2,438,900	112%	2,199,403	11%
Transfers In	3,342,540	2,889,483	86%	2,716,858	6%
TOTAL REVENUES	\$ 53,505,651	\$ 43,070,454	81%	\$ 40,766,779	6%



Morgan Hill YTD General Fund Expenditures

May 31, 2024 - 92% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,489,162	\$ 5,664,515	87%	\$ 5,562,482	2%
Community Services	17,780,940	15,512,110	87%	13,202,068	17%
Police	23,056,204	20,731,241	90%	18,413,327	13%
Fire	9,139,905	8,387,560	92%	7,787,666	8%
Transfers Out	3,263,767	3,155,120	97%	4,540,039	-31%
TOTAL EXPENDITURES	\$ 59,729,978	\$ 53,450,546	89%	\$ 49,505,582	8%

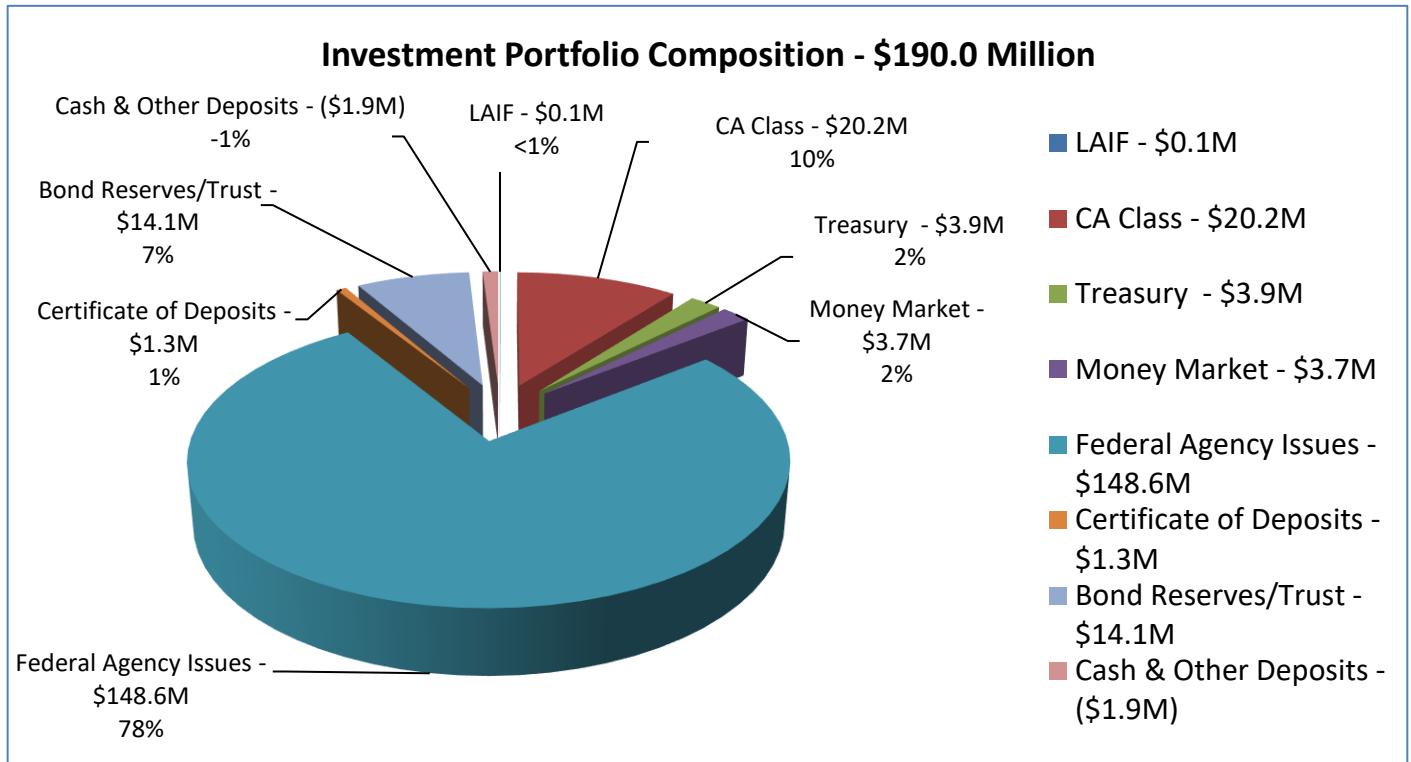


City of Morgan Hill
Recreation Report - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

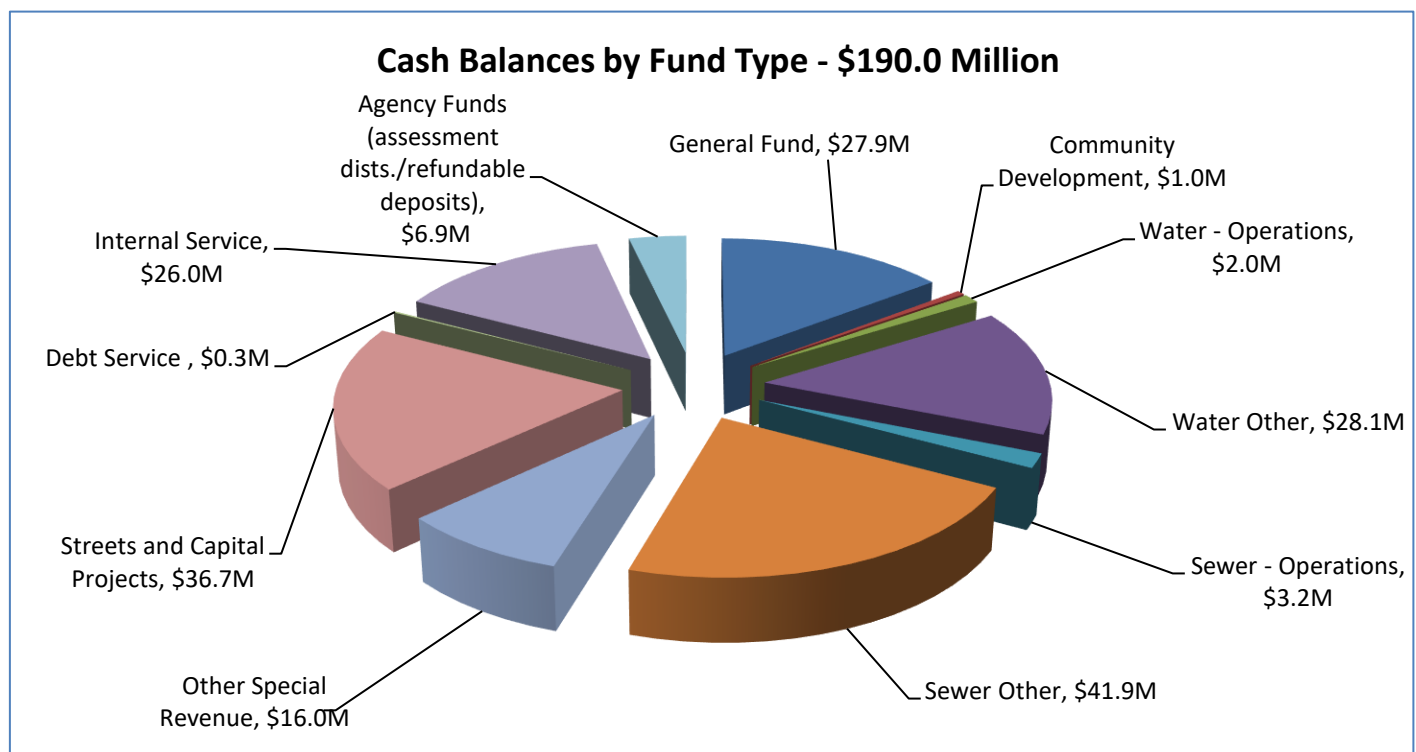
	<u>Budget</u>	<u>May 2024</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,656,265	\$ 457,431	\$ 5,430,758	
Facility Rentals	1,203,269	75,655	1,425,788	
Community Services	152,498	8,746	63,675	
Transfers in	75,000	6,250	68,750	
Total Revenues	<u>\$ 7,087,032</u>	<u>\$ 548,082</u>	<u>\$ 6,988,971</u>	99%
Less: Expenditures				
Membership & Program Services	\$ 7,268,962	\$ 592,513	\$ 6,431,903	
Facility Rentals	573,524	64,766	546,187	
Community Services	672,192	81,112	573,734	
Total Expenditures	<u>\$ 8,514,679</u>	<u>\$ 738,390</u>	<u>\$ 7,551,824</u>	89%
Net Impact without encumbrances	<u>\$ (1,427,647)</u>	<u>\$ (190,308)</u>	<u>\$ (562,853)</u>	
Encumbrances	-	-	657,280	
Net Impact with encumbrances	<u>\$ (1,427,647)</u>	<u>\$ (190,308)</u>	<u>\$ (1,220,133)</u>	

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

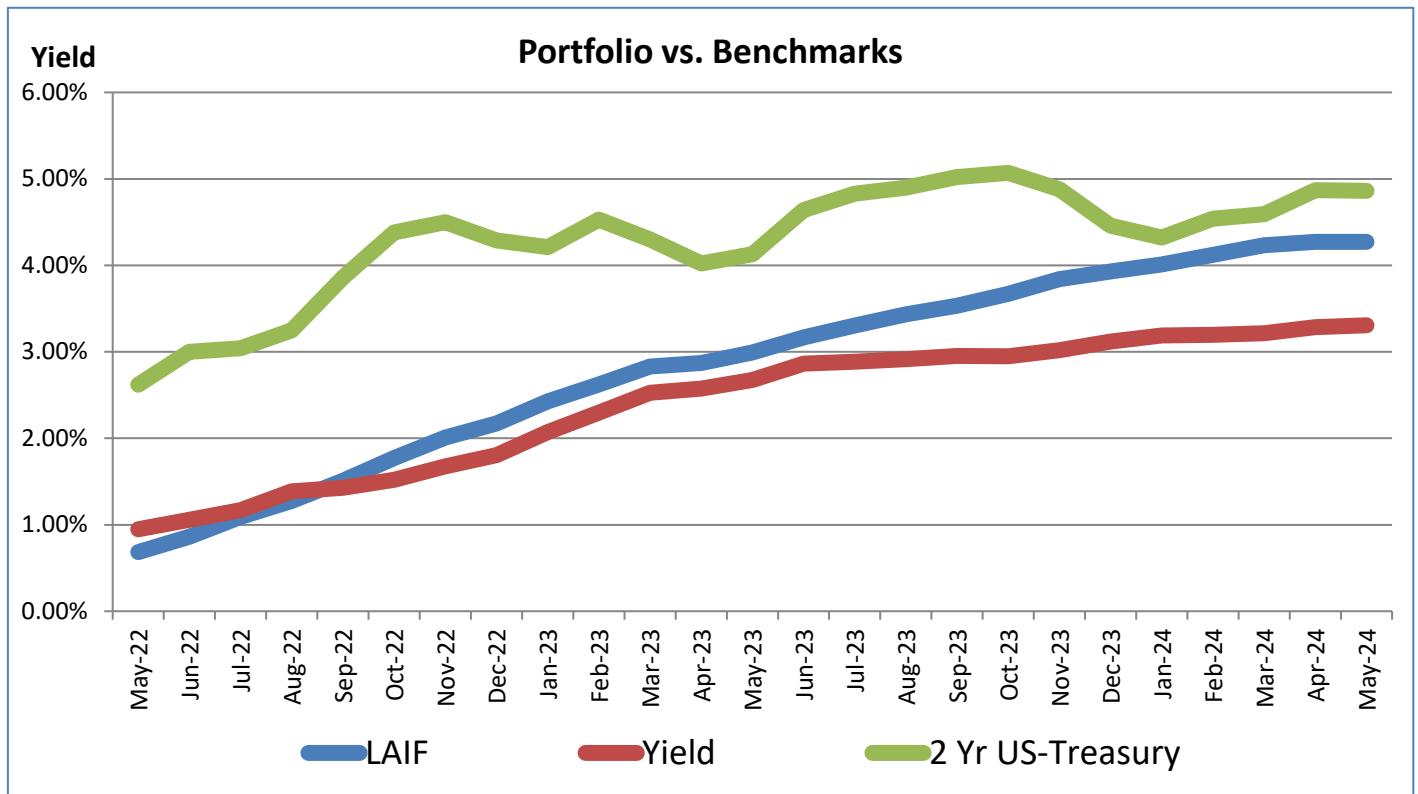
The following are the snapshots of City's investment portfolio as of May 31, 2024. The first chart shows the portfolio composition by investment type:



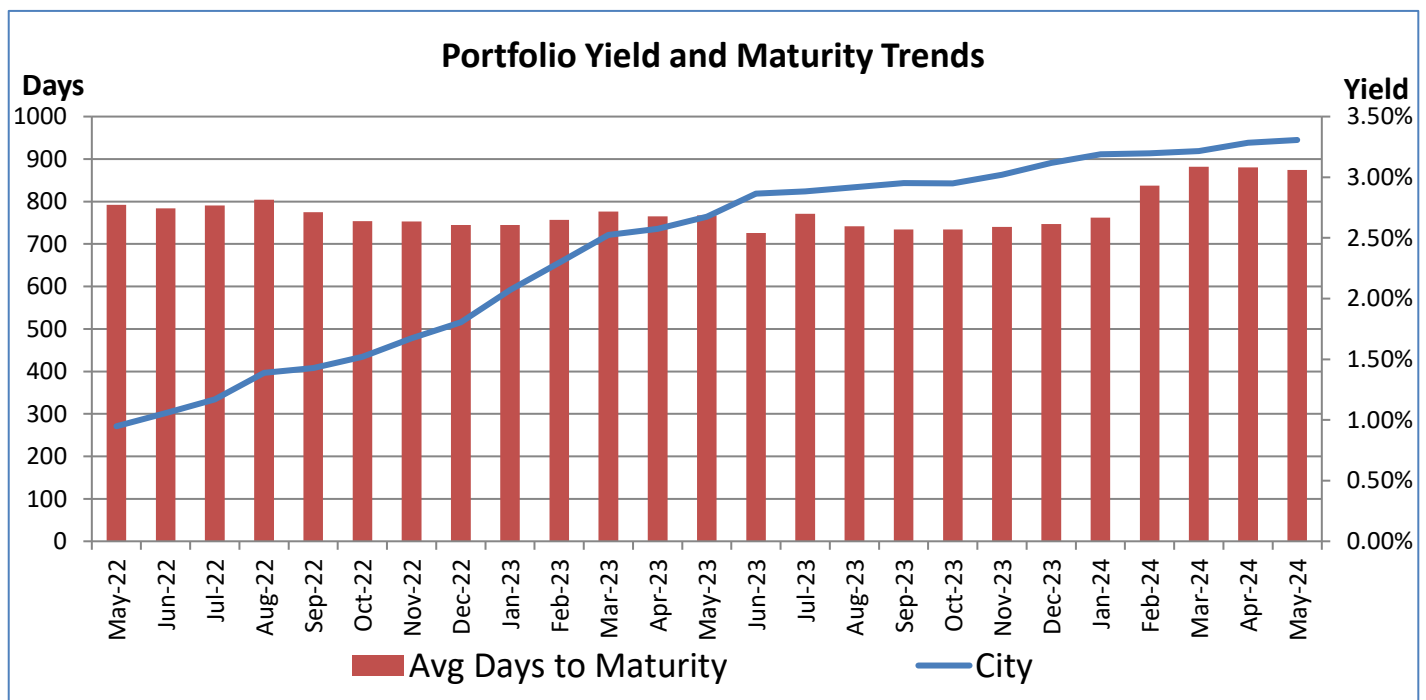
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





City of Morgan Hill
Investment Portfolio Detail
As of May 31, 2024

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F			\$ 60,411	\$ 60,411	0.0%	\$ 60,060	4.27%		
California C L A S S			20,218,094	20,218,094	10.6%	20,218,094	5.39%		
US Bank - Portfolio of Securities									
Dreyfus Treasury Agency MM	261908107		625,265	625,265	0.3%	625,265	5.20%		
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,994,215	1.0%	1,830,160	1.00%	9/30/2026	9/30/2026
Treasury Note	912828U24	6/13/2022	1,904,688	1,947,036	1.0%	1,873,600	3.16%	11/15/2026	11/15/2026
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.1%	1,914,680	0.73%	6/27/2024	5/27/2025
FHLMC Bond	3134GVYN2	6/3/2020	2,000,000	2,000,000	1.1%	1,954,520	0.60%	12/3/2024	12/3/2024
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.1%	1,880,820	0.60%	7/20/2024	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.1%	1,881,980	0.63%	7/27/2024	10/27/2025
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.1%	1,878,380	0.54%	6/3/2024	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.1%	1,878,000	0.65%	11/18/2024	11/18/2025
FHLMC Bond	3134GXEJ9	11/24/2020	2,000,000	2,000,000	1.1%	1,876,320	0.64%	8/24/2024	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.5%	936,630	0.60%	6/24/2024	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.6%	2,813,490	0.63%	11/25/2024	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.1%	1,876,140	0.65%	8/26/2024	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.1%	1,865,380	0.47%	6/22/2024	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.1%	1,861,440	0.63%	7/22/2024	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.1%	1,859,540	0.55%	7/28/2024	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.1%	1,860,780	0.65%	7/28/2024	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.1%	1,858,200	0.75%	8/24/2024	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.1%	1,855,200	0.66%	8/25/2024	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.1%	1,855,680	0.65%	8/26/2024	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.1%	1,860,420	0.85%	6/10/2024	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.1%	1,854,020	0.70%	6/16/2024	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.1%	1,857,400	0.80%	6/16/2024	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.1%	1,853,540	1.08%	6/9/2024	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.1%	1,846,380	1.00%	6/30/2024	6/30/2026
FHLB Bond	3130AMYP1	7/15/2021	3,000,000	3,000,000	1.6%	2,769,150	1.13%	7/15/2024	7/15/2026
FHLB Bond	3130AMYS5	7/15/2021	2,000,000	2,000,000	1.1%	1,909,600	0.85%	7/15/2024	7/15/2025
FHLB Bond	3130ANJC5	8/26/2021	2,000,000	2,000,000	1.1%	1,827,880	0.80%	8/26/2024	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.6%	2,754,360	1.00%	8/26/2024	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.1%	1,832,060	0.90%	8/26/2024	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,047,129	1.1%	1,874,080	0.82%	9/11/2026	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,992,168	1.0%	1,829,720	0.98%	9/10/2026	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.6%	2,752,260	1.13%	6/29/2024	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.1%	1,824,520	0.88%	9/30/2026	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.6%	2,747,160	1.05%	6/30/2024	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.6%	2,745,210	1.02%	6/30/2024	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.1%	1,824,300	1.00%	7/19/2024	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.1%	1,831,880	1.30%	11/18/2024	11/18/2026
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.1%	1,879,480	1.74%	7/19/2024	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.1%	1,928,740	1.51%	7/25/2024	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.1%	1,971,260	3.48%	6/10/2024	3/10/2027
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.1%	1,954,940	3.28%	12/15/2025	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.1%	1,963,500	4.30%	7/28/2024	7/28/2027
FNMA Bond	3135GACZ2	11/25/2022	2,000,000	2,000,000	1.1%	2,000,020	5.40%	8/25/2024	11/25/2024
FHLMC Bond	3134GY4B5	11/28/2022	2,000,000	2,000,000	1.1%	1,996,580	5.00%	8/15/2024	8/26/2024
FHLB Bond	3130AUP32	1/27/2023	2,250,000	2,250,000	1.2%	2,241,540	5.98%	7/27/2024	1/27/2028
FHLMCMTN Bond	3134GYGB2	1/30/2023	2,000,000	2,000,000	1.1%	1,986,320	5.20%	7/26/2024	1/26/2028
FHLMCMTN Bond	3134GYG22	2/16/2023	3,000,000	3,000,000	1.6%	2,975,910	5.13%	8/16/2024	11/16/2026
FHLB Bond	3130AVL83	4/6/2023	2,000,000	2,000,000	1.1%	1,995,980	5.20%	7/7/2024	10/7/2024
FHLB Bond	3130AXY36	12/18/2023	2,000,000	2,000,000	1.1%	1,998,560	5.88%	6/18/2024	12/18/2028
FHLMCMTN Bond	3134H1MK6	12/21/2023	2,000,000	2,000,000	1.1%	1,996,520	5.40%	6/21/2024	12/21/2026
FHLB Bond	3130AYAG1	12/28/2023	2,000,000	2,000,000	1.1%	1,995,180	5.50%	6/28/2024	12/28/2028
FHLB Bond	3130AYBT2	1/2/2024	2,000,000	2,000,000	1.1%	2,013,640	5.40%	7/2/2024	1/2/2029
FHLMCTN Bond	3134H1NA7	1/5/2024	2,000,000	2,000,000	1.1%	1,996,520	5.63%	6/5/2024	1/5/2029
FHLB Bond	3130AYGX8	1/11/2024	2,000,000	2,000,000	1.1%	1,997,580	5.63%	6/11/2024	1/11/2029

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FHLB Bond	3130AYF35	1/12/2024	2,000,000	2,000,000	1.1%	1,997,820	5.60%	7/12/2024	1/12/2029
FHLMCTN Bond	3134H1PC1	1/12/2024	2,000,000	2,000,000	1.1%	1,996,740	6.02%	7/12/2024	1/12/2029
FHLMCTN Bond	3134H1QG1	1/26/2024	3,000,000	3,000,000	1.6%	3,004,110	4.66%	7/26/2024	1/26/2029
FHLMCTN Bond	3134H1QMB	1/26/2024	2,000,000	2,000,000	1.1%	1,997,320	5.70%	6/26/2024	1/26/2029
FHLB Bond	3130AYLR5	2/2/2024	2,148,128	2,145,000	1.1%	2,134,961	5.25%	10/22/2024	1/22/2029
FHLMCTN Bond	3134HRW5	2/7/2024	2,000,000	2,000,000	1.1%	1,997,700	5.70%	6/7/2024	2/7/2029
FHLB Bond	3130AYXA9	2/12/2024	2,000,000	2,000,000	1.1%	1,989,820	5.50%	8/12/2024	2/12/2029
FHLMCTN Bond	3134H1SW4	2/15/2024	2,000,000	2,000,000	1.1%	1,994,140	5.63%	8/15/2024	2/15/2029
FHLMCTN Bond	3134H1TC7	2/15/2024	2,000,000	2,000,000	1.1%	1,994,720	5.65%	6/15/2024	2/15/2028
FHLMCTN Bond	3134H1TQ6	2/22/2024	2,000,000	2,000,000	1.1%	1,994,500	5.63%	8/22/2024	2/22/2027
FHLMCTN Bond	3134H1UN1	2/26/2024	1,200,000	1,200,000	0.6%	1,198,932	5.50%	2/26/2025	2/26/2029
FHLMCTN Bond	3134H1UN1	2/26/2024	2,000,000	2,000,000	1.1%	1,998,220	5.50%	2/26/2025	2/26/2029
FHLMCTN Bond	3134H1VC4	2/28/2024	2,000,000	2,000,000	1.1%	1,995,760	6.13%	8/28/2024	2/28/2029
FHLMCTN Bond	3134H1VR1	3/6/2024	2,000,000	2,000,000	1.1%	1,995,580	5.75%	9/6/2024	3/26/2029
FHLB Bond	3130B07A1	3/21/2024	4,000,000	4,000,000	2.1%	3,990,560	6.00%	6/21/2024	3/21/2029
FHLMCTN Bond	3134H1XV0	3/26/2024	2,000,000	2,000,000	1.1%	1,996,120	6.17%	6/26/2024	3/26/2029
FHLMCTN Bond	3134H1G31	4/17/2024	2,000,000	2,000,000	1.1%	2,003,000	6.05%	7/17/2024	4/17/2029
FHLMCTN Bond	3134H1P56	5/28/2024	2,000,000	2,000,000	1.1%	1,996,960	6.00%	11/25/2024	5/25/2029
CD - Zions Bancorp	98970LC43	3/31/2023	250,000	250,000	0.1%	249,998	5.40%	9/27/2024	9/27/2024
CD - Morgan Stanley Bank	61690DGT9	11/8/2023	250,000	250,000	0.1%	253,023	5.05%	11/8/2028	11/8/2028
CD - Morgan Stanley Private Bank	61768EE82	11/8/2023	250,000	250,000	0.1%	253,023	5.05%	11/8/2028	11/8/2028
CD - American Express	02589AF98	11/8/2023	250,000	250,000	0.1%	252,528	5.00%	11/8/2028	11/8/2028
CD - State Bank India	8562834U7	11/24/2023	250,000	250,000	0.1%	255,675	5.00%	11/24/2028	11/24/2028
Sub Total/Average			\$ 154,452,037	\$ 154,450,814	81.3%	\$ 148,463,624	3.00%		
WFB Money Market			\$ 3,083,581	\$ 3,083,581	1.6%	\$ 3,083,581	5.20%		
Total City Managed/Average			\$ 177,814,123	\$ 177,812,900	93.6%	\$ 171,825,359	3.31%		
Bond Reserve Accounts - Held By Trustees			\$ 6,610,368	\$ 6,610,368	3.5%	\$ 6,610,368			
Cash/Deposits			\$ (1,933,011)	\$ (1,933,011)	-1.0%	\$ (1,933,011)			
PARS and CALPERS CERBT Trust			\$ 7,537,404	\$ 7,537,404	4.0%	\$ 8,660,250			
GRAND TOTAL/AVERAGE			\$ 190,028,885	\$ 190,027,661	100.0%	\$ 185,162,967			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF MAY 31, 2024
FOR THE FISCAL YEAR OF 2023-24

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	4.27%	\$ 60,411	0.0%	\$ 60,060
California CLASS	All Funds Pooled	5.39%	20,218,094	10.6%	20,218,094
US Bank - Portfolio of Securities	All Funds Pooled	3.00%	154,450,814	81.3%	148,463,624
WFB MMA	All Funds Pooled	5.20%	3,083,581	1.6%	3,083,581
	SUBTOTAL		\$ 177,812,900	93.6%	\$ 171,825,359
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	4.95%	129	0.0%	129
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	4.95%	165	0.0%	165
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Agency Fund	4.90%	5,989,354	3.2%	5,989,354
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	4.95%	620,721	0.3%	620,721
	SUBTOTAL		6,610,368	3.5%	6,610,368
Other Cash/Deposits					
General Checking	All Funds		(1,978,861)	-1.0%	(1,978,861)
Workers' Comp Administrators	Workers' Comp		30,000	0.0%	30,000
Petty Cash & Emergency Cash	General Fund		15,850	0.0%	15,850
CALPERS CERBT - OPEB Trust			5,237,404	2.8%	6,032,836
PARS - PENSION Trust			2,300,000	1.2%	2,627,414 **
	SUBTOTAL		5,604,393	2.9%	6,727,239
Total Cash and Investments			\$ 190,027,661	100.0%	\$ 185,162,967

** As of 04/30/2024

CASH ACTIVITY SUMMARY
FY 2023-24

Fund Type	07/01/2023 Balance	Change in Cash Balance	5/31/2024 Balance
General Fund	\$ 32,352,753	\$ (4,451,194)	\$ 27,901,559
Development Services	1,831,559	(854,210)	977,350
Water - Operations	2,585,170	(614,401)	1,970,769
Water Other	23,673,105	4,406,236	28,079,341
Sewer - Operations	907,428	2,313,164	3,220,592
Sewer Other	44,135,046	(2,184,799)	41,950,248
Other Special Revenue	13,030,597	2,987,803	16,018,400
Streets and Capital Projects	40,486,238	(3,753,991)	36,732,248
Debt Service	342,534	(51,472)	291,062
Internal Service	25,139,787	820,591	25,960,378
Agency Funds (assessment dists./refundable deposits)	8,515,969	(1,590,254)	6,925,715
Total	\$ 193,000,187	\$ (2,972,526)	\$ 190,027,661

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

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

Prepared by:


 Gina Nazareno, Senior Accountant

Approved by:


 Caitlin Jachimowicz, Treasurer

Reviewed by:


 Dat Nguyen, Finance Director



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 15,245,000	15,745,000	\$ 11,914,805	76%	\$ 11,183,456	\$ 731,349	7%
Property Tax - RPTTF Residual Distribution	2,527,000	2,527,000	1,020,900	40%	987,196	33,704	3%
Property Tax - Supplemental Roll	200,000	200,000	245,846	123%	395,548	(149,702)	-38%
Sales Tax	12,218,967	12,218,967	9,242,129	76%	9,301,272	(59,143)	-1%
Public Safety Sales Tax	455,000	455,000	328,666	72%	302,371	26,295	9%
Transient Occupancy Taxes	2,800,000	2,800,000	1,985,712	71%	2,094,179	(108,467)	-5%
Franchise (Refuse ,Cable ,PG&E)	2,873,800	3,005,800	2,543,636	85%	2,204,302	339,334	15%
Property Transfer Tax	510,000	510,000	376,776	74%	300,595	76,181	25%
TOTAL TAXES	36,829,767	37,461,767	27,658,470	74%	26,768,919	889,551	3%
LICENSES/PERMITS							
Business License	170,000	170,000	160,398	94%	146,960	13,438	9%
Other Permits	53,975	83,975	103,744	124%	640,736	(536,993)	-84%
TOTAL LICENSES/PERMITS	223,975	253,975	264,142	104%	787,696	(523,554)	-66%
FINES AND PENALTIES							
Parking Enforcement	3,019	3,019	8,354	277%	6,489	1,865	29%
Bails & Fines	47,875	47,875	49,346	103%	41,898	7,448	18%
Administrative Citations	20,000	20,000	28,789	144%	5,128	23,661	461%
TOTAL FINES AND PENALTIES	70,894	70,894	86,489	122%	53,515	32,974	62%
OTHER AGENCIES							
Motor Vehicle in-Lieu	40,800	40,800	56,686	139%	47,613	9,073	19%
Other Revenue - Other Agencies	971,089	1,001,233	957,083	96%	1,085,449	(128,366)	-12%
TOTAL OTHER AGENCIES	1,011,889	1,042,033	1,013,769	97%	1,133,062	(119,293)	-11%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,248	33,248	29,720	89%	36,915	(7,195)	-19%
Business License Application Review	53,000	83,000	89,899	108%	46,179	43,720	95%
Membership Services & Rec Programs	5,656,265	5,656,265	5,430,758	96%	4,773,647	657,111	14%
Facility Rentals	1,203,269	1,203,269	1,425,788	118%	1,117,155	308,633	28%
Community Services	152,498	152,498	63,675	42%	53,682	9,993	19%
General Administration Overhead	1,822,869	1,822,869	1,633,380	90%	1,618,812	14,568	1%
Other Charges Current Services	1,084,930	1,084,930	830,075	77%	650,355	179,720	28%
TOTAL CURRENT SERVICES	10,006,079	10,036,079	9,503,295	95%	8,296,745	1,206,550	15%
OTHER REVENUE							
Use of money/property	583,850	683,850	1,267,688	185%	770,338	497,350	65%
Other Revenues	234,513	614,513	387,118	63%	239,646	147,472	62%
TOTAL OTHER REVENUE	818,363	1,298,363	1,654,807	127%	1,009,984	644,823	64%
TRANSFERS IN							
One Time Transfer	180,000	180,000	165,000	92%	165,000	(0)	0%
Public Safety Facilities Fund	50,000	50,000	45,833	92%	45,833	0	0%
Supplemental Law Enforcement Fund	100,000	100,000	100,000	100%	100,000	-	n/a
Countywide Solid Waste	373,000	468,680	341,917	73%	325,417	16,500	5%
Streets	949,760	949,760	687,580	72%	654,179	33,401	5%
Park Maintenance	650,000	650,000	595,833	92%	595,837	(4)	0%
Sewer Operations	394,000	394,000	401,899	102%	343,750	58,149	17%
Water Operations	394,000	394,000	408,330	104%	343,750	64,580	19%
Open Space	81,100	81,100	74,342	92%	74,342	(0)	0%
Park Development	75,000	75,000	68,750	92%	68,750	-	n/a
TOTAL TRANSFERS IN	3,246,860	3,342,540	2,889,483	86%	2,716,858	172,625	6%
TOTAL GENERAL FUND	52,207,827	53,505,651	43,070,454	81%	40,766,779	2,303,675	6%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	954,952	954,952	681,435	71%	650,483	30,952	5%
Interest / Other Revenue/Other Charges	78	78	6,145	7878%	3,696	2,449	66%
202 STREET MAINTENANCE	955,030	955,030	687,580	72%	654,179	33,401	5%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	1,905	1,905	9,636	506%	3,979	5,657	142%
Police Grant/SLEF/JAG	100,000	100,000	186,159	186%	165,271	20,888	13%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	101,905	101,905	195,795	192%	169,250	26,545	16%
206 DEVELOPMENT SERVICES							
Building Fees	3,455,600	3,495,600	2,988,178	85%	3,490,010	(501,832)	-14%
Planning Fees	1,645,444	1,645,444	1,250,814	76%	649,623	601,191	93%
Engineering Fees	1,190,852	1,190,852	477,259	40%	890,552	(413,293)	-46%
Other Revenue/Current Charges	-	-	20,990	n/a	311,001	(290,011)	-93%
206 DEVELOPMENT SERVICES	6,291,896	6,331,896	4,737,241	75%	5,341,186	(603,945)	-11%
207 LONG RANGE PLANNING	1,013,392	1,013,392	824,677	81%	986,580	(161,903)	-16%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	325	325	1,685	519%	914	771	84%
215 and 216 HCD BLOCK GRANT	325	325	1,685	519%	914	771	84%
225 ASSET SEIZURE	1,298	1,298	2,580	199%	1,424	1,156	81%
229 LIGHTING AND LANDSCAPE	200,028	200,028	116,003	58%	111,890	4,113	4%
230 COMMUNITY FACILITIES DISTRICT	37,914	37,914	30,469	80%	27,938	2,531	9%
232 ENVIRONMENTAL PROGRAMS	590,223	590,223	552,860	94%	518,969	33,891	7%
234 MOBILE HOME PARK RENT STAB.	584	584	5,483	939%	6,614	(1,131)	-17%
236 HOUSING MITIGATION	4,456,924	4,456,924	3,218,878	72%	870,883	2,347,995	270%
240 EMPLOYEE ASSISTANCE	20,889	20,889	7,654	37%	7,756	(102)	-1%
246 COUNTYWIDE SOLID WASTE	1,645,138	1,944,000	2,111,570	109%	1,248,895	862,675	69%
247 ENVIRONMENT REMEDIATION	1,358	1,358	3,546	261%	1,931	1,615	84%
255 HOUSING SUCCESSOR AGENCY	239,202	239,202	513,638	215%	366,133	147,505	40%
TOTAL SPECIAL REVENUE FUNDS	15,556,107	15,894,969	13,009,659	82%	10,314,542	2,695,117	26%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,673,505	2,008,505	851,324	42%	3,728,743	(2,877,419)	-77%
302 PARK MAINTENANCE	363,038	363,038	87,258	24%	526,062	(438,804)	-83%
303 LOCAL DRAINAGE	447,897	447,897	511,466	114%	1,007,297	(495,831)	-49%
304 LOCAL DRAINAGE/NON AB1600	30,901	30,901	33,301	108%	107,970	(74,669)	-69%
306 AGRICULTURE & OPEN SPACE PRESERVATION	4,036	4,036	194,030	4807%	76,992	117,038	152%
308 STREET CIP	4,486,656	4,486,656	3,788,750	84%	5,031,711	(1,242,961)	-25%
309 TRAFFIC IMPACT	1,276,925	1,276,925	1,252,700	98%	7,160,711	(5,908,011)	-83%
315 PUBLIC SAFETY FACILITIES IMPACT	801,703	801,703	774,687	97%	627,030	147,657	24%
346 PUBLIC FACILITIES NON-AB1600	822,102	966,667	208,965	22%	405,295	(196,330)	-48%
347 PUBLIC FACILITIES IMPACT	176,602	176,602	293,666	166%	115,593	178,073	154%
348 LIBRARY	657,457	657,457	886,308	135%	186,160	700,148	376%
350 UNDERGROUNDING	22,520	22,520	260,769	1158%	23,523	237,246	1009%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	492,717	492,717	32,121	7%	214,745	(182,624)	-85%
360 COMMUNITY/REC IMPACT FUND	1,142,697	1,142,697	1,253,462	110%	532,277	721,185	135%
375 QUIMBY FEE	610,860	610,860	2,903,060	475%	1,560,852	1,342,208	86%
TOTAL CAPITAL PROJECTS FUNDS	13,009,616	13,489,181	13,331,866	99%	21,304,961	(7,973,095)	-37%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	290,850	290,850	270,651	93%	269,961	690	0%
441 POLICE FACILITY BOND	387,792	387,792	355,838	92%	355,488	350	0%
TOTAL DEBT SERVICE FUNDS	678,642	678,642	626,489	92%	625,449	1,040	0%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 WASTEWATER OPERATION							
Sewer Service Fees	15,200,000	15,200,000	12,314,886	81%	12,370,597	(55,711)	0%
Interest Income/Transfers	39,704	39,704	51,149	129%	33,325	17,824	53%
Other Revenue/Current Charges	329,403	329,403	281,412	85%	356,917	(75,505)	-21%
640 WASTEWATER OPERATION	15,569,107	15,569,107	12,647,446	81%	12,760,839	(113,393)	-1%
641 WASTEWATER EXPANSION							
Interest Income	40,173	40,173	530,995	1322%	323,312	207,683	64%
Development Impact Fee	4,388,986	4,388,986	6,963,174	159%	2,721,524	4,241,650	156%
Transfer From-643 (Sewer Replacement)	-	-	-	n/a	8,035,993	(8,035,993)	-100%
641 WASTEWATER EXPANSION	4,429,159	4,429,159	7,494,170	169%	11,080,829	(3,586,659)	-32%
642 WASTEWATER RATE STABILIZATION	192,000	192,000	252,558	132%	85,929	166,629	194%
643 WASTEWATER CAPITAL PROJECT	5,204,512	5,204,512	5,104,792	98%	6,246,360	(1,141,568)	-18%
TOTAL SEWER FUNDS	25,394,778	25,394,778	25,498,965	100%	30,173,957	(4,674,992)	-15%
650 WATER OPERATION							
Water Sales	18,500,000	18,500,000	13,866,844	75%	13,017,504	849,340	7%
Meter Install & Service	50,000	50,000	76,872	154%	68,439	8,433	12%
Transfers-In / Interest Income	606,318	606,318	611,121	101%	727,904	(116,783)	-16%
Other Revenue/Current Charges	630,464	630,464	721,585	114%	1,024,405	(302,820)	-30%
650 WATER OPERATION	19,786,782	19,786,782	15,276,421	77%	14,838,252	438,169	3%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	28,855	28,855	84,595	293%	42,154	42,441	101%
Development Impact Fee	1,720,216	1,720,216	1,277,126	74%	696,668	580,458	83%
651 WATER EXPANSION	1,749,071	1,749,071	1,361,721	78%	738,822	622,899	84%
652 WATER RATE STABILIZATION	-	-	84,781	n/a	45,996	38,785	84%
653 WATER CAPITAL PROJECT	6,948,348	6,948,348	6,752,240	97%	4,816,760	1,935,480	40%
TOTAL WATER FUNDS	28,484,201	28,484,201	23,475,164	82%	20,439,830	3,035,334	15%
TOTAL ENTERPRISE FUNDS	53,878,979	53,878,979	48,974,128	91%	50,613,787	(1,639,659)	-3%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,493,922	2,493,922	2,289,172	92%	2,055,166	234,006	11%
740 BUILDING MAINTENANCE	1,675,215	1,675,215	1,537,734	92%	1,517,782	19,952	1%
741 BUILDING REPLACEMENT	859,973	859,973	878,031	102%	800,613	77,418	10%
745 CIP ADMINISTRATION	2,059,092	2,059,092	1,152,211	56%	1,235,983	(83,772)	-7%
760 UNEMPLOYMENT INSURANCE	2,940	2,940	7,204	245%	4,170	3,034	73%
770 WORKERS COMPENSATION	997,442	997,442	906,261	91%	800,025	106,236	13%
790 EQUIPMENT REPLACEMENT	1,725,990	1,725,990	1,269,528	74%	2,176,273	(906,745)	-42%
791 EMPLOYEE BENEFITS	849,796	849,796	783,850	92%	744,444	39,406	5%
795 GENERAL LIABILITY INSURANCE	2,103,483	2,103,483	1,934,310	92%	1,826,601	107,709	6%
TOTAL INTERNAL SERVICE FUNDS	12,767,853	12,767,853	10,758,302	84%	11,161,057	(402,755)	-4%
TOTAL FOR ALL FUNDS	\$ 148,099,024	\$ 150,215,275	\$ 129,770,900	86%	\$ 134,786,575	\$ (5,015,675)	-4%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 38,401	\$ 435,652	\$ 414,289	\$ -	\$ 414,289	95%	\$ 359,303
	CITY ATTORNEY	95,553	1,081,241	811,924	137,435	949,359	88%	712,874
	CITY MANAGER	70,831	886,041	641,206	20,034	661,240	75%	568,949
	HUMAN RESOURCES	87,622	898,203	796,604	-	796,604	89%	734,182
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	58,369	628,281	479,153	-	479,153	76%	457,498
	Elections	3,419	37,728	29,058	-	29,058	77%	217,152
	COUNCIL SVCS & RECORDS MGMT	61,788	666,009	508,211	-	508,211	76%	674,650
	FINANCE	191,693	2,522,016	1,785,091	549,722	2,334,812	93%	1,740,123
	TOTAL ADMINISTRATION	545,888	6,489,162	4,957,325	707,190	5,664,515	87%	4,790,081
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	592,513	7,268,962	6,431,903	614,474	7,046,377	97%	5,582,821
	Recreation Facility Rentals	64,766	573,524	546,187	31,016	577,203	101%	431,705
	Innovative Transit	52,498	850,612	552,181	259,770	811,951	95%	464,280
	Community Services	81,112	672,192	573,734	11,790	585,524	87%	508,822
	Park Maintenance	165,586	1,567,049	1,039,537	26,799	1,066,336	68%	1,051,869
	Environmental Services	26,732	907,406	420,744	101,446	522,190	58%	212,343
	Countywide Solid Waste Program	45,977	472,354	373,291	-	373,291	79%	329,304
	Street Maintenance	286,744	3,025,578	2,554,548	26,814	2,581,362	85%	2,025,041
	Downtown Maintenance	23,809	345,237	238,099	26,949	265,048	77%	155,067
	Cable Television	7,029	74,940	80,729	-	80,729	108%	50,322
	COMMUNITY SERVICES	1,346,766	15,757,854	12,810,954	1,099,058	13,910,011	88%	10,811,574
	CODE COMPLIANCE	37,646	340,153	268,135	-	268,135	79%	181,666
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	44,764	415,141	380,556	-	380,556	92%	315,994
	ECONOMIC DEVELOPMENT PROGRAMS	108,476	1,267,792	886,251	67,156	953,408	75%	685,945
	TOTAL COMMUNITY SERVICES	1,537,652	17,780,940	14,345,896	1,166,214	15,512,110	87%	11,995,179
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	164,424	1,735,700	1,477,943	30,059	1,508,001	87%	1,386,390
	Field Operations	1,186,028	11,210,613	10,287,069	438,388	10,725,457	96%	8,871,973
	Support Services	254,776	3,586,324	2,538,855	595,532	3,134,388	87%	2,475,406
	Emergency Services/Haz Mat	28,940	222,865	225,587	-	225,587	101%	207,804
	Special Operations	327,949	4,098,765	3,261,805	-	3,261,805	80%	3,549,500
	Dispatch Services	230,959	2,201,937	1,876,003	-	1,876,003	85%	1,854,459
	POLICE	2,193,077	23,056,204	19,667,262	1,063,979	20,731,241	90%	18,345,532
	FIRE	730,039	9,139,905	8,290,525	97,036	8,387,560	92%	7,542,097
	TOTAL PUBLIC SAFETY	2,923,116	32,196,109	27,957,787	1,161,015	29,118,802	90%	25,887,629
IV. TRANSFERS								
	Other	108,647	3,263,767	3,155,120	-	3,155,120	97%	4,540,039
	TOTAL TRANSFERS	108,647	3,263,767	3,155,120	-	3,155,120	97%	4,540,039
	TOTAL GENERAL FUND	5,115,303	59,729,978	50,416,128	3,034,419	53,450,546	89%	47,212,928



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	433	954,952	687,580	-	687,580	72%	654,179
205	PUBLIC SAFETY/SUPP.LAW	107	101,289	101,182	-	101,182	100%	101,148
206	DEVELOPMENT SERVICES FUND							
	Planning	162,442	1,847,544	1,487,812	-	1,487,812	81%	1,444,371
	Building	262,289	2,563,441	2,227,618	69,975	2,297,593	90%	2,007,787
	Engineering	165,113	1,974,680	1,569,894	75,955	1,645,849	83%	1,625,654
206	DEVELOPMENT SERVICES FUND	589,845	6,385,665	5,285,324	145,930	5,431,254	85%	5,077,812
207	LONG RANGE PLANNING	93,146	1,581,133	765,375	18,178	783,553	50%	778,379
215/216	CDBG	7	83	76	-	76	92%	74
225	ASSET SEIZURE	65	782	717	-	717	92%	696
229	LIGHTING AND LANDSCAPE	13,683	234,554	141,366	3,818	145,183	62%	137,128
230	COMMUNITY FACILITIES DISTRICT	4,717	41,249	40,096	-	40,096	97%	29,893
232	ENVIRONMENT PROGRAMS	49,145	561,335	391,509	2,040	393,549	70%	425,679
234	MOBILE HOME PARK	76	907	831	-	831	92%	807
236	HOUSING MITIGATION	70,249	1,541,126	835,133	188,873	1,024,006	66%	748,061
240	EMPLOYEE ASSISTANCE	79	20,946	4,367	-	4,367	21%	10,036
246	COUNTYWIDE SOLID WASTE PROGRAM	115,660	2,078,493	1,469,417	671,825	2,141,242	103%	1,282,326
255	HOUSING SUCCESSOR AGENCY	105,078	1,172,110	1,112,841	0	1,112,841	95%	1,088,413
TOTAL SPECIAL REVENUE FUNDS		1,042,288	14,674,624	10,835,814	1,030,663	11,866,477	81%	10,334,631
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	13,194	2,475,298	529,284	612,132	1,141,416	46%	800,274
302	PARK MAINTENANCE	54,242	660,850	596,029	-	596,029	90%	601,772
303	LOCAL DRAINAGE	3,173	7,119,361	3,024,077	1,273,061	4,297,138	60%	877,113
304	LOCAL DRAIN. NON-AB1600	6,255	410,006	178,965	3,818	182,782	45%	127,399
306	AGRICULTURE & OPEN SPACE PRESERVATION	8,133	247,600	89,467	-	89,467	36%	115,366
308	STREET CIP	14,479	5,499,004	4,730,431	367,785	5,098,216	93%	6,944,720
309	TRAFFIC IMPACT	40,032	6,133,049	1,127,537	3,076,549	4,204,086	69%	5,786,493
315	PUBLIC SAFETY FACILITIES IMPACT	457,997	11,717,604	3,966,914	7,564,986	11,531,900	98%	795,081
346	PUBLIC FAC. NON AB1600	47,771	3,408,156	1,083,580	917,417	2,000,997	59%	26,273
347	PUBLIC FACILITIES IMPACT	2,440	279,278	129,438	12,400	141,838	51%	26,724
348	LIBRARY IMPACT	18,529	222,349	203,820	-	203,820	92%	204,340
350	UNDERGROUNDING	98	1,194,738	139,340	138,263	277,603	23%	1,046
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	1,711	916,562	29,714	3,428	33,142	4%	48,177
360	COMM/REC CENTER IMPACT	1,331	2,794,248	237,843	557,016	794,859	28%	762,008
375	QUIMBY FEE	87,117	1,403,605	357,529	319,244	676,772	48%	542,182
TOTAL CAPITAL PROJECTS FUNDS		756,501	44,481,708	16,423,968	14,846,098	31,270,066	70%	17,658,968
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	47,683	290,852	287,751	-	287,751	99%	291,904
441	POLICE FACILITY BOND DEBT	64,688	387,792	390,265	-	390,265	101%	387,161
TOTAL DEBT SERVICE FUNDS		112,371	678,644	678,016	-	678,016	100%	679,065



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	WASTEWATER OPERATIONS	549,976	15,555,361	12,423,669	71,449	12,495,118	80%	14,153,978
641	WASTEWATER CAPITAL EXPANSION	1,427,686	26,223,607	10,377,554	566,779	10,944,333	42%	8,041,788
642	WASTEWATER RATE STABILIZATION	156	1,872	1,716	-	1,716	92%	1,666
643	WASTEWATER CAPITAL PROJECTS	194,738	17,522,286	3,589,315	2,022,256	5,611,571	32%	11,512,549
TOTAL SEWER FUND(S)		2,172,556	59,303,126	26,392,255	2,660,483	29,052,737	49%	33,709,981
WATER								
	Water Operations	1,455,866	18,480,381	15,835,339	529,551	16,364,890	89%	12,565,730
	Utility Billing	114,269	1,192,638	1,106,803	56,347	1,163,149	98%	917,811
	Water Conservation	39,096	644,730	328,869	49,180	378,049	59%	244,995
650	WATER OPERATIONS	1,609,230	20,317,749	17,271,011	635,078	17,906,089	88%	13,728,536
651	WATER CAPITAL EXPANSION	63,509	2,479,364	734,580	62,239	796,820	32%	652,274
652	WATER RATE STABILIZATION	117	1,403	1,286	-	1,286	92%	1,248
653	WATER-CAPITAL PROJECTS	1,384,544	16,010,730	3,053,241	571,024	3,624,265	23%	1,681,733
TOTAL WATER FUND(S)		3,057,400	38,809,246	21,060,119	1,268,341	22,328,460	58%	16,063,791
TOTAL ENTERPRISE FUNDS		5,229,957	98,112,372	47,452,374	3,928,824	51,381,198	52%	49,773,772
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	195,525	2,683,931	2,319,451	31,332	2,350,783	88%	2,032,915
740	BUILDING MAINTENANCE	142,784	1,781,790	1,384,912	89,734	1,474,645	83%	1,306,318
741	BUILDING REPLACEMENT	25,825	1,501,100	220,783	137,196	357,979	24%	145,326
745	CIP ADMINISTRATION	228,846	2,061,046	1,787,608	169	1,787,777	87%	1,659,794
760	UNEMPLOYMENT	14,818	15,000	26,644	-	26,644	178%	14,081
770	WORKERS COMPENSATION	15,654	1,048,265	812,252	-	812,252	77%	680,901
790	EQUIPMENT REPLACEMENT	58,718	1,245,240	717,596	495,813	1,213,409	97%	593,426
791	EMPLOYEE BENEFITS FUND	49,368	750,000	644,309	-	644,309	86%	725,078
795	GEN. LIABILITY INSURANCE	105,360	2,551,193	2,625,290	-	2,625,290	103%	1,842,561
TOTAL INTERNAL SERVICE FUNDS		836,898	13,637,565	10,538,844	754,244	11,293,088	83%	9,000,400
REPORT TOTAL		\$ 13,093,318	\$ 231,314,891	\$ 136,345,143	\$ 23,594,248	\$ 159,939,391	69%	\$ 134,659,764



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2023-24
For the Month Ended May 31, 2024
92% of Year Complete

Fund No.	Fund Description	Beginning Fund Balance 07-01-23	Revenues		Expenses		Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 33,224,036	\$ 43,070,454	81%	\$ 50,416,128	84%	\$ (7,345,673)	\$ 3,034,419	\$ 22,843,944
TOTAL GENERAL FUND		\$ 33,224,036	\$ 43,070,454	81%	\$ 50,416,128	84%	\$ (7,345,673)	\$ 3,034,419	\$ 22,843,944
202	STREET MAINTENANCE	68,927	\$ 687,580	72%	\$ 687,580	87%	\$ (0)	\$ -	\$ 68,927
205	PUBLIC SAFETY/SUPPL. LAW	319,867	195,795	192%	101,182	80%	94,613	-	414,480
206	DEVELOPMENT SERVICES	(426,677)	4,737,241	75%	5,285,324	83%	(548,083)	145,930	(1,120,689)
207	LONG RANGE PLANNING	1,276,770	824,677	81%	765,375	48%	59,302	18,178	1,317,894
215 / 216	CDBG	30,767	1,685	519%	76	92%	1,609	-	32,376
225	ASSET SEIZURE	102,496	2,580	199%	717	92%	1,863	-	104,359
229	LIGHTING AND LANDSCAPE	191,949	116,003	58%	141,366	60%	(25,363)	3,818	162,768
230	COMMUNITY FACILITIES DISTRICT	150,651	30,469	80%	40,096	97%	(9,627)	-	141,024
232	ENVIRONMENTAL PROGRAMS	328,270	552,860	94%	391,509	70%	161,351	2,040	487,581
234	MOBILE HOME PK RENT STAB.	76,297	5,483	939%	831	92%	4,651	-	80,948
235	SENIOR HOUSING	239,361	-	n/a	-	n/a	-	-	239,361
236	HOUSING MITIGATION	5,698,654	3,218,878	72%	835,133	54%	2,383,745	188,873	7,893,526
240	EMPLOYEE ASSISTANCE	61,893	7,654	37%	4,367	21%	3,287	-	65,180
246	COUNTYWIDE SOLID WASTE	239,294	2,111,570	261%	1,469,417	71%	642,153	671,825	209,623
247	ENVIRONMENT REMEDIATION	140,690	3,546	261%	-	n/a	3,546	-	144,236
255	HOUSING SUCCESSOR AGENCY	4,001,427	513,638	215%	1,112,841	95%	(599,203)	0	3,402,224
TOTAL SPECIAL REVENUE FUNDS		\$ 12,500,636	\$ 13,009,659	82%	\$ 10,835,814	74%	\$ 2,173,845	\$ 1,030,663	\$ 13,643,818
301	PARK DEV. IMPACT FUND	\$ 1,426,990	\$ 851,324	42%	\$ 529,284	21%	\$ 322,040	\$ 612,132	\$ 1,136,899
302	PARK MAINTENANCE	2,489,205	87,258	24%	596,029	90%	(508,771)	-	1,980,434
303	LOCAL DRAINAGE	11,817,863	511,466	114%	3,024,077	42%	(2,512,611)	1,273,061	8,032,191
304	LOCAL DRAINAGE/NON-AB1600	1,343,736	33,301	108%	178,965	44%	(145,663)	3,818	1,194,255
306	AG. AND OPEN SPACE PRESERVATION	541,496	194,030	4807%	89,467	36%	104,564	-	646,060
308	STREET CIP	4,078,203	3,788,750	84%	4,730,431	86%	(941,681)	367,785	2,768,736
309	TRAFFIC IMPACT FUND	3,727,580	1,252,700	98%	1,127,537	18%	125,163	3,076,549	776,194
315	PUBLIC SAFETY FACILITIES IMPACT	3,050,728	774,687	97%	3,966,914	34%	(3,192,227)	7,564,986	(7,706,485)
346	PUBLIC FACILITIES NON-AB1600	2,943,797	208,965	22%	1,083,580	32%	(874,615)	917,417	1,151,765
347	PUBLIC FACILITIES IMPACT FUND	1,099,809	293,666	166%	129,438	46%	164,228	12,400	1,251,637
348	LIBRARY IMPACT FUND	1,408,238	886,308	135%	203,820	92%	682,488	-	2,090,726
350	UNDERGROUNDING	1,626,301	260,769	1158%	139,340	12%	121,428	138,263	1,609,466
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	92,077	32,121	7%	29,714	3%	2,407	3,428	91,056
360	COMM/REC CTR IMPACT FUND	992,228	1,253,462	110%	237,843	9%	1,015,619	557,016	1,450,831
375	QUIMBY FEE	1,621,885	2,903,060	475%	357,529	25%	2,545,531	319,244	3,848,172
TOTAL CAPITAL PROJECT FUNDS		\$ 38,260,136	\$ 13,331,866	99%	\$ 16,423,968	37%	\$ (3,092,102)	\$ 14,846,098	\$ 20,321,936
420	CIVIC CENTER DEBT	\$ 175,864	\$ 270,651	93%	\$ 287,751	99%	\$ (17,100)	\$ 129	\$ 158,635
441	POLICE FACILITY BOND DEBT	166,725	355,838	92%	390,265	101%	(34,427)	165	132,134
TOTAL DEBT SERVICE FUNDS		\$ 342,589	\$ 626,489	92%	\$ 678,016	100%	\$ (51,526)	\$ 293	\$ 290,769
640	WASTEWATER OPERATIONS	\$ 4,670,817	\$ 12,647,446	81%	\$ 12,423,669	80%	\$ 223,777	71,449	4,823,145
641	WASTEWATER IMPACT FUND*	21,350,081	7,494,170	169%	10,377,554	40%	(2,883,384)	566,779	17,899,918
642	WASTEWATER RATE STABILIZATION	2,799,081	252,558	132%	1,716	92%	250,842	-	3,049,923
643	WASTEWATER CAPITAL PROJECTS	15,601,623	5,104,792	98%	3,589,315	20%	1,515,477	2,022,256	15,094,844
650	WATER OPERATIONS	4,444,824	15,276,421	77%	17,271,011	85%	(1,994,590)	635,078	1,815,156
651	WATER IMPACT FUND*	2,969,960	1,361,721	78%	734,580	30%	627,141	62,239	3,534,861
652	WATER RATE STABILIZATION	3,183,868	84,781	n/a	1,286	92%	83,495	-	3,267,363
653	WATER -CAPITAL PROJECT	15,548,298	6,752,240	97%	3,053,241	19%	3,698,999	571,024	18,676,273
TOTAL ENTERPRISE FUNDS		\$ 70,568,552	\$ 48,974,128	91%	\$ 47,452,374	48%	\$ 1,521,755	\$ 3,928,824	\$ 68,161,483
730	INFORMATION SERVICES	\$ 793,101	\$ 2,289,172	92%	\$ 2,319,451	86%	\$ (30,279)	\$ 31,332	\$ 731,490
740	BUILDING MAINTENANCE	7,256	1,537,734	92%	1,384,912	78%	152,823	89,734	70,345
741	BUILDING REPLACEMENT	4,309,501	878,031	102%	220,783	15%	657,249	137,196	4,829,553
745	CIP ENGINEERING	9,209	1,152,211	56%	1,787,608	87%	(635,397)	169	(626,357)
760	UNEMPLOYMENT	303,137	7,204	245%	26,644	178%	(19,439)	-	283,698
770	WORKERS COMPENSATION	2,152,498	906,261	91%	812,252	77%	94,009	30,000	2,216,507
790	EQUIPMENT REPLACEMENT	7,665,968	1,269,528	74%	717,596	58%	551,932	495,813	7,722,087
791	EMPLOYEE BENEFITS FUNDS	(124,893)	783,850	92%	644,309	86%	139,541	-	14,648
795	GEN. LIABILITY INSURANCE	932,477	1,934,310	92%	2,625,290	103%	(690,980)	-	241,497
TOTAL INTERNAL SERVICE FUNDS		\$ 16,048,254	\$ 10,758,302	84%	\$ 10,538,844	77%	\$ 219,458	\$ 784,244	\$ 15,483,468

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2023-24 For the Month Ended May 31, 2024 92% of Year Complete							
Beginning Fund Balance 07-01-23	Revenues		Expenses		Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance	
	YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 33,224,036	\$ 43,070,454	81%	\$ 50,416,128	84%	\$ (7,345,673)	\$ 3,034,419	\$ 22,843,944
SPECIAL REVENUE GROUP	12,500,636	13,009,659	82%	10,835,814	74%	2,173,845	1,030,663	13,643,818
DEBT SERVICE GROUP	342,589	626,489	92%	678,016	100%	(51,526)	293	290,769
CAPITAL PROJECTS GROUP	38,260,136	13,331,866	99%	16,423,968	37%	(3,092,102)	14,846,098	20,321,936
ENTERPRISE GROUP	70,568,552	48,974,128	91%	47,452,374	48%	1,521,755	3,928,824	68,161,483
INTERNAL SERVICE GROUP	16,048,254	10,758,302	84%	10,538,844	77%	219,458	784,244	15,483,468
TOTAL ALL GROUPS	\$ 170,944,203	\$ 129,770,900	86%	\$ 136,345,143	59%	\$ (6,574,243)	\$ 23,624,542	\$ 140,745,418

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

From: [Christina Turner](#)
To: [Kim Mancera](#)
Cc: [Michelle Bigelow](#)
Subject: FW: [EXTERNAL] June 26th , 2024 City Council Agenda Item #9
Date: Monday, June 24, 2024 10:24:47 AM
Attachments: [GF Open Encumbrance \\$25K and over.xlsx](#)

Please supplement.

From: Dat Nguyen <Dat.Nguyen@morganhill.ca.gov>
Sent: Monday, June 24, 2024 10:22 AM
To: Joe Baranowski <joe.b@mh-rgc.org>
Cc: Christina Turner <Christina.Turner@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>; Mark Turner <mark.turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: RE: [EXTERNAL] June 26th , 2024 City Council Agenda Item #9

Please see attached:

Thanks,
Dat

From: Joe Baranowski <joe.b@mh-rgc.org>
Sent: Saturday, June 22, 2024 7:36 AM
To: Dat Nguyen <Dat.Nguyen@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@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>; Mark Turner <mark.turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: [EXTERNAL] June 26th , 2024 City Council Agenda Item #9

Re. Monthly Budget Update and Financial Report

Hi Dat,

The staff report for the budget update notes there are outstanding encumbrances totaling approximately \$3M.

That's about the amount a quarter-cent sales tax would raise, representing a significant future budget commitment (expenditures).

Can you please provide an itemized list of encumbrances greater than \$25K ?

Thank you,

Joe Baranowski

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

Purchase Order	Fiscal Year	Total Ordered	Total Liquidated	Total Balance	Create Date	Vendor
20240103	2024	778,400.00	0.00	778,400.00	08/17/2023	100887
20250001	2024	668,384.71	158,073.09	510,311.62	08/03/2023	100228
20240330	2024	407,187.42	0.00	407,187.42	05/03/2024	101813
20240113	2024	1,236,028.00	927,021.00	309,007.00	08/21/2023	100183
20240150	2024	768,550.00	567,785.96	200,764.04	08/25/2023	101421
20240329	2024	80,979.06	0.00	80,979.06	05/02/2024	101797
20240134	2024	100,000.00	30,962.31	69,037.69	08/24/2023	100998
20240207	2024	55,740.50	0.00	55,740.50	10/04/2023	100438
20240268	2024	182,094.89	134,206.10	47,888.79	01/03/2024	100402
20240120	2024	46,419.84	11,186.18	35,233.66	08/23/2023	101631
20240035	2024	60,000.00	29,209.50	30,790.50	08/14/2023	101424
20240022	2024	34,000.00	4,524.00	29,476.00	08/14/2023	101620
20240277	2024	47,415.00	18,460.00	28,955.00	01/24/2024	100645
20240294	2024	74,000.00	45,410.60	28,589.40	02/14/2024	100683
20240206	2024	28,500.00	0.00	28,500.00	10/04/2023	100768
20240278	2024	30,000.00	1,619.50	28,380.50	01/24/2024	101728
20240013	2024	26,000.00	0.00	26,000.00	08/10/2023	100803
20240220	2024	39,000.00	13,000.00	26,000.00	10/24/2023	100794

Alpha Sort

AXON ENTERPRISE INC
TYLER TECHNOLOGIES,
LENCO ARMORED VEHICL
YMCA OF SILICON VALL
RIDECO US INC.
HYUNDAI OF SAN BRUNO
A & B MECHANICAL, IN
JARVIS FAY
FIRATO SERVICE CO.,
RADIOMOBILE, INC.
SOUTH BAY YOUTH SPOR
AASKA PATEL
BURR PLUMBING & PUMP
TRIPEPI, SMITH & ASS
LANCE E BAYER
BOUCHER LAW, PC
NANOGAN SCIENCE & SE
STANFORD HEALTH CARE

DBA

LENCO ARMORED VEHICLES
YMCA OF SILICON VALLEY

HYUNDAI OF SAN BRUNO

SOUTH BAY YOUTH SPORTS
ISLAND KIDS LLC

MAD SCIENCE OF THE BAY AREA

Name

AXON ENTERPRISE INC
TYLER TECHNOLOGIES, INC
LENCO INDUSTRIES INC
YOUNG MEN'S CHRISTIAN ASSN OF SILICON VALLEY
RIDECO US INC.
BAY AREA AG INC
A & B MECHANICAL, INC
JARVIS FAY LLP
FIRATO SERVICE CO., INC.
RADIOMOBILE, INC.
KYLE CAMPBELL
AASKA PATEL
BURR PLUMBING & PUMPING, INC
TRIPEPI, SMITH & ASSOCIATES, INC
LANCE E BAYER
BOUCHER LAW, PC
NANOGAN SCIENCE & SERVICES, LLC
STANFORD HEALTH CARE

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

AWARD THE ENERGY SERVICES CONTRACT TO SYSERCO ENERGY SOLUTIONS, INC. FOR DESIGN AND CONSTRUCTION OF SOLAR SYSTEMS AT MULTIPLE CITY FACILITIES IN THE AMOUNT OF \$7,583,500

RECOMMENDATION(S)

1. Open and close the Public Hearing;
2. Authorize the City Manager to execute and administer an energy service contract with Syserco Energy Services for \$7,583,500;
3. Authorize contingency funds of \$379,175; and
4. Adopt a resolution making findings in compliance with California Government Code Section 4217.12 on Energy Conservation Contracts.

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
Healthy Community

Guiding Documents

Climate Action Plan

REPORT NARRATIVE:

The City has a history of reviewing options for solar panel installation at City facilities, with City-owned panels at the Centennial Recreation Center and the Civic Center, as well as third-party-owned solar at the Aquatics Center and Police Department. City staff have continued to monitor opportunities for solar photovoltaic generation at its facilities. In 2023, the City staff identified an opportunity for significant benefit from solar opportunities:

Federal Inflation Reduction Act Funding—The Inflation Reduction Act (IRA), enacted

in 2022, provides a 30% tax credit for solar installations. Since government agencies do not pay federal taxes, under the IRA, they are eligible to receive a direct payment from the federal government equal to the value of a 30% tax credit. This direct payment is intended to provide the same financial incentive for government entities to invest in solar energy as the tax credit does for taxpayers.

The NEM2 Rate Structure Concludes - The NEM2 rate structure was highly beneficial as it allowed solar customers to receive credits for excess energy exported to the grid at the full retail rate. This means that for every kilowatt-hour (kWh) of electricity a solar system sends to the grid, the customer receives a credit for one kWh on their bill at the same price they would pay for electricity from the utility. This makes solar installations financially attractive, as excess energy production could offset a significant portion of a customer's energy bill. The NEM2 rate structure concluded in mid-2023. However, City staff submitted applications for solar at seven locations to PG&E prior to the conclusion of the rate structure, allowing the City time to potentially design and install solar at these City facilities.

PG&E Rates Continue to Increase — The City has seen significant rate increases from PG&E over the last few years and is forecasting additional years of rate increases. These rate increases significantly impact the City's budget.

Based on these factors and the very fast timing needed to identify feasibility options and design the solar equipment, the City Manager entered into a Letter of Intent (Attachment 1) with Syserco Energy Solutions, Inc. for the preliminary design and analysis to install solar at seven locations in the City. Syserco Energy Solutions has provided numerous energy services to the City over the years and presented this option to the City. Syserco Energy Solutions has also worked with numerous municipalities and school districts to develop and construct large-scale solar systems. The seven locations include the Aquatics Center, Police Department, Corporation Yard, City Hall, Community and Cultural Center, the water well at Nordstrom Park, and the water well at the Outdoor Sports Center. The letter of intent provides the opportunity for the City Council to move forward with an Energy Services Contract with Syserco Energy Solutions, Inc. to design and construct the solar improvements at these facilities.

Overall, the City will significantly benefit financially. It is anticipated that over the 30-year life of the systems, the City will have an estimated net savings of over \$18.6 million and see a return on investment in eight years. The Inflation Reduction Act Rebate, estimated at \$2.3 million, is a large part of this quick return on investment. While staff believe this funding source will be available by project completion in the first half of 2026, if it were to become unavailable, the overall number of years to see the return on investment would move out to year 11. The overall cost saving over 30 years would be reduced to \$16.3 million.

Additionally, since funding the project would utilize various capital funds, the City would begin seeing significant operational cost savings as soon as the systems come online. By the second year of service, the system would provide over \$0.5 million in estimated savings, of which approximately 66% would be in the General Fund. The estimated savings would increase each year with increases in the cost of electricity. Furthermore,

the City has additional grant funding applications in process that could further reduce costs and increase savings. A detailed cost and savings analysis is included in Attachment 2.

California Government Code sections 4217.10 to 4217.18 establish a framework that allows public agencies, including cities, to implement energy efficiency, cogeneration, and alternative energy projects through performance contracts or other financial mechanisms. This code enables cities to enter into agreements with energy service companies to finance, design, construct, and/or maintain energy-saving improvements to public facilities. The key feature of the e-contracts is that the costs must be determined to be offset through energy savings achieved by the project, ensuring that the improvements deliver the expected financial and environmental benefits to the City. A resolution making the required findings is included as Attachment 3. The energy service contract prepared by the City (Attachment 4) provides the City with all the necessary protection that the City's standard public works project provides.

The project will require the removal of a significant number of trees. While more expensive, City staff recommend relocating most of the trees that require removal. This will ensure as many mature trees as possible are retained. New trees will replace any trees that cannot be relocated. The tree relocation and removal summary is included in Attachment 5.

COMMUNITY ENGAGEMENT:

Inform/Involve

This project aligns with the City's Climate Action Plan, which was developed through extensive collaboration with the Community. It is also aligned with the City Council's Goal of Fiscal Sustainability and is being brought forward to the Council by staff for this financial opportunity.

ALTERNATIVE ACTIONS:

The City Council could choose not to move forward with the project at this time and provide staff with alternate direction or direct staff to issue a Request For Proposal (RFP). This would result in the City being unable to receive the NEM2 rate structure unless a Council meeting could be held by mid-July to bring back an alternative contract.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously approved the City's Capital Improvement Program on June 19, 2024, that included funding for this project.

FISCAL AND RESOURCE IMPACT:

Funding for this project was approved within the Capital Improvement Program Budget for Fiscal Year 2024/25. The breakdown of project costs of \$7,741,500 allocated by fund/ project is outlined below.

- Recreation Center Expansion and Renovation - \$3,267,158 - Quimby Fund 375

- Police Facility Expansion - \$976,990 - Public Safety Facilities Fund 315
- Civic Center Expansion - \$1,365,352 - Public Facilities Fund 347
- Utility System Solar - \$2,132,000 - Water Capital Fund 653 and Sewer Capital Fund 643

Tree removal and relocation costs, approximately \$158,000, are anticipated for this project. However, they are not included in this contract with Syserco Energy Solutions but have been included in the cost and savings analysis.

CEQA (California Environmental Quality Act):

Categorical Exemption / Statutory Exemption

This first portion of the project will complete the final design for the solar panels; therefore, exact sizing is not yet available. However, this project will be exempt from CEQA under the following exemptions:

- The proposed installation of solar panels on a new carport structure is exempt from the California Environmental Quality Act (CEQA) under Categorical Exemption Class 3 (Small Structures). The project consists of constructing a new carport structure that is less than 10,000 square feet and does not require significant grading or excavation. The solar panel installation is considered part of the carport structure and will not result in significant environmental impacts beyond those already considered under Class 33.
- The proposed installation of solar panels on a new carport structure, even if exceeding 10,000 square feet, at the locations identified is exempt under California Public Resources Code Section 21080.35 as the project will be designed to meet specific requirements, including the size of the facility, location in an existing developed area, and will not have a significant impact on the environment.

126-04-23-034

October 19, 2023

Chris Ghione
Public Services Director
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

Mr. Gabe Johnson
Syserco Energy Solutions, Inc.
215 Fourier Ave., Suite 140
Fremont, CA 94539

Subject: Letter of Intent (LOI) to Contract and Approval to Proceed with Detailed Engineering and Final Project Development for NEM2 Solar PV and Options for City's Existing Solar Power Purchase Agreement

Dear Mr. Johnson,

The City of Morgan Hill ("City") has reviewed the Preliminary Solar Designs presented by Syserco Energy Solutions, Inc. ("SES"), that details an opportunity for the City to reduce Utility Costs by installing solar PV under NEM 2.0 status.

City staff worked closely with SES to identify all viable locations where the City had an opportunity to install solar PV and submit Interconnection Applications through PG&E to secure NEM 2.0 status. Ten (10) locations were identified and all ten) Interconnection Applications were successfully submitted and accepted by PG&E.

The City requests that SES proceed with Project Development and Detailed Engineering of the City's NEM 2.0 Solar PV portfolio, consisting of the following systems and seven (7) site locations:

1. Aquatic Center (~231 kW)
2. City Hall (~162 kW)
3. Community and Culture Center (~207kW)
4. CRC Park and Corp Yard (~93 kW)
5. Nordstrom Well (~93kW)
6. Police HQ (~119kW)
7. Sports Well (~124kW)

In order to maintain NEM 2.0 status and realize the maximum financial value of these systems, each system must be designed, built and receive Point of Connection (POC) approval by PG&E by April 15, 2026. If these systems are unable to be built and preserve NEM 2.0 status ahead of the deadline, the financial gains of the generated electricity for the City will be significantly devalued.

In consideration of current market and supply chain conditions, City staff recognizes extremely long lead times for various components that are required for successful completion of the projects, and recommends finalizing Project Development and Project Implementation as quickly as possible so as to not jeopardize the financial gains that will be realized by the City by implementing these solar PV systems. Additionally, as part of this Scope of Work, SES will analyze the City's existing solar Power Purchase Agreement (PPA) for solar at the Police Department and Aquatics Center and provide a summary of options, relating to refinancing, buying-out, terminating, or renegotiating existing Agreement.

The purpose of this Detailed Engineering and Final Project Development is to determine the feasibility of entering into a negotiated Energy Services Agreement (Agreement) utilizing CA GC 4217 for the Design-Build Implementation of these projects.

The City intends to enter into either an Energy Services Agreement ("Agreement") with SES, if the following Project Criteria is met:

- | | |
|-------------------------------|--|
| 1. Budget Impact: | Project must not impact existing City capital budget. Capital Outlay by the City shall not be required unless desired by the City. |
| 2. Annual Savings: | Must exceed annual Project and Operational Costs, at minimum. |
| 3. Energy Savings: | 100% of energy savings goes directly to the City. Savings shall not be shared with SES or others. |
| 4. Financing: | The City shall have the opportunity to qualify for project Financing, if applicable, at the discretion of the City. |
| 5. Financing Term: | Shall not exceed the useful life of the proposed systems. |
| 6. Rebate/Grant Application: | Program shall include administrative support for all grants and rebates, if available, including Inflation Reduction Act. |
| 7. Design-Build Construction: | All systems shall be designed and built by Syserco Energy Solutions. |
| 8. Procurement Method: | Procurement shall meet provisions of California Government Code 4217. |

The City agrees to work exclusively with SES through the duration of the Project Development and Detailed Engineering effort.

The City intends to enter into either an Energy Services Agreement with SES, or a PPA with 3rd party provider, within 90 days following the delivery of a final Energy Services Proposal (ESP) that will result from the Final Engineering and Project Development that SES will perform.

All costs associated with Final Engineering and Project Development performed by SES shall be incorporated into the final Lump Sum Fixed Price of the Agreement.

In the event SES cannot meet this Project Criteria, there will be no charge to the City for engineering, pre-construction activities, project development or estimating costs incurred by SES for the development of the projects.

In the event SES meets the Project Criteria above and City does not enter into the Agreement with SES within ninety (90) days of submittal of the ESP, then the City shall pay SES a Break-Fee, in the amount of:

Sixty Thousand Dollars
(\$60,000.00)

SES shall provide the City with all work products related to the planning and design conducted by SES prior to receiving the Break-Fee.

ACTIONS TO BE PERFORMED:

In order for SES to complete the Work, City shall provide SES with the following (if not already provided):

- 2-year history of utility bills and a signed form authorizing SES to act as an Agent for City and receive the data directly from the Utility Provider(s).
- Records of existing solar PV Agreements, including access to existing solar PV production data, where applicable.
- Reasonable access to facilities and design drawings

The Work is a very collaborative effort. The Work is intended to form the basis of a Final Proposal and contracting documents. Therefore, City shall also:

- Assign a main Point of Contact for the Work: Chris Ghione, Public Services Director
- Provide reasonable access to Key Stakeholders:
 - Christina Turner, City Manager

TIMELINE AND MILESTONES: SES will initiate this Work immediately upon acceptance of this Letter. Formal progress review meetings will be conducted regularly throughout the process of the Work. During these review meetings, SES will make recommendations based on preliminary analysis, while City will provide final direction regarding acceptance of the recommended Scope(s) of Work of the Project. The goal of these review meetings is to focus engineering / project development efforts, budgeting, and savings assessment of the measures that possess a high probability for implementation.

The following are proposed key milestone dates:

- October, 2023 - Authorization to Proceed based on signature of LOI

- October, 2023 - Project Development Kickoff Meeting
 - October, 2023 - 30% Design Review Meeting
 - November, 2023 - 60% Design Review Meeting
 - December, 2023 - 90% Pre-Final Workshop Meeting
 - January, 2024 - Project Development Completion
 - March, 2024 - Agreements Approved by City Council
 - March, 2024 - Project Implementation begins
- March, 2024 – January, 2026 : Estimated Project Implementation Timeline, based on current

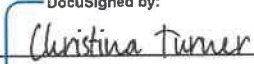
lead times and market conditions for material availability

Please signify acceptance of this Letter of Intent by signing below.

Letter of Intent Authorized by:

Christina Turner
City Manager
City of Morgan Hill

Scott Meinen
VP and General Manager
Sysco Energy Solutions, Inc.

DocuSigned by:

Signature 6D0198AF549944D...

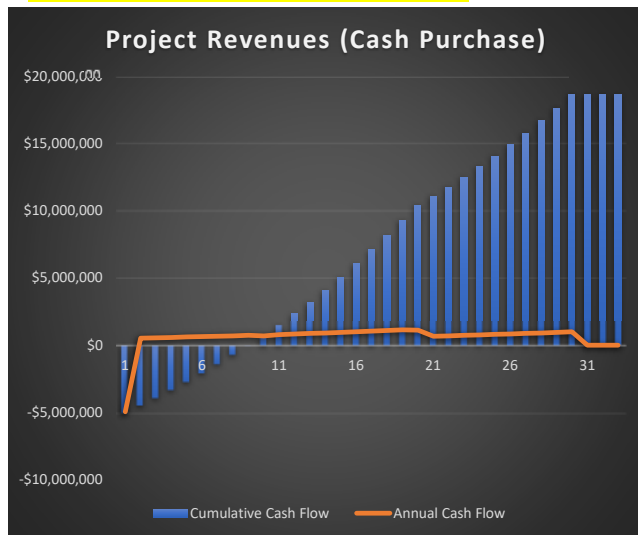
Date: 10/19/2023

DocuSigned by:

Signature 654B25CDF45249C...

Date: 10/18/2023

Customer	
Preliminary Cash Flow Analysis	
Project Cost	\$7,741,500
Inflation Reduction Act (Solar)*	\$2,275,050
Other Incentives	\$0
<i>*IRA Solar Incentive is an Estimate - SES is not a Financial Advisor</i>	
Total Grants and Incentives	\$ 2,275,050
PV Construction Duration (Years)	0
ECM Construction Duration (Years)	0
Annual Escalation of Electricity Cost	5.00%
Annual Escalation of O&M Cost/Savings	3.00%
Change Settings on TELP Page	



Project Savings					Project Costs			Project Savings	Cash Position
Year	Projected Energy Savings	Incentives	Projected O&M Savings	Total Program Savings	Project Payments	PV O&M and M&V Cost	Total Program Costs		
Year 1	\$530,770	\$2,275,050	\$0	\$2,805,820	\$7,741,500	\$24,184	\$7,765,684	-\$4,959,863	-\$4,959,863
Year 2	\$554,726	\$0	\$0	\$554,726	\$0	\$24,909	\$24,909	\$529,817	-\$4,430,047
Year 3	\$579,769	\$0	\$0	\$579,769	\$0	\$25,656	\$25,656	\$554,113	-\$3,875,933
Year 4	\$605,950	\$0	\$0	\$605,950	\$0	\$26,426	\$26,426	\$579,524	-\$3,296,409
Year 5	\$633,318	\$0	\$0	\$633,318	\$0	\$27,219	\$27,219	\$606,100	-\$2,690,310
Year 6	\$661,928	\$0	\$0	\$661,928	\$0	\$28,035	\$28,035	\$633,893	-\$2,056,417
Year 7	\$691,835	\$0	\$0	\$691,835	\$0	\$28,876	\$28,876	\$662,958	-\$1,393,458
Year 8	\$723,097	\$0	\$0	\$723,097	\$0	\$29,743	\$29,743	\$693,354	-\$700,105
Year 9	\$755,774	\$0	\$0	\$755,774	\$0	\$30,635	\$30,635	\$725,139	\$25,035
Year 10	\$789,931	\$0	\$0	\$789,931	\$0	\$112,354	\$112,354	\$677,577	\$702,612
Year 11	\$825,634	\$0	\$0	\$825,634	\$0	\$32,501	\$32,501	\$793,133	\$1,495,745
Year 12	\$862,951	\$0	\$0	\$862,951	\$0	\$33,476	\$33,476	\$829,476	\$2,325,221
Year 13	\$901,955	\$0	\$0	\$901,955	\$0	\$34,480	\$34,480	\$867,476	\$3,192,696
Year 14	\$942,722	\$0	\$0	\$942,722	\$0	\$35,514	\$35,514	\$907,208	\$4,099,904
Year 15	\$985,330	\$0	\$0	\$985,330	\$0	\$36,580	\$36,580	\$948,750	\$5,048,654
Year 16	\$1,029,861	\$0	\$0	\$1,029,861	\$0	\$37,677	\$37,677	\$992,184	\$6,040,838
Year 17	\$1,076,401	\$0	\$0	\$1,076,401	\$0	\$38,807	\$38,807	\$1,037,593	\$7,078,431
Year 18	\$1,125,039	\$0	\$0	\$1,125,039	\$0	\$39,972	\$39,972	\$1,085,068	\$8,163,499
Year 19	\$1,175,870	\$0	\$0	\$1,175,870	\$0	\$41,171	\$41,171	\$1,134,699	\$9,298,198
Year 20	\$1,228,991	\$0	\$0	\$1,228,991	\$0	\$123,206	\$123,206	\$1,105,785	\$10,403,983
Year 21	\$710,516	\$0	\$0	\$710,516	\$0	\$43,678	\$43,678	\$666,837	\$11,070,820
Year 22	\$742,447	\$0	\$0	\$742,447	\$0	\$44,988	\$44,988	\$697,458	\$11,768,279
Year 23	\$775,814	\$0	\$0	\$775,814	\$0	\$46,338	\$46,338	\$729,476	\$12,497,755
Year 24	\$810,682	\$0	\$0	\$810,682	\$0	\$47,728	\$47,728	\$762,954	\$13,260,709
Year 25	\$847,116	\$0	\$0	\$847,116	\$0	\$49,160	\$49,160	\$797,956	\$14,058,664
Year 26	\$885,186	\$0	\$0	\$885,186	\$0	\$50,635	\$50,635	\$834,551	\$14,893,215
Year 27	\$924,964	\$0	\$0	\$924,964	\$0	\$52,154	\$52,154	\$872,810	\$15,766,025
Year 28	\$966,527	\$0	\$0	\$966,527	\$0	\$53,719	\$53,719	\$912,808	\$16,678,834
Year 29	\$1,009,953	\$0	\$0	\$1,009,953	\$0	\$55,330	\$55,330	\$954,622	\$17,633,456
Year 30	\$1,055,324	\$0	\$0	\$1,055,324	\$0	\$56,990	\$56,990	\$998,334	\$18,631,790
Year 31	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$18,631,790
Year 32	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$18,631,790
Year 33	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$18,631,790
Totals	\$25,410,380	\$2,275,050	\$0	\$27,685,430	\$7,741,500	\$1,312,140	\$9,053,640	\$18,631,790	

CONTRACT

This energy services contract ("Contract") is entered into and becomes effective on _____ (Effective Date) by and between the City of Morgan Hill ("City"), a municipal corporation, and Syserco Energy Solutions, Inc. a California Corporation ("Contractor") hereinafter referred to collectively as "Parties", for work on the City Multi Facility Solar Project ("Project") as described below.

In consideration of the promises and the mutual covenants contained in this Contract, the Parties agree as follows:

1. Location and Description. The Project is for the design and installation of Solar Photovoltaic arrays and all associated infrastructure and connections at seven City-owned facilities located at the following locations in Morgan Hill:

- Aquatics Center
- Morgan Hill Police Department
- Morgan Hill Community and Cultural Center
- Morgan Hill Corporation Yard
- Morgan Hill Civic Center
- Nordstrom Park (Nordstrom Well)
- Outdoor Sports Center (San Pedro Well)

2. Award of Contract. In accordance with Government Code Section 4217.12, Contractor has submitted a Proposal to perform the Work to construct the Project. On June 26, 2024, via a Public Hearing, City made findings that the Project complies with Government Code Section 4217 *et seq.* and authorized award of this Contract to Contractor for the amount set forth in Section 6, below.

3. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.

- 3.1** Contract;
- 3.2** Subcontractor List
- 3.3** Payment and Performance Bonds
- 3.4** General Conditions;
- 3.5** Special Conditions;
- 3.6** Energy Services Proposal (ESP) Scope;
- 3.7** Notice of Award
- 3.8** Notice to Proceed

4. Contractor's Obligations. Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance

and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

5. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Seven Million Five Hundred and Eighty Three Thousand Five Hundred Dollars (\$7,583,500) (the "Contract Price"), for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, federal, state, and local taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
6. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 638 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
7. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Two Thousand Dollars (\$2,000) per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.
8. **Labor Code Compliance.**
 - 8.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
 - 8.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per

diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

- 8.3 Compliance.** The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, pursuant to Labor Code Section 1771.4.
- 8.4 DIR Registration.** The Contractor, along with its Subcontractors, is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
- 9. License Requirements.** This Project requires a valid California contractor's license for the following classification(s): Class B.
- 10. Subcontractor List.** The subcontractors used will be added to the Subcontractor List and mutually agreed upon by the City and the Contractor prior to the approval of the design documents and/or shop drawings. Each Subcontractor must be registered with the California DIR to perform work on public projects. Contractor must submit a completed Subcontractor List form, including the name, location of the place of business, California contractor license number and DIR registration number and percentage of the Work to be performed (based on the Contract price) for each Subcontractor who will perform Work or service or fabricate or install Work for the prime contractor in excess of one-half (1/2) of one percent (1%) of the contract price, using the Subcontractor List form included with the Contract Documents.
- 11. Workers' Compensation Certification.** Pursuant to Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 12. Conflicts of Interest.** Contractor, its employees, Subcontractors, and agents, may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code Section 1090 *et seq.*, or the Political Reform Act, as set forth in Government Code Section 81000 *et seq.* and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 13. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by

which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

- 14. Notice.** Any notice required by the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

Address of City:

City of Morgan Hill
Attn: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Email: michelle.bigelow@morganhill.ca.gov
Copy to: Public Services Director

Address of Contractor:

Name: Syserco Energy Solutions, Inc.
Attn: Scott Meinzen
Address: 215 Fourier Ave, Suite 140
City/State/Zip: Fremont, CA 94539
Phone: (510) 498-1171
Email: s.meinzen@syserco-es.com
Copy to: contracts@syserco.com

- 15. Performance and Payment Bonds.** Contractor will be required to provide performance and payment bonds each for one hundred percent of the Contract Price as further described in the Contract Documents.

16. General Provisions.

16.1 Assignment and Successors. Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

16.2 Third Party Beneficiaries. There are no intended third-party beneficiaries to this Contract.

16.3 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place. Contractor waives any right it may have

pursuant to Code of Civil Procedure Section 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.

- 16.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 16.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 16.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 16.7 Iran Contracting Act.** Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code Section 2200 *et seq.* (the “Act”), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 16.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313. If Contractor is a partnership, signature by a general partner with authority to bind the partnership is required. If Contractor is a limited liability company (LLC), a signature by a member or manager with authority to bind the LLC is required.
- 16.9 Electronic Signatures.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

[Signatures are on the following page]

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

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

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

CITY OF MORGAN HILL:

SYSERCO ENERGY SOLUTIONS, INC.

Christina J. Turner
City Manager

Signature

Date: _____

Majd Khelif, Chief Executive Officer

Date: _____

Attest:

Corporate entities must provide a second signature:

Michelle Bigelow
City Clerk

Signature

Date: _____

Derek Eggers, President

Date: _____

Approved as to Form:

991301

Donald A. Larkin
City Attorney

Contractor's License Number(s)

03/31/2026

Date: _____

Expiration Date(s)

Seal:

1000545743

Contractor's DIR Registration
Number(s)

6/30/2024

Expiration Date

END OF CONTRACT

SUBCONTRACTOR LIST

The subcontractors that will perform Work on the Project will be listed and mutually agreed upon by the City and the Contractor prior to the approval of the design documents and/or shop drawings.

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Contract amount, the Contractor must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, its DIR registration number, and the portion of the Work that the Subcontractor is performing based on a percentage of the Contract amount.

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER	DIR REG. NO.	LOCATION OF BUSINESS	LOCAL VENDOR ² YES/NO	PERCENT OF WORK

END OF SUBCONTRACTOR LIST

GENERAL CONDITIONS

Article 1 - Definitions

Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day,” or “working day.”

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

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

Bid shall refer to the proposal submitted by Contractor.

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

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

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

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

Contract means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the Notice of Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents. The Contract Documents do not include documents provided “For Reference Only,” or documents that are intended solely to provide information regarding existing conditions.

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

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

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

Day means a calendar day unless otherwise specified.

Design Professional means the Contractor who is providing both design and construction.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

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

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

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

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 *et seq.*

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

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

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

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

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the City-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract.

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

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or RFI means a Contractor’s written request for information about the Contract Documents, the Work, or the Project, submitted to City in the manner and format specified by City.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means design documents, drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

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

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

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

Work Day or Working Day, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by City.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 City.

(A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.

(B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.

(C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative for daily administration of the Project on behalf of City. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.

2.2 Contractor.

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

(B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism, or theft.

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

(D) **On-Site Superintendent.** Contractor must, at all times during performance of physical, on-site Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants, as necessary, who must be physically present or available as necessary at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** Contractor, its project manager, superintendent, and any primary Subcontractors requested by City, must attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements, and utilities, damage, and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials, or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee, Subcontractor, or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate, or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts, or equipment. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Plans, Specifications, and every other Contract Document, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly

correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include, but are not limited to, complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
- (2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7. The record-keeping

requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, Addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequately trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor. Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

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

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

perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code Section 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code Section 4107, as applicable.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform have performed or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to back charge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Engineer for review and acceptance, all schedules, Design Documents, Shop Drawings, samples, product data and similar submittals required by the Contract Documents,

or upon request by Engineer. Unless otherwise specified, all submittals, including Requests for Information (RFIs) are subject to the provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

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

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

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

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

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

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

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

2.6 Design Documents & Shop Drawings. When Design Documents and Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Design Documents and Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Design Documents and Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Design Documents and Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Design Documents and/or Shop Drawings, Contractor will not furnish materials or perform any Work until the Design Documents and/or Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Design Documents and/or Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of the Design Documents and/or Shop Drawings. Acceptance of Design Documents and/or Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

(A) ***Plans and Specifications.*** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental

to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the Plan(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify the City of the issue and request clarification, interpretation, or direction. The Engineer's clarification, interpretation, or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)

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

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

(E) ***Measurements.*** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) ***Compliance with Laws.*** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

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

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Appendix B- Federal Contract Requirements (only if used);
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Energy Services Proposal/Scope
- (J) Appendix A – Federal Bidding Requirements (only if used);
- (K) The City’s standard specifications, as applicable; and
- (L) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as Caltrans Standard Specifications or Caltrans Special Provisions.

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

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

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

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

- (1) Any reference to the “Engineer” is deemed to mean the City Engineer.

(2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.

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

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by the City or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code, or regulation in effect at the time the Contract is signed.

3.6 Conformed Copies. If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor’s responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor’s sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten days following issuance of the Notice of Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100 percent of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

(A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within

seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

(B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants, (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201. Contractor waives any right to express or implied indemnity against any Indemnatee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract through the date of City's acceptance of the Project. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City

reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

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

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

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

protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

to City for at least five (5) years after the completion of work performed under this Contract.

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

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

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

(D) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation. Contractor must confirm that each Subcontractor has complied with requirements as outlined herein. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

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

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

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

(G) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

Article 5 - Contract Time

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

(A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed

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

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

(A) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for review and acceptance a baseline as-planned schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) ***Specialized Materials Ordering.*** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

(B) ***City's Review of Schedules.*** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) ***Progress Schedules.*** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three week look-ahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment or when otherwise specified by City, until completion of the Work. The updated progress schedule must show: how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.

(1) ***Float.*** The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.

(2) ***Failure to Submit Schedule.*** Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code Section 7102.

(D) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

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

(F) **Posting.** Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office.

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

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

5.3 Delay and Extensions of Contract Time.

(A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters, including earthquake or

unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, supply chain material delays, permit approval delays, delays caused by utility companies (Pacific Gas & Electric ("PG&E"), encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

(1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.

(2) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

(3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

(D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:

(1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;

(2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;

(3) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;

(4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to the Contractor;

(5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers.

(6) performance or non-performance by Contractor's Subcontractors or suppliers;

(7) the time required to respond to excessive RFIs (see Section 2.5(G));

(8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;

(9) time required for repair of, re-testing, or re-inspection of defective Work;

(10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or

(11) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** Pursuant to Public Contract Code Section 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either City or Contractor, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, is not Compensable Delay, and will only entitle

Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

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

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

(2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. If the Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount of and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

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

(4) *Burden of Proof.* Contractor has the burden of proving that the delay was an Excusable or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion, and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(6) *No Waiver.* Any grant of an extension of Contract Time or compensation for Recoverable Costs due to Compensable Delay will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegate.

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

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

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

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

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs, or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in Work will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code Section 7101, except to the extent authorized in advance by City in writing,

and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) *Disputes.* In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to extra City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) *Extra Work.* City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next

Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

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

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

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

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

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

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

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or Changes referenced herein, and agrees that any costs, expenses, or time extension requests not included herein are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation only for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1 Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have previously been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs. will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs;

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

(1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs plus 15 percent markup;

(2) All direct material costs provided by the Contractor, including sales tax, plus 15 percent markup;

(3) All direct plant and equipment rental costs provided by the Contractor, plus 15 percent markup;

(4) All direct additional subcontract costs plus ten percent markup for Work performed by Subcontractors; and

(5) Increased bond or insurance premium costs computed at 1.5% percent of total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

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

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) ***Permits, Fees, and City Business License.*** Contractor must obtain and pay for all permits, fees, and licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

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

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage,

scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use, and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer, and all other utilities required for the Project site, including the piping, wiring, internet and Wi-Fi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use, and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release

from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

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

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

(1) Subject to City's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(C) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Engineer. The Engineer's written response will be final and binding on Contractor. If Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also Section 7.15 Trenching of Five Feet or More.

(E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

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

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

7.7 Substitutions.

(A) **"Or Equal."** Any Specification designating a material, product, or thing (collectively "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in

every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

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

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

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

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

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

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

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

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

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

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

(4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.

(5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or of noncompliant Work or material. Inspection or testing of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the

inspection(s) or testing required by the Contract Documents will be subject to rejection by City.

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

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

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

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

(B) ***Dust and Debris.*** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

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

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

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

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

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris., presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting, and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

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

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

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

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

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete, and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to the Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork, or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

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

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

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

7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code Section 4216 *et seq.*, which are incorporated by reference herein.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code Section 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

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

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

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

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

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to

bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(D) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by the City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

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

7.16 New Utility Connections. Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace, if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate

paleontological site, including fossilized footprints or other archeological, paleontological, or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5 or as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides, or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

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

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

7.20 Noise Control. Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

7.21 Mined Materials. Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 *et seq.*, any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining

operation included on the AB 3098 List, which may be accessed online at: <https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx>

Article 8 - Payment

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

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct, and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

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

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents. **Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.**

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due within thirty days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will

deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items. City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work, or any failure to protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due. City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work. City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(E) For any unreleased stop notice, City may withhold 125% of the amount claimed.

(F) For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

(G) For Contractor's failure to maintain or submit as-built documents in the manner specified or within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts.

(H) For Work performed without Shop Drawings, that has been accepted by the City when accepted Shop Drawings are required before proceeding with the Work,

City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.

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

8.5 Retention. City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's acceptance of the Project.

(A) **Substitution of Securities.** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code Section 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices,

or otherwise withheld pursuant to Section 8.3 Adjustment of Payment Application will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C) Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code Section 7107(c).

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

(A) ***Withholding for Stop Notice.*** Pursuant to Civil Code Section 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) ***Joint Checks.*** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment to Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City

exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

- 8.8 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts, subject to the limitations of Public Contract Code Section 7100. Any disputed amounts may be specifically excluded from the release.
- 8.9 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM
CITY MULTI FACILITY SOLAR PROJECT

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

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

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

Article 9 - Labor Provisions

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

9.2 Labor Code Requirements.

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

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

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

(D) ***Notices.*** Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Sections 1720, 1720.3, or 1720.9, including cleanup at the Project site, must 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>. Contractor must post a copy of the applicable prevailing rates at the Project site.

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

(B) ***Federal Requirements.*** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

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

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

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

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

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

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

9.5 Labor Compliance. Pursuant to Labor Code Section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

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

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been

exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions

of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

Article 10 - Safety Provisions

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

(A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

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

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

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos

or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with Section 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Law, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.

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

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

(A) ***Final Inspection and Punch List.*** When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for the Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

(B) ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) ***Acceptance.*** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) ***Final Payment and Release of Retention.*** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers, and manufacturers any special or extended warranties required by the Contract Documents.

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

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

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H) below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs City incurs to correct the defective Work.

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

(A) **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

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

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

Article 12 - Dispute Resolution

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

(A) **Definition.** “Claim” means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price when the demand has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.

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

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

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

(E) **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.

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

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents,

and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.).

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

- (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
- (2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.
- (3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim and include the following for each separate issue or Claim:
 - (a) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - (b) Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation above);
 - (c) A chronology of relevant events; and
 - (d) Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.
- (4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis

for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived.

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

(1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 15 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 15 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

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

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.7, Final Payment, above.

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

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code Section 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section

12.2(A), Substantiation, City may first request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

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

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response, or within 15 days of City's failure to respond within the applicable 45-day time period, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City in writing of the dispute, and demand an informal conference to meet and confer, within the specified time, Contractor's Claim will be deemed waived.

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

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

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

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

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, following

the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code Section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) Government Code Claims.

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

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

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

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

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

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

Article 13 - Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City, except for taking measures to protect completed or in progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with the Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default, due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor and its performance bond surety of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven calendar days from the date of the notice of termination, pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, under Section 13.4, below. Contractor

waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

(A) **Compensation to Contractor.** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation.

(1) **Completed Work.** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) **Demobilization.** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) **Termination Markup.** Five percent of the total value of the Work performed as of the date of notice of termination including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(B) **Disputes.** If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built

drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.

(5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings,

instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.
- 14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.
- 14.6 Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6 of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Design Documents & Shop Drawings.** Whenever Design Documents and/or Shop Drawings are required by the Contract Documents or by the Engineer, Contractor must submit five (5) prints of each design document and/or shop drawing to the Engineer.

(A) If three (3) prints of the design documents and/or shop drawings are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the drawings will not be required. If one (1) print of the drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor must revise the design documents and/or shop drawings and resubmit five (5) copies of the revised drawing to the Engineer. City reserves the right to withhold payment due Contractor to cover additional costs of the Engineer's review beyond the second submission.

(B) Fabrication of an item may not commence before the Engineer has reviewed the pertinent shop drawings and returned copies to Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."

(C) Revisions indicated on the design documents and/or shop drawings are deemed necessary to meet the existing requirements of the Contract Documents and may not be taken as the basis of claims for extra Work. Contractor is not entitled to claim for damages or extension of time due to any delay resulting from making the required revisions to shop drawings. The Engineer's review of the design documents and/or shop drawings does not relieve Contractor of responsibility for any errors or omissions contained in the design documents and/or shop drawings nor will such review operate to waive or modify any provision contained in the Contract Documents.

2. **Equipment.** Contractor must provide and use equipment and plants suitable to produce the quality of Work and materials required by the Contract Documents. Contractor may be required to remove equipment which the Engineer deems unsuitable for the Work. Contractor must ensure that equipment is operated by trained, experienced operators, and at a speed or rate of production not to exceed that recommended by the manufacturer. Any vehicles used to haul materials over existing streets and highways must be equipped with pneumatic tires.

3. **Emergency Contact.** Prior to the commencement of Work on the Project, Contractor must provide contact information to the Engineer for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible

for responding to the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

4. Authorized Work Days and Hours.

(A) **Authorized Work Days.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:
Monday - Friday

(B) **Authorized Work Hours.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:

7:00am to 5:00pm

5. Pre-Construction Conference. City will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between City and Contractor will be discussed, and Contractor must present City with the following information or documents at the meeting for City's review and acceptance before the Work commences:

- 5.1** Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
- 5.2** List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
- 5.3** Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses, and other operations in the Project vicinity;
- 5.4** If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;
- 5.5** Draft baseline schedule for the Work as required under Section 5.2 of the General Conditions, to be finalized within ten days after City issues the Notice to Proceed;
- 5.6** Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;

- 5.7 Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
- 5.8 Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
- 5.9 Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;
- 5.10 If requested by City, Contractor's cash flow projections; and
- 5.11 Any other documents specified in the Special Conditions or Notice of Award.

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

- (A) **Weather Delay Day.** A Weather Delay Day is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than forty percent (40%) of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Worksite clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule.
- (B) **Normal Weather Delay Days.** Based on historic records for the Project location, Contractor's schedule should assume the following number of normal Weather Delay Days for each month:

Month	# Normal Weather Delay Days
January	11
February	11
March	10
April	6
May	4
June	2
July	1
August	1

September	1
October	4
November	7
December	10

Weather Delay Days which do not occur during a given month based on the number of days allocated for that month (above) do not carry over to another month.

END OF SPECIAL CONDITIONS

Energy Services Proposal/Scope

Section 1 – Scope of Work Overview

1.1. Energy Conservation Measure (ECM) Summary

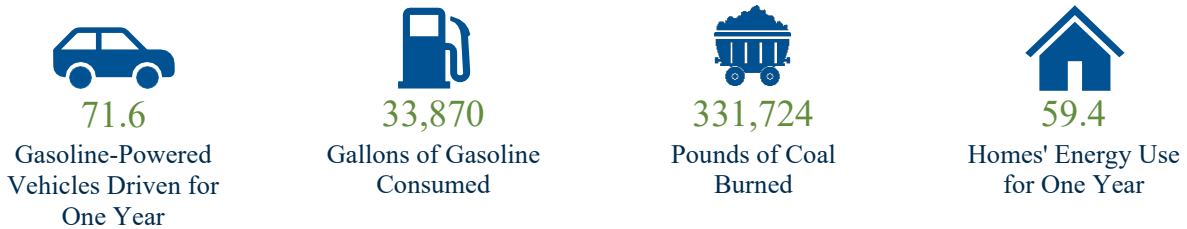
For detailed descriptions of the scope of work, please refer to *Section 2 – ECM Descriptions and Detailed Scope of Work*.

1.1.1. Savings by ECM

The following table depicts cost savings and emissions reductions per proposed ECM.

ECM #	ECM Description	Electric Savings (\$/yr)	Emissions Savings (mtCO ₂ /yr)
11.01	Install Solar PV System	\$530,770	302
	Total ²	\$530,770	302

For comparison, 302 metric tons of Carbon Dioxide (CO₂) equivalent to greenhouse gas emissions from:



² *Projected energy reduction and cost avoidance figures are calculated based upon existing building occupancy, operation, and stipulated assumptions of performance. All calculations are based upon industry best practices and methodologies.*

1.1.2. Savings by Site

The following table displays the description of energy savings per proposed site.

Site Name	Elec Savings (kWh/yr)	Elec Cost Savings (\$/yr)
Aquatics Center	354,078	\$111,154
Sports Well	149,700	\$64,399
City Hall Complex	230,562	\$97,046
Community & Cultural Center	288,229	\$104,130
Corp Yard	140,802	\$53,265
Police HQ	186,282	\$56,195
Nordstrom Well	135,565	\$44,579
Total	1,482,308	\$ 530,770

The projected energy reduction and cost avoidance figures were calculated based upon existing building occupancy, operation, and stipulated assumptions of performance. Legacy utility billing was derived from city-generated reports and data provided directly by Pacific Gas & Electric (PG&E). All calculations are based on industry best practices and methodologies.

1.2. Clarifications and Exclusions

1.2.1. Clarifications

- Electrical work requiring an electrical shut down shall be installed outside of operational hours of the specific facility impacted. This work will be coordinated with the City to minimize the impact. City shall not unreasonably withhold approval of this work with provision of advance notice. The Morgan Hill Police Department is a 24 hour facility and any shut downs will require a minimum of 2 weeks advance notice. Any scheduled shut down at the Police Department may be cancelled without notice in the event of emergency need.
- SES will work closely with City staff to identify any areas that may require after-hours work. SES will review the project schedule with City staff to ensure mutual agreement is reached regarding site access and City-approved work in occupied spaces.
- The City shall provide all required static IP addresses and ethernet drops for equipment where applicable and required.
- The City shall provide a laydown and storage area during the construction period.
- It is assumed that the electrical circuit breakers and disconnects are working in good order and are fully functional.
- The City shall provide electrical power to operate electrical construction tools and equipment.
- It is assumed proper grounding exists for all electrical equipment.
- The City will provide our team with two (2) sets of facility keys during the construction period for each facility. For the Morgan Hill Police Department access to necessary areas will be coordinated through the Police Department.
- Assumed that City will perform all necessary tree work a minimum of 4 weeks prior to the start of installation of carport/shade structure columns. Details of timing will be finalized once a Preliminary Schedule is agreed upon.

1.2.2. Exclusions

- Provision of temporary heating, cooling, fans, and domestic water.
- Any repair work for existing systems beyond that which is stated in the project scope of work, or resolving existing code violations. All existing equipment is assumed to be in good working order and meet code.
- Fire and life safety system programming or related work.
- ADA improvements for carport shade structures.
- Tree removal, trimming or relocation.
- Electric Vehicle Charging stations, infrastructure, installation, or any other requirements related charging infrastructure.
- Hazardous material abatement.

Section 2 – ECM Descriptions & Detailed Scope of Work

2.1. Introduction

The following section is a detailed description of each proposed solar PV array. Each description includes the existing and proposed conditions, planned scope of work, and any impacts to operations and/or maintenance.

Solar ECMs

ECM 11.01 – Solar Photovoltaic System (Solar PV)

Existing Conditions and General Intent

The designs of the new solar arrays were developed to offset as much of the City's overall electricity use and costs from PG&E and Silicon Valley Clean Energy (SVCE) as feasible, taking into consideration the most ideal locations and beneficial use of the systems by the City. Equipment location, identification, and selection is the result of our detailed review of the sites, the City's building plans, specifications, physical equipment arrangements, and discussions with City staff.

These new solar PV arrays are intended to reduce the annual true-up energy consumption and cost relative to the PG&E and Silicon Valley Clean Energy bills. This will help the City to become less dependent on grid purchased electricity via local power generation and reduce the City's overall carbon footprint.

This project will design, furnish, and install new solar PV carport shade structures at six (6) sites and a shade structure at (1) site. These new systems will bring each site closer to a net zero energy balance relative to the grid-purchased electrical energy.

A separate service agreement with Syserco Energy Solutions, Inc. (SES) will be provided for ongoing monitoring services for the new arrays being installed.

Solar Benefits

The benefit to the City is a reduced electrical need by providing on-site solar production to offset the volume of electrical energy purchased from the grid.

Site Details

Site Name	Nominal Array Size (kW_DC)	Mounting Type
Aquatics Center	225.9	Car Port
Sports Well	97.9	Car Port
City Hall Complex	151.8	Car Port
Community & Cultural Center	186.3	Car Port
Corp Yard	93.1	Car Port
Police HQ	119.0	Car Port
Nordstrom Well	93.1	Shade Structure
Total	967.1	

The following images show the proposed location of the solar arrays with blue rectangles and the electrical point of interconnection with a red box.

Aquatics Center – 225.9 kW_DC– Car Port



Sports Well – 97.9 kW_DC– Car Port



City Hall Complex – 151.8 kW_DC – Car Port



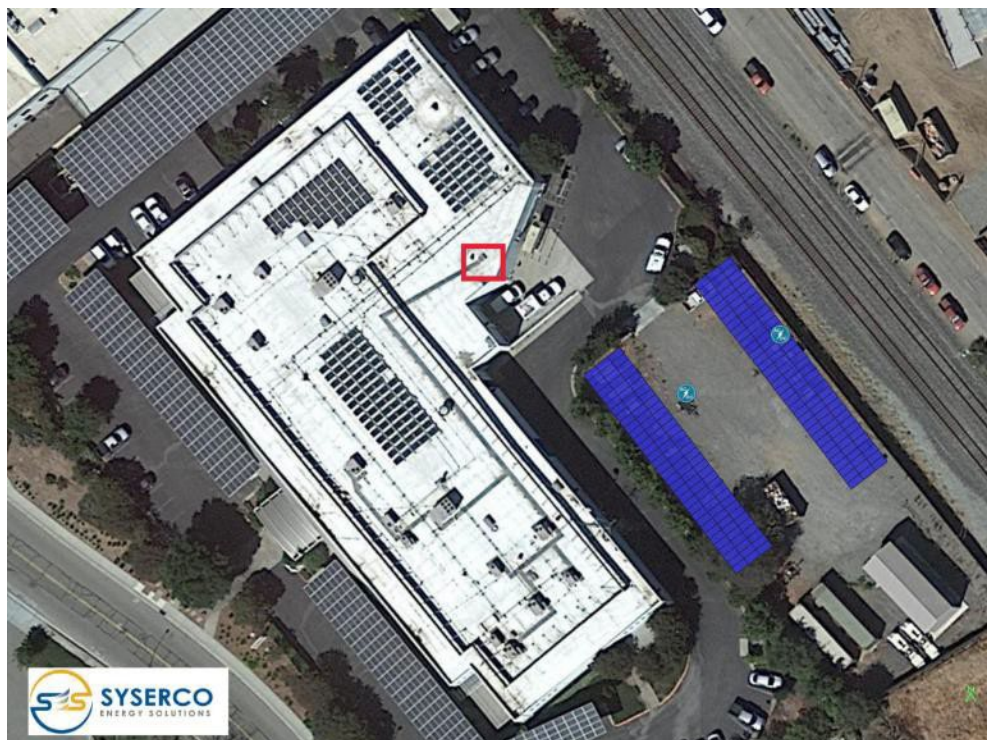
Community & Cultural Center – 186.3 kW_DC– Car Port



Corp Yard – 93.1 kW_DC – Car Port



Police HQ – 119.0 kW_DC – Car Port



Nordstrom Well – 93.1 kW_DC – Shade Structure



Assumed Conditions

1. All field craft labor will comply with prevailing wage requirements, current California Department of Industrial Relations (DIR), and Federal Investment Tax Credit / Inflation Reduction Act requirements.
2. The City shall provide all IT support required for the installation of solar PV and interface systems for this project.
3. All structural engineering related to the support of equipment as identified is included. All structural work related to the construction of the canopy structure is included.
4. All permit drawings required for the execution of the work are included.
5. The City shall provide electrical power to operate electrical construction tools and equipment.
6. Pricing is based on a single-mobilization project, multiple phases or extensions to schedule may constitute a change in scope and project schedule.

Customer Furnished/Performed Items

1. All as built drawings or site-specific information available to the City necessary to effectively design, engineer and construct the renewable energy solution including but not limited to past site plans, all existing utilities (including irrigation infrastructure), permits for past work, etc.
2. Water as needed to complete the work. Construction services and, if it is required by the authority having jurisdiction, to fill any fire safety water tanks.
3. Provide and maintain a suitable good-weather site access road that will accommodate heavy vehicles, deliveries, and service vehicles. SES has determined that existing conditions meet these criteria as of June 19, 2024.
4. Provide mutually acceptable construction staging and storage area(s) adjacent to project sites throughout the construction phase.
5. Provide unrestricted access to the Site during construction Monday through Friday including hours (7:00 am – 5:00 pm). Reasonable access to sites during non-regular hours as needed.
6. Lab of Record (LOR), Inspector of Record (IOR), and special inspections.

Design Phase

1. The solar PV schematic design aims to meet the targeted electrical production outlined in the City approved in this scope of work. The design plans will be based on technical documents developed for each site. It will be based on accurate and detailed modeling of system production and consideration of shading analysis or other site constraints using industry-standard tools. The design plans will include sufficient detail to analyze and discuss critical design decisions and the system layout will only utilize areas identified by the City for use.
2. Design development and complete construction drawings of the solar PV and all ancillary work required for permitting and construction will be provided by SES. Drawings shall fully describe all aspects of the construction work including fencing, directional boring/trenching, excavations, racking and mounting systems, electrical systems, signage, foundations, lighting, Americans with Disabilities Act (ADA) requirements, etc. SES will provide electrical, structural, and all other required California licensed engineers and/or architects (Engineers of Record and Architect of Record) to provide a complete, stamped design set as required to permit and construct a complete energy project submittal for the authority having jurisdiction (AHJ). The electrical construction drawings shall show and include all conduits below and above the finished grade/finish. All plans and specifications must meet the approval of AHJ, the City, the City's representative, the local Fire Authority, and any other agency deemed as having jurisdiction over this project.
3. All designs shall identify and specify equipment meeting industry standards. Manufacturers and equipment types specified shall have an established background of successful use within similar sized installations.
4. SES shall submit Building Permit Application cover sheet by 6.28.23. This application shall be submitted prior to Notice to Proceed if necessary based on existing design development work.
5. Designs shall replace existing lighting with under canopy lighting providing levels equivalent or exceeding the current lighting levels at the sites.
6. Designs shall ensure no net loss of parking spaces in sites with public parking lots.
7. Designs shall incorporate all existing conditions and existing utilities and be developed to ensure that no additional costs are incurred by the City to alter existing conditions.
8. Designs shall ensure that existing conditions outside the improvements specified in this section are restored to pre-existing conditions.
9. SES shall be responsible for submission of all applicable permits associated with the project. City shall pay directly for City building permit costs. Any non-City permit costs shall be the responsibility of SES.

Construction Phase

1. SES will provide and install the following:
 - a. PV racking
 - b. PV modules
 - c. PV inverters
 - d. Balance of System components
 - e. Attachments/Foundations
 - f. Data collection and online monitoring system with a five (5) year monitoring service subscription, a five (5) year cellular service plan, and inputs such as irradiance, panel temperature, ambient temperature, and utility grade production.
 - g. Interconnection work includes connection of systems to utility grid at the main switchboard of each site.
2. SES will provide the utility Interconnection Application (IA), process management, materials, and coordination for inspection from the local utility. The IA process includes a utility application review phase.
3. SES' project manager will be assigned for the duration of the project through final completion. Regular coordination meetings (via conference calls or on-site visits) will be facilitated by the project manager. The assigned project manager will create a project schedule with a City representative utilizing project constraints and information revealed during due diligence activities within the design and engineering phase.

The project schedule will include these phases sequentially:

- a. Design, engineering, interconnection application phase.
 - b. Permitting phase.
 - c. Procurement phase.
 - d. Construction phase.
 - e. Commissioning phase.
 - f. Close-out phase.
4. SES will coordinate with and support scheduled inspectors representing the City, City's team, and their consultants during design, construction, commissioning, and close-out.
 5. SES is responsible for and will address new lighting, soft scape modifications that are required for the installation of the energy projects.
 6. All work assumes normal subsurface and digging conditions. The City acknowledges that SES has not yet performed subsurface due diligence or a geotechnical engineering analysis and therefore makes no representation of knowing the impact of the results of the geotechnical study upon the scope, cost, or schedule of the proposed project. If, prior to the completion of the Design Phase any of the sites are deemed to be infeasible in commercially reasonable discretion of the City after consultation with SES, such site shall be removed from the portfolio and the total Fixed Price shall be adjusted based on the size of the balance of the portfolio through a deductive contract change order.

7. SES shall be responsible for restoring all facilities to existing conditions outside of the improvements specified.
8. SES will perform project commissioning including all associated tasks.
9. Final energy system as-built construction documents clearly conformed with all changes during construction shall be provided.
10. SES will provide a comprehensive set of closeout documents, including O&M manuals for each installed system.
11. SES will conduct training for City staff including orientation to the O&M manuals, systems, and safety procedures.
12. SES will secure laydown and storage facilities at the job site for all racking materials, energy system equipment, and supplies including any required security.
13. SES will provide legal toilets and handwashing facilities at job sites.
14. SES will provide a SWPPP (stormwater pollution prevention plan) for each site.
15. SES will perform daily cleanup to “broom clean” conditions.
16. SES will return any disturbed areas to pre-construction conditions including repair of all pavement/concrete, landscape restoration, irrigation restoration, equipment track marks, and scuffs on finished concrete surfaces.
17. SES will provide project closeout, inclusive of obtaining AHJ final inspection and closeout.
18. As needed, SES will provide temporary lighting until under-canopy lighting is fully operational.
19. SES shall prepare and provide all necessary material and documentation for the application of the Inflation Reduction Act Tax Credit. City shall be responsible for submitting the final documentation.

Exclusions

1. ADA Upgrades.
2. Any upgrades determined after due diligence after Contract Effective Date by the AOR will be managed through the process laid out in the contractual documents.
3. Engineering, installation, and maintenance of permanent stormwater facilities and features if required, which includes the best management practice mitigations including but not limited to riprap, basins, inlet structures, and down inlet protections.
4. Multiple mobilizations, except relating to weather delays and delays caused by SES.
5. Environmental engineering and/or any environmental/biological remediation.
6. Floodplain engineering and/or any alterations to site and materials to accommodate floodplains.
7. Service upgrades, electrical service equipment, or new services.
8. Changes to project design and implementation required to accommodate easements and/or rights of way not listed in the scope of work.
9. Environmental assessment, environmental impact reports, testing, and other reports not listed in the scope of work.
10. Any design or engineering related to flood plains and/or FEMA high-hazard floodplains.
11. Relocation and/or removal of any existing utilities (active or abandoned), inclusive of water, electricity, communication, data, cable TV, security systems, etc. Relocation and repair of irrigation on association with installation of foundations is not excluded from costs.
12. Hazardous material surveys, testing, and/or monitoring.
13. Removal and/or disposal of any hazardous or contaminated materials.
14. Rock excavation and drilling.
15. Soft soil stabilization.
16. Dewatering drilled foundations and sleeving of foundations.
17. Removal/disposal of pre-existing on-site trash and/or debris (inclusive of encountered underground or excavated trash or debris).
18. Arc Fault Hazard Assessment.
19. Overcurrent Protection Coordination Studies.
20. Lab of Record (LOR), Inspector of Record (IOR), and special inspections.

Section 4 – Project Financials

4.1. Items Included in Project Cost

Project costs include:

1. Engineering audit/project development including the cost for preparation of this proposal.
2. Engineering design
3. Construction/project management and site supervisor services.
4. Installation of equipment as specified in the scope of work:
 - a. All costs will be paid by SES for the installation of the equipment. This includes costs paid to subcontractors, team member reimbursements, or otherwise as it relates to the installation or system verification of equipment.
 - b. Cost of all equipment, materials, supplies, and equipment incorporated in the scope of work, including costs of transportation thereof.
 - i. Cost or rental charges including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers.
 - ii. Cost of premiums for all bonds and insurance.
 - iii. Demolition cost and cost of removal of all debris.
 - iv. Cost of equipment startup, training, system verification, and balancing performed by SES.
5. Mobilization, project development, and engineering fee:
 - a. Invoices shall be made per the contract, the engineering and mobilization phases shall account for 25% of the total project value. Mobilization costs shall not be paid until after mobilization occurs.

RESOLUTION NO. 24-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL MAKING FINDINGS ON AN ENERGY
SERVICES CONTRACT FOR AN ENERGY EFFICIENCY
PROJECT REQUIRED UNDER CALIFORNIA
GOVERNMENT CODE SECTION 4217.10 ET SEQ. AND
AUTHORIZING AN ENERGY SERVICES CONTRACT**

WHEREAS, California Government Code section 4217.12 permits the City to enter directly into an energy services contract to design and construct energy conservation facilities if the City Council finds at a regularly scheduled public hearing noticed at least two weeks in advance that “the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases”;

WHEREAS, the City signed a letter of intent with Syserco Energy Solutions, Inc. to evaluate a project to install solar photovoltaic installations at seven City owned facilities;

WHEREAS, the project will effectively reduce electrical costs and help reduce greenhouse gas emissions associated with the production of electricity from conventional power plants;

WHEREAS, Syserco Energy Solutions has provided the City with analysis showing the benefits of implementing the project, and the analysis is included in the staff report associated with this resolution;

WHEREAS, City staff has determined that the cost of energy after completion of the project will be less than the cost of energy that would have otherwise been without this project, and that therefore, this project can be accomplished under the authority of California Government Code 4217;

WHEREAS, the City proposes to enter into an Energy Services Contract for the design and construction of solar photovoltaic systems at seven locations within the City for compensation not to exceed \$7,583,500;

WHEREAS, in accordance with Government Code section 4217.10 et seq., not less than fourteen days before the meeting where this Resolution was considered, the City posted notice of a public hearing at which the City Council would consider this Resolution.

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

Section 1. Energy Savings Finding (Gov. Code, § 4217.12) In accordance with Section 4217.12, and based on data provided by the energy analysis, the City Council finds that the anticipated cost to the City for electrical energy and conservation services provided by the Energy

Improvements will be less than the anticipated marginal cost to the City of electrical and other energy that would have been consumed by the City in the absence of the project.

Section 2. Approval of Energy Services Contract. The City Council hereby authorizes the City Manager to enter into the Energy Services Contract with Syserco Energy Solutions, Inc., in accordance with Section 4217.12.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 26th 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. 24-_____ adopted by the City Council at the meeting held on the 26th day of June 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Citywide Solar Projects Tree Impacts by Location

Civic Center



10 American Elm Trees

City will attempt to relocate all 10 trees on site at the Civic Center. If relocation of any trees fails, new trees shall be replanted.

Additional tree trimming of other trees may be required.

Community and Cultural Center



3 Ornamental Pear Trees

Trees will be replaced on site with new trees.

Additional tree trimming of other trees may be required.

Morgan Hill Police Department



14 Marina Arbutus Trees

1 Oak Tree

Trees will be replaced off site at a City park with new trees. These trees are remnant property line trees from prior to the City owning the gravel lot. For efficient and effective use of the site the staff is not recommending they be replaced on site.

Aquatics Center



9 Sawtooth Zelkova Trees

City will attempt to relocate all 9 trees to the adjacent Outdoor Sports Center. If relocation of any trees fails, new trees shall be replanted.

Additional tree trimming of other trees may be required.

Outdoor Sports Center/San Pedro Well



4 Eastern Redbud Trees

City will attempt to relocate all 4 trees to the adjacent Outdoor Sports Center. If relocation of any trees fails, new trees shall be replanted.

Additional tree trimming of other trees may be required.

Nordstrom Park/Nordstrom Well



9 Ornamental Pear Trees

3 London Plane Trees

City will attempt to relocate all 12 trees to the adjacent Outdoor Sports Center. If relocation of any trees fails, new trees shall be replanted.

Additional tree trimming of other trees may be required.

Corporation Yard – No Tree removals

CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Matt Mahood, Economic Development Director

APPROVED BY: City Manager

AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HOTEL MOHI BY APPELLATION FOR A TRANSIENT OCCUPANCY TAX AND SALES TAX SHARING AGREEMENT

RECOMMENDATION(S)

Authorize the City Manager to prepare and execute a Transient Occupancy Tax (TOT) and Sales Tax Sharing Agreement for the Hotel MOHI by Appellation project based on the Draft Deal Points as memorialized by KMA.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

Economic Development and Tourism

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Policy Consideration

Should the City of Morgan Hill provide a Transient Occupancy Tax (TOT) and Sales Tax Sharing Agreement to support the upgrade of the hotel brand and the range of offerings of the Downtown boutique hotel to increase the City's share of TOT and Sales Tax revenue?

Background:

The City of Morgan Hill's 2017 Economic Blueprint identifies tourism as one of four key industries the City should prioritize to further economic development opportunities. During the 2024 City Council Goal Setting Session, the Council added tourism to the Economic Development Strategic Priority within the City's 2024-25 Sustainable Morgan Hill Strategic Priorities to strengthen the City's focus on supporting efforts that advance the City's goals for tourism.

Hotel Inventory & Future Product Development

One of the most substantial impacts the City can have on positively impacting its tourism strategy is to grow and diversify its lodging options both in quality and quantity. Currently, the City of Morgan Hill does not have a full-service hotel. A full-service hotel is a mid-priced, upscale, or luxury hotel with a wide range of amenities, including (a) restaurant(s), meeting spaces, and, in some cases, exercise rooms, spas, and concierge service. Full-service hotels generally offer food and beverage services, special events, and minimum service levels like valet parking, bell service, and room service. Most of the existing hotel inventory is older and needs re-investment. Currently, the City of Morgan Hill is losing corporate, group, and leisure travelers to nearby cities due to the lack of a full-service hotel or the lack of high-quality and newer hotel products. These travelers often stay at full-service hotels in San Jose, Los Gatos, Palo Alto, or the Monterey Peninsula.

Economic Conditions

Before the COVID-19 pandemic, the City of Morgan Hill hotel industry was experiencing record occupancy and solid average daily revenue (ADR) rates. However, while leisure travel has experienced a significant rebound post-pandemic, the business travel sector, which the City of Morgan Hill and the greater Silicon Valley has historically benefited from, has not rebounded as quickly. More importantly, post-pandemic, the costs of new hotel construction have skyrocketed. The cost of materials, labor, supply chain issues, and high interest rates all make the construction of a new hotel increasingly difficult. Many hotel projects have seen their construction costs increase 30 to 40 percent, making it difficult for projects to secure lines of credit and bank financing. At least three (3) very high-profile, well-financed developers have delayed plans to build new full-service hotels in Cupertino and Santa Clara until the economic conditions improve. To support hotel development, in 2022, the City created a [Hotel Incentive Policy](#) (HIP) that allows the City to use hotel revenue to incentivize new hotel development and/or upgrade existing hotels to more upscale brands. The HIP offers for a hotel rebate program for up to 50% of the costs associated with offsite/public improvements such as roadways, sidewalks, utility undergrounding, and other offsite improvements required for a new hotel in a greenfield development. During the development of the HIP, the City Council encouraged City staff to pursue full-service hotel development. The opportunity with Appellation furthers the Council's direction and provides for the development of a full-service luxury hotel brand.

Hotel MOHI Project History and Status

In 2016, Downtown Boutique Hotel developer and owner Frank Leal (Developer) received a Design Permit and a Conditional Use Permit approval from the Planning Commission for a 60-room Downtown Hotel. The approvals included a new 67,940 square foot, four-story building with restaurants, bars, retail, banquet hall, and a hotel lobby with guest rooms, services including valet parking and amenities. The Conditional Use Permit allows for an outdoor green event space, banquet rooms, and ancillary prep kitchens with one main kitchen to serve the hotel. The hotel also included a pool with an outdoor lounge area. The City Council approved the project on May 18, 2016, and construction commenced in March 2019.

In March 2020, the COVID-19 pandemic halted construction and decimated the hospitality and lodging industries. The project, which completed all underground and utility work and two floors of foundation work, became a popular pop-up restaurant while the developer pursued additional construction financing. To complete the project, the developer requested the addition of a partial fifth story to gain an additional thirteen (13) new guest rooms.

On November 15, 2022, the City Council approved a Zoning Map Amendment allowing for the additional 5th floor. As a condition of approval, the City required the developer to enter into a [Memorandum of Understanding \(MOU\)](#) to further define the parties' expectations, parameters, and project timeline moving forward, including commencement of construction and completion of the hotel rooms. To date, the conditions of the MOU have been met, and the project is back under construction. It is important to note that the hotel and restaurant project, initially budgeted to cost \$16 million in 2016, went up to \$40 million by 2022 and is now expected to cost over \$75 million. This represents an increase of over 87% in total development costs since 2022. Due to the current economic environment, the rising costs of construction, and the state of the capital markets – the subject property is at risk of meeting the levels of investment metrics required to successfully achieve full capitalization and completion of development.

Opportunity

While the construction costs have increased significantly, the developer is committed to meeting the terms of the MOU and completing the hotel rooms by December 2025. The purpose of this staff report is to present the City Council with a unique opportunity to partner with the developer to attract the investment and partnership of a hotel and restaurant brand that will elevate the Downtown hotel, increase projected TOT and Sales Tax revenue, and cement the City's place branding as a tourist destination.

For several years, the City's Economic Development team has been pursuing brands that would increase the City's profile on the culinary and hospitality front. Charlie Palmer is one of these brands. Charlie Palmer is an American chef, hospitality entrepreneur, hotelier, and author. He is best known for Aureole, his flagship restaurant in New York City, which earned 13 Michelin stars and two James Beard awards. Chef Palmer is credited with having earned over 20 Michelin stars. Charlie Palmer and Christopher Hunsberger are co-founders of Appellation Hospitality. Chef Palmer and Mr. Hunsberger started working together on their first hotel 20 years ago and, after five dozen hotels, have launched the [Appellation Hospitality brand](#), which is focused on culinary excellence with access to world-class artisans and offering an accessible luxury experience with a sense of place and community.

There is a unique opportunity to support the union of Hotel MOHI with Appellation Hospitality to upgrade the Downtown Boutique Hotel offerings with an upgrade in brand and recognition with a world-renowned chef, create a state-of-the-art restaurant in Downtown Morgan Hill, and upgrade the lodging experience. The developer has negotiated with Charlie Palmer and the Appellation Hospitality Group and has

collectively identified a unique opportunity to re-brand and upgrade Hotel MOHI to Hotel MOHI by Appellation. The new hotel development group has approached the City with the opportunity to support this project that will benefit the City in name recognition, revenue, and amenities. The project requires financial assistance in the form of a TOT and Sales Tax Sharing Agreement to support the increased costs--some of which are directly associated with the upgrade and build-out required by the Appellation Hospitality group. To evaluate the opportunity, the City engaged the services of Keyser Marston Associates, Inc. (KMA), a financial consultancy firm.

Hotel MOHI by Appellation Scope

1. An approximately 76-room boutique hotel (assumes 3 more rooms than currently designed);
2. Food and beverage service areas totaling approximately 14,000 square feet of gross building area (GBA);
3. Event space totaling approximately 11,000 square feet of GBA;
4. An approximately 2,100 square foot spa; and
5. A swimming pool and pool deck area.

Project Review

KMA was asked to identify the project financial gap, projected revenues from the upgraded hotel and restaurant, and a financial package that secured increased financial gain by the City while limiting its financial risks. KMA performed the following tasks as part of the project analysis:

1. Reviewed the development plans for the Proposed Project;
2. Prepared a comparative cost analysis for constructing the proposed development scope versus the cost associated with constructing a typical limited-service hotel;
3. Compiled market data to assist in projecting the achievable room rates; and
4. Prepared a 15-year projection of the transient occupancy tax (TOT) and sales tax revenues that could potentially be generated by the Proposed Project under current market and financial conditions.

KMA Financial Analysis

The KMA financial analysis showed that the hotel, as a limited-service hotel, has a gap of approximately \$3 million. The Hotel MOHI by Appellation shows a total project gap of approximately \$9 million. The estimated development costs of the project are \$75.75 million. These development costs include the previous investment of nearly \$20 million. The analysis assumes an increased hotel room rate from \$170 per night for a limited-service hotel to \$296 per night for the proposed luxury boutique hotel. The rates are projected to increase at a 3% average annual rate. The commercial operation of the Proposed Project assumes revenue that ranges between \$600 to \$950 per square foot of areas associated with the food and beverage, meeting and event space, and spa.

Financial Assistance

Based on those assumptions, KMA is recommending that the following assistance package be provided by the City:

1. The City's assistance to the Proposed Project will be measured in terms of the TOT

and sales tax revenues generated by the Proposed Project.

2. The City's assistance will be provided for a 15-year term, commencing in the first year of the Proposed Project's operation.

3. Before any funds are distributed to the Proposed Project, the City will receive the following share of the TOT and sales tax revenues generated by the

Proposed Project:

a. A \$282,000 base will be applied in the first year of the Proposed Project's operation; and

b. The base will be increased by 3% annually.

4. During the 15-year term, the City assistance will be structured as follows:

a. An amount equal to 100% of the TOT and sales tax revenue generated by the Proposed Project above the base level will be provided to the Proposed

Project each year until the Proposed Project has received \$6 million measured in net present value terms.

b. After the developer receives \$6 million in assistance in net present value terms, the City assistance will be reduced to 50% of the TOT and sales tax revenue generated above the base level until the end of the 15th year of the Proposed Project's operation.

5. In the event the developer defaults on any of the development scope and/or operational standards imposed by the City assistance agreement, and that default is not cured within a defined time period, the City assistance payments to the Proposed Project will terminate.

Economic Impact

The KMA analysis shows the economic benefit of partnering to secure the delivery of the Hotel MOHI by Appellation project. The benefits include:

1. Increase in TOT and Sales Tax generation;
2. A lifestyle luxury hotel that receives a rating of four stars or greater;
3. A Charlie Palmer restaurant;
4. Commercial and event spaces that are compatible with a luxury lifestyle hotel; and
5. Increased brand recognition

Ultimately, delivering a full-service hotel and high-end restaurant in Downtown Morgan Hill would be transformative for the City and business community, especially the Downtown district. In addition to the direct financial impact described above, the subject property would also directly contribute to a broader multiplier effect of economic growth in the City of Morgan Hill and elevate the City's overall appeal and reputation as a destination market. The addition of Morgan Hill's premier hotel offering and the association with Appellation Hotels and celebrated restaurateur and hotelier Charlie Palmer will undoubtedly be a defining moment for the City of Morgan Hill.

Conclusion

TOT and Sales Tax sharing agreements can help improve a project's viability. Many local jurisdictions have used these types of agreements to ensure a project is completed, and it is financially viable during its multiple-year start-up period. The City of Morgan Hill has used Sales Tax rebate programs to help attract and assist in developing several businesses, including Target, The Ford Store Morgan Hill, Honda of Morgan Hill, and Morgan Hill Chrysler Dodge, Ram & Jeep. These businesses have

ultimately exceeded the anticipated Sales Tax revenue generation and positively contributed to the City's General Fund.

The City developed a Hotel Incentive Program to support construction and upgrade of existing hotels. The opportunity to partner with Appellation Hospitality and deliver a full-service hotel is consistent with the previous direction of the City Council. The proposed financial package by KMA limits the City's financial risk while supporting a project that will be catalytic for Morgan Hill. KMA's recommended TOT and Sales Tax Sharing Agreement secures an enhanced revenue of \$82,000 annually (above the previously anticipated \$200,000) plus a 3% annual increase capped at 15 years with a reduced share of 50% split above base after \$6 million. The financial assistance package will cease if the project defaults on the development scope and/or operational standards of a four-star hotel.

Staff recommends the City Council authorize the City Manager to execute a Transient Occupancy Tax (TOT) and Sales Tax Sharing Agreement for the Hotel MOHI by Appellation project based on the attached Draft Deal Points parameters.

COMMUNITY ENGAGEMENT:

This report serves to inform the community of the proposed agreement.

ALTERNATIVE ACTIONS:

Alternatively, the City Council could decide to provide an alternative incentive or no incentive for the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2016, the developer received a Design Permit and a Conditional Use Permit approval from the Planning Commission for a new 60-room Downtown Hotel. The project was approved by the City Council on May 18, 2016, and construction commenced on March 2019.

In August 2022, to encourage new hotel investment and reinvestment, the City Council adopted a Hotel Incentive Strategy & Program (HIP). The intent of the HIP was to provide rebate incentives to encourage the construction of new hotel development and the rehabilitation and upgrade of existing hotels.

On December 7, 2022, the City Council adopted Ordinance No. 2339, approving a Zoning Map Amendment for a Planned Development Combining District on the site, to allow for the additional 5th floor.

FISCAL AND RESOURCE IMPACT:

The proposed TOT and Sales Tax Sharing Agreement poses no financial risks to the City and secures added revenue of \$82,000 annually above previous projections. If the project meets its financial targets, the City anticipates increasing the TOT and Sales Tax revenue from the project.

CEQA (California Environmental Quality Act):
Not a Project as a governmental fiscal activity.

DRAFT DEAL POINTS
PROPOSED HOTEL MOHI BY APPELLATION
JUNE 12, 2024

CONSTRUCTION AND OPERATIONAL STANDARDS

1. A Scope of Development will be included in the City of Morgan Hill (City) assistance agreement. The “Project” will be required to consist of the following uses:
 - a. An approximately 76 room boutique hotel;
 - b. Food and beverage service areas totaling approximately 14,000 square feet of gross building area;
 - c. Event and meeting space totaling approximately 11,000 square feet of gross building area;
 - d. An approximately 2,100 square foot spa; and
 - e. A swimming pool and pool deck area.
2. The hotel must meet and maintain the quality standards associated with a four star or above lifestyle luxury hotel. A list of comparable hotel brands shall be identified as part of the agreement between the City and the development team.
3. One restaurant within the Project must meet and maintain the scope, construction quality, and operational standards associated with a Charlie Palmer restaurant. A list of comparable restaurant brands shall be identified as part of the agreement between the City and the development team.
4. The balance of the commercial and event space uses shall be developed and operated as typically provided within four star and above lifestyle luxury hotels.

FINANCIAL REQUIREMENTS

1. A Schedule of Performance will be included in the City assistance agreement that establishes a timeframe by which the development team must provide evidence of sufficient debt and equity contributions to fund 100% of the Project's estimated development costs.
2. To verify that the proposed assistance package is warranted, upon completion of construction, the City shall have the right to review the actual costs incurred to construct the Project.

PROPOSED PUBLIC ASSISTANCE PACKAGE

The fundamental terms of the proposed assistance package can be described as follows:

1. The City will provide assistance to the Project that is measured in terms of the transient occupancy tax (TOT) and sales tax revenues generated by the Project.
2. The City assistance will be provided over a maximum 15 year term, commencing in the first year of the Project's operation.
3. Prior to any funds being distributed to the Project, the City will receive the following share of the TOT and sales tax revenues generated by the Project:
 - a. A \$282,000 base will be applied in the first year of the Project's operation; and
 - b. The base will be increased by 3% annually.
4. During the 15-year term the City assistance will be structured as follows:
 - a. An amount equal to 100% of the TOT and sales tax revenue generated by the Project above the base level will be provided to the Project each year until the Project has received \$6 million measured in net present value terms.¹
 - b. In the event \$6 million in assistance is provided prior to the end of the 15th year of the Project's operation, the City assistance will be reduced to 50% of the TOT and sales tax revenue generated by the Project above the base level until the end of the 15th year of the Project's operation.

¹ The discount rate will be set at 6.5%.

DEFAULT

In the event the Project defaults on any of the development scope and/or operational standards imposed by the City assistance agreement, and that default is not cured within a defined time period, the City assistance payments to the Project will terminate.



KEYSER MARSTON ASSOCIATES

MEMORANDUM

ADVISORS IN:

Real Estate
Affordable Housing
Economic Development

BERKELEY

Debbie M. Kern
David Doezenia

LOS ANGELES

Kathleen H. Head
Kevin E. Engstrom
Julie L. Romey
Tim R. Bretz

SAN DIEGO

Paul C. Marra
Linnie A. Gavino

EMERITUS

A. Jerry Keyser
Timothy C. Kelly

To: Edith Ramirez,
Assistant City Manager, Development Services
City of Morgan Hill

From: Kathleen Head

Date: June 19, 2024

Subject: Hotel MoHi by Appellation: Financial Analysis

At your request, Keyser Marston Associates, Inc. (KMA) evaluated the financial characteristics of the Hotel MoHi by Appellation proposed to be developed by the Léal Group with management to be provided by Appellation Hotels (Developer). The development site is located at 17490 Monterey Road (Site), and the proposed development scope (Proposed Project) can be described as follows:

1. An approximately 76 room boutique hotel;
2. Food and beverage service areas totaling approximately 14,000 square feet of gross building area (GBA);
3. Event space totaling approximately 11,000 square feet of GBA;
4. An approximately 2,100 square foot spa; and
5. A swimming pool and pool deck area.

The purpose of the KMA analysis is to assist the City of Morgan Hill (City) in creating a financial assistance package for the Proposed Project. The objective is to limit the assistance to the premium costs associated with developing the Proposed Project versus the cost to construct a typical limited service hotel.

As part of preparing this analysis KMA undertook the following tasks:

1. Reviewed the development plans for the Proposed Project;
2. Prepared a comparative cost analysis for constructing the proposed development scope versus the cost associated with constructing a typical limited service hotel;
3. Compiled market data to assist in projecting the achievable room rates; and
4. Prepared a 15-year projection of the transient occupancy tax (TOT) and sales tax revenues that could potentially be generated by the Proposed Project under current market and financial conditions.

EXECUTIVE SUMMARY

The City's objective is to set the assistance package at the incremental difference between the financial gaps associated with the Proposed Project and a typical limited service hotel. The result of the comparative analysis can be summarized as follows:

1. The Proposed Project demonstrates an approximately \$9 million gap between the estimated development costs and the projected value upon completion.
2. A limited service hotel is estimated to generate an approximately \$ 3 million gap.

Another City objective is to eliminate the financial risk to the City of providing assistance to the Proposed Project. To that end, the proposed assistance package is limited amounts equal to the TOT and sales tax revenues generated by the Proposed Project above a base that would be received by the City before any funds are provided to the Developer.

Based on those assumptions, KMA is recommending that the following assistance package be provided by the City:

1. The City assistance to the Proposed Project will be measured in terms of the TOT and sales tax revenues generated by the Proposed Project.
2. The City assistance will be provided for a 15 year term, commencing in the first year of the Proposed Project's operation.

3. Prior to any funds being distributed to the Proposed Project, the City will receive the following share of the TOT and sales tax revenues generated by the Proposed Project:
 - a. A \$282,000 base will be applied in the first year of the Proposed Project's operation; and
 - b. The base will be increased by 3% annually.
4. During the 15-year term the City assistance will be structured as follows:
 - a. An amount equal to 100% of the TOT and sales tax revenue generated by the Proposed Project above the base level will be provided to the Proposed Project each year until the Proposed Project has received \$6 million measured in net present value terms.¹
 - b. After \$6 million in assistance in net present value terms is received by the Developer, the City assistance will be reduced to 50% of the TOT and sales tax revenue generated above the base level until the end of the 15th year of the Proposed Project's operation.
5. In the event the Developer defaults on any of the development scope and/or operational standards imposed by the City assistance agreement, and that default is not cured within a defined time period, the City assistance payments to the Proposed Project will terminate.

FINANCIAL ANALYSIS

The following analysis summarizes the KMA financial analysis based on the current market and financial conditions. Basic assumptions are that the Proposed Project will meet and maintain the quality standards associated with:

1. A lifestyle luxury hotel that receives a rating of four stars or greater;
2. A Charlie Palmer Steak restaurant; and

¹ The discount rate will be set at 6.5%.

3. Commercial and event spaces that are compatible with a lifestyle luxury hotel.

The KMA analysis is organized as follows:

Appendices	
Appendix A:	Pro Forma Analysis: Hotel Component – Proposed Project
Appendix B:	Pro Forma Analysis: Restaurant Component – Proposed Project
Appendix C:	Pro Forma Analysis: Limited Service Hotel
Appendix D:	Proposed Assistance Package

The following pro forma analysis tables are used in each of the analyses:

Pro Forma Analysis Tables	
Table 1:	Pro Forma Analysis: Hotel Component – Proposed Project
Table 2:	Pro Forma Analysis: Restaurant Component – Proposed Project
Table 3:	Pro Forma Analysis: Limited Service Hotel

Financial Analysis: Proposed Project

The financial analysis of the Proposed Project is presented in Appendices A and B. The purpose of separating the components is to identify both the impacts associated with a four star lifestyle luxury hotel and a restaurant of the caliber of Charlie Palmer Steak restaurants.

HOTEL COMPONENT (APPENDIX A)

Estimated Development Costs

Approximately 80% of the property acquisition costs are allocated to the hotel component of the Proposed Project. The costs are estimated at \$23.60 per square foot of the allocated land area, which equates to approximately \$11,700 per room.

Based on the proposed premium quality level of the hotel component the unique direct costs are estimated as follows:

1. The building costs are estimated at \$400,000 per room.
2. The furniture, fixtures and equipment (FF&E) allowances are set as follows:
 - a. The hotel FF&E allowance is set at \$48,000 per room; and
 - b. The meeting and event space FF&E allowance is set at \$135 per square foot of net leasable area (NLA).

The total development costs are estimated as follows:

Estimated Development Costs		
Hotel Component: Proposed Project		
	Total	Per Room
Property Acquisition Costs	\$893,000	\$11,700
Direct Costs	41,170,000	541,700
Indirect Costs	8,349,000	109,900
Financing Costs	4,856,000	63,900
Total Development Costs	\$55,268,000	\$727,200

Estimated Stabilized Net Operating Income ²

The revenues estimated to be achieved by the hotel upon reaching stabilized occupancy are estimated as follows:

1. The room sales revenues are based on an average daily rate of \$296 and a 75% average occupancy rate.
2. The food and beverage; meeting and event space; and spa revenues are estimated at approximately \$97,000 per room per year.
3. Other revenues are estimated at approximately \$19,000 per room per year.

² The stabilized revenues and expenses are presented in 2024 dollars.

Based on the preceding estimates, total sales revenues are estimated at approximately \$15 million per year. The estimated stabilized net operating income is presented in the following table:

Estimated Stabilized Net Operating Income			
Hotel Component: Proposed Project			
Total Sales Revenue			\$15,021,000
<u>Expenses</u>			
Department Expenses	43% of Total Sales	\$6,439,000	
Undistributed Expenses	20% of Total Sales	2,972,000	
Management Fees	4% of Total Sales	601,000	
Fixed Expenses	8.5% of Total Sales	1,280,000	
Total Expenses			\$11,292,000
Estimated Stabilized Net Operating Income			\$3,729,000
Estimated Gross Profit			25%

Estimated Financial Gap

The fundamental premise of this analysis is that under current market and financial conditions developers, lenders and investors will require a threshold stabilized return in the range of 8%. This is measured as a percentage of the estimated total development costs. Based on this assumption, the financial gap for the hotel component of the Proposed Project is estimated in the following table:

Estimated Financial Gap	
Hotel Component: Proposed Project	
Estimated Supportable Investment	\$46,613,000
Estimated Development Costs	55,268,000
Estimated Financial Gap	\$8,655,000

RESTAURANT COMPONENT (APPENDIX B)

Estimated Development Costs

Approximately 20% of the property acquisition costs are allocated to the restaurant component of the Proposed Project. The costs are estimated at \$23.60 per square foot of the allocated land area.

Based on the proposed premium quality level of the restaurant component the unique direct costs are estimated as follows:

1. The building costs are estimated at \$530 per square foot of GBA.
2. The FF&E allowance is set at \$520 per square foot of the restaurant NLA.

The total development costs are estimated as follows:

Estimated Development Costs Restaurant Component: Proposed Project		
	Total	Per Square Foot of GBA
Property Acquisition Costs	\$230,000	\$16
Direct Costs	15,822,000	1,068
Indirect Costs	2,635,000	178
Financing Costs	1,795,000	121
Total Development Costs	\$20,482,000	\$1,383

Estimated Stabilized Net Operating Income

The assumptions applied to estimate the stabilized net operating income for the restaurant component are presented in the following table:

Estimated Stabilized Net Operating Income Restaurant Component: Proposed Project		
Total Sales Revenue		\$11,923,000
<u>Expenses</u>		
Department Expenses	66% of Total Sales	\$7,876,000
Undistributed Expenses	11% of Total Sales	1,311,000
Management Fees	4% of Total Sales	477,000
Fixed Expenses	6% of Total Sales	667,000
Total Expenses		\$10,331,000
Estimated Stabilized Net Operating Income		\$1,592,000
Estimated Gross Profit		13%

Estimated Financial Gap

As discussed previously, the threshold stabilized return on total development costs is set at 8%. Based on this assumption, the financial gap for the restaurant component of the Proposed Project is estimated in the following table:

Estimated Financial Gap Restaurant Component: Proposed Project	
Estimated Supportable Investment	\$19,900,000
Estimated Development Costs	20,482,000
Estimated Financial Gap	\$582,000

Financial Analysis: Limited Service Hotel (Appendix C)

ESTIMATED DEVELOPMENT COSTS

The total development costs for the limited service hotel are estimated as follows:

Estimated Development Costs Limited Service Hotel		
	Total	Per Room
Property Acquisition Costs	\$1,124,000	\$14,800
Direct Costs	17,309,000	227,800
Indirect Costs	2,456,000	32,300
Financing Costs	1,604,000	21,100
Total Development Costs	\$22,493,000	\$296,000

Estimated Stabilized Net Operating Income

The revenues estimated to be achieved by the hotel upon reaching stabilized occupancy are estimated as follows:

1. The room sales revenues are based on an average daily rate of \$170 and a 70% average occupancy rate.
2. Other revenues are estimated at approximately \$8,200 per room per year.

Based on the preceding estimates, total sales revenues are estimated at approximately \$3.9 million per year. The estimated stabilized net operating income is presented in the following table:

Estimated Stabilized Net Operating Income Limited Service Hotel		
Total Sales Revenue		\$3,927,000
<u>Expenses</u>		
Department Expenses	27% of Total Sales	\$1,051,000
Undistributed Expenses	21% of Total Sales	824,000
Management Fees	3% of Total Sales	118,000
Fixed Expenses	10% of Total Sales	395,000
Total Expenses		\$2,388,000
Estimated Stabilized Net Operating Income		\$1,539,000
Estimated Gross Profit		39%

Estimated Financial Gap

As discussed previously, the threshold stabilized return on total development costs is set at 8%. Based on this assumption, the financial gap associated with the limited service hotel is estimated in the following table:

Estimated Financial Gap Limited Service Hotel	
Estimated Supportable Investment	\$19,238,000
Estimated Development Costs	22,493,000
Estimated Financial Gap	\$3,255,000

Pro Forma Analysis Summary

The results of the KMA pro forma analyses are summarized in the following table:

	Hotel Component	Restaurant Component	TOTAL
I. Proposed Project			
A. Estimated Development Costs			
Property Acquisition	\$893,000	\$230,000	\$1,123,000
Direct Costs	41,170,000	15,822,000	56,992,000
Indirect Costs	8,349,000	2,635,000	10,984,000
Financing Costs	4,856,000	1,795,000	6,651,000
Estimated Development Costs	\$55,268,000	\$20,482,000	\$75,750,000
B. Estimated Supportable Investment			
Estimated Stabilized Net Operating Income	\$3,729,000	\$1,592,000	\$5,321,000
Threshold Stabilized Return	8.0%	8.0%	8.0%
Estimated Supportable Investment	\$46,612,500	\$19,900,000	\$66,512,500
C. Estimated Financial Gap - Proposed Project	\$8,655,500	\$582,000	\$9,237,500
II. Estimated Financial Gap - Limited Service Hotel			\$3,255,000
III. Proposed Assistance in Present Value Terms			\$5,982,500

PROPOSED ASSISTANCE PACKAGE (APPENDIX D)

TOT and Sales Tax Projections

To assist in creating the proposed assistance package, KMA projected TOT and sales tax revenues for the Proposed Project based on a conservative set of assumptions. These assumptions can be described as follows:

HOTEL TOT REVENUES

1. The average daily room rate, in 2024 dollars, is projected at \$296 per night.
2. The hotel is projected to reach stabilized occupancy in the fourth year of operation. The ramp up is projected as follows:
 - a. Year 1: 35% occupancy
 - b. Year 2: 70% occupancy
 - c. Year 3: 75% occupancy

3. Room rates are projected to increase at an average rate of 3% annually following stabilization.

SALES TAX REVENUES

1. In 2024 dollars the stabilized taxable sales revenues are estimated to range from approximately \$600 to \$950 per square foot of leasable area for the various commercial uses in the Proposed Project.
2. The food and beverage; meeting and event space; and spa space are projected to reach full stabilization in the third year of operation. The ramp up is projected as follows:
 - a. Year 1: 33% of stabilized performance
 - b. Year 2: 67% of stabilized performance
 - c. Year 3: 100% of stabilized performance
3. Sales revenues are projected to increase at an average rate of 3% annually following stabilization.

Proposed Assistance Package Terms

1. The base assistance amount is set at \$6 million. This represents the incremental difference between the financial gaps associated with the Proposed Project and a typical limited service hotel.
2. The City expects to receive a fixed amount of the TOT and sales tax revenue before any public funds are provided to the Developer. This base amount is set at \$282,000 per year plus a 3% annual escalation factor.
3. Based on the preceding assumptions, KMA projects that it will take 15 years for sufficient revenues to be generated to provide the Proposed Project with \$6 million in assistance in net present value terms.
4. Recognizing that the Proposed Project demonstrates a total financial gap of approximately \$9 million, the assistance is proposed to be structured as follows:

- a. An amount equal to 100% of the TOT and sales tax revenue generated above the base level will be provided to the Proposed Project each year until the Proposed Project has received \$6 million in net present value terms.
 - b. After \$6 million in assistance in net present value terms is generated, the City assistance will be reduced to an amount equal to 50% of the TOT and sales tax revenue above the base until the end of the 15th year of the Proposed Project's operation.
5. In the event the Developer defaults on any of the development scope and/or operational standards imposed by the City assistance agreement, and that default is not cured within a defined time period, the City assistance payments to the Proposed Project will terminate.

APPENDIX A
PRO FORMA ANALYSIS
HOTEL COMPONENT - PROPOSED PROJECT
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

APPENDIX A - TABLE 1

ESTIMATED DEVELOPMENT COSTS

HOTEL COMPONENT

FINANCIAL ANALYSIS

HOTEL MOHI BY APPELLATION

MORGAN HILL, CALIFORNIA

I. Property Acquisition	¹	37,845	Sf of Land	\$23.60 /Sf of Land		\$893,000
II. Direct Costs						
Site Improvements	¹	37,845	Sf of Land	\$27.00 /Sf of Land	\$1,022,000	
Building Costs	²	76	Hotel Rooms	\$400,000 /Room	30,400,000	
Hotel FF&E	²	76	Hotel Rooms	\$48,000 /Room	3,648,000	
Event Space FF&E		7,730	Sf of NLA	\$135 /Sf of NLA	1,044,000	
Contractor Costs		14.0%	Other Direct Costs		5,056,000	
Total Direct Costs		76	Hotel Rooms	\$541,700 /Room		\$41,170,000
III. Indirect Costs						
Architecture, Engineering & Consulting		5.5%	Direct Costs		\$2,264,000	
Public Permits & Fees	³	14,811	Sf of GBA	\$12.80 /Sf of GBA	190,000	
Taxes, Insurance, Legal & Accounting		2.5%	Direct Costs		1,029,000	
Marketing		14,811	Sf of GBA	\$10.00 /Sf of GBA	148,000	
Hotel Pre-Opening & Working Capital	²	76	Hotel Rooms	\$25,000 /Room	1,900,000	
Developer Fee / General & Administrative		5.0%	Direct Costs		2,059,000	
Soft Cost Contingency Allowance		10%	Other Indirect Costs		759,000	
Total Indirect Costs		76	Hotel Rooms	\$109,900 /Room		\$8,349,000
IV. Financing Costs						
Interest During Construction						
Land	⁴	\$893,000	Loan Amount	7.0% Interest	\$125,000	
Construction Costs	⁵	\$54,375,000	Loan Amount	7.0% Interest	3,806,000	
Loan Origination Fees						
Construction Loan	⁶	\$54,375,000	Loan Amount	1.00 Points	544,000	
Permanent Loan	⁷	\$38,063,000	Loan Amount	1.00 Points	381,000	
Total Financing Costs		76	Hotel Rooms	\$63,900 /Room		\$4,856,000
V. Total Construction Costs		76	Hotel Rooms	\$715,500 /Room		\$54,375,000
Total Development Costs		76	Hotel Rooms	\$727,200 /Room		\$55,268,000

¹ Based on the Developer's estimates. The land area is allocated on a pro rata basis between the Hotel Component and the Restaurant Component.

² Based on the Developer's estimates.

³ Based on the Developer's estimates. City staff should verify the accuracy of the estimates.

⁴ Based on a 24-month development period with a 100% average outstanding balance.

⁵ Based on 100% of the estimated construction costs. Assumes a 24-month development period with a 50% average outstanding balance.

⁶ Based on 100% of the estimated construction costs.

⁷ Based on 70% of the estimated construction costs.

APPENDIX A - TABLE 2

ESTIMATED STABILIZED NET OPERATING INCOME

HOTEL COMPONENT

FINANCIAL ANALYSIS

HOTEL MOHI BY APPELLATION

MORGAN HILL, CALIFORNIA

I. Sales Revenues				
Room Sales	1	\$296 /Room	76 Hotel Rooms	\$6,158,000
Food & Beverage				
In-Room Dining & Poolside/Pool Bar		\$44 /Occupied Room		911,000
Meeting & Event Space		7,730 Sf of NLA	\$615 /Sf of NLA	4,755,000
Spa		2,100 Sf of NLA	\$826 /Sf of NLA	1,736,000
Parking	2	83% of Total Estimated Valet Parking Revenues		536,000
Resort Fee		\$25 /Occupied Room		520,000
Miscellaneous Revenue		2.4% Sales Revenues		366,000
Other Revenue		0.3% Sales Revenues		39,000
Total Sales Revenues				\$15,021,000
II. Department Expenses				
Hotel Rooms		25.3% Department Sales		\$1,558,000
In-Room Dining & Poolside/Pool Bar		62.0% Department Sales		565,000
Meeting & Event Space		53.3% Department Sales		2,534,000
Spa		72.5% Department Sales		1,259,000
Parking		55.0% Department Sales		295,000
Miscellaneous Revenue		27.5% Department Sales		143,000
Other Revenue		23.2% Department Sales		85,000
Total Department Expenses				\$6,439,000
III. Undistributed Expenses				
General & Administrative	3	7.0% Sales Revenues		\$1,056,000
Information & Technology		1.3% Sales Revenues		201,000
Sales & Marketing		6.2% Sales Revenues		937,000
Property Operations & Maintenance		3.0% Sales Revenues		448,000
Utilities		2.2% Sales Revenues		330,000
Total Undistributed Expenses				\$2,972,000
IV. Management Fees				\$601,000
V. Fixed Expenses				
Property Taxes		1.1% Value	\$5,980 /Room	\$454,000
Insurance		1.5% Sales Revenues		225,000
FF&E Replacement Reserves		4.0% Sales Revenues		601,000
Total Fixed Expenses				\$1,280,000
VI. Estimated Stabilized Net Operating Income				\$3,729,000
				25% Total Sales Revenues

1 Assumes a 75% average occupancy rate.

2 Based on the Developer's allocation of total value parking revenue among the proposed uses.

3 Based on a weighted average allocation of the hotel and food & beverage cost components of the project.

APPENDIX A - TABLE 3

ESTIMATED FINANCIAL GAP
HOTEL COMPONENT
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

I.	Estimated Stabilized Net Operating Income	See APPENDIX A - TABLE 2	\$3,729,000
II.	Threshold Stabilized Return on Total Development Costs		8.0%
III.	Estimated Supportable Investment		\$46,613,000
IV.	Estimated Development Costs	See APPENDIX A - TABLE 1	\$55,268,000
V.	Estimated Financial Gap	¹	\$8,655,000

¹ The estimated return on total development cost if no assistance is provided is 6.7%. This is equal to Estimated Stabilized Net Operating Income divided by Estimated Development Costs.

APPENDIX B
PRO FORMA ANALYSIS
RESTAURANT COMPONENT - PROPOSED PROJECT
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

APPENDIX B - TABLE 1

ESTIMATED DEVELOPMENT COSTS RESTAURANT COMPONENT FINANCIAL ANALYSIS HOTEL MOHI BY APPELLATION MORGAN HILL, CALIFORNIA

I. Property Acquisition	¹	9,766	Sf of Land	\$23.60 /Sf of Land		\$230,000
II. Direct Costs						
Site Improvements	¹	9,766	Sf of Land	\$27.00 /Sf of Land	\$264,000	
Building Costs	²	14,811	Sf of GBA	\$530 /Sf of GBA	7,850,000	
Restaurant FF&E	²	11,086	Sf of NLA	\$520 /Sf of NLA	5,765,000	
Contractor Costs		14.0%	Other Direct Costs		1,943,000	
Total Direct Costs		14,811	Sf of GBA	\$1,068 /Sf of GBA		\$15,822,000
III. Indirect Costs						
Architecture, Engineering & Consulting		5.5%	Direct Costs		\$870,000	
Public Permits & Fees	³	14,811	Sf of GBA	\$12.80 /Sf of GBA	190,000	
Taxes, Insurance, Legal & Accounting		2.5%	Direct Costs		396,000	
Marketing		14,811	Sf of GBA	\$10.00 /Sf of GBA	148,000	
Developer Fee / General & Administrative		5.0%	Direct Costs		791,000	
Soft Cost Contingency Allowance		10%	Other Indirect Costs		240,000	
Total Indirect Costs		14,811	Sf of GBA	\$178 /Sf of GBA		\$2,635,000
IV. Financing Costs						
Interest During Construction						
Land	⁴	\$230,000	Loan Amount	7.0% Interest	\$32,000	
Construction Costs	⁵	\$20,252,000	Loan Amount	7.0% Interest	1,418,000	
Loan Origination Fees						
Construction Loan	⁶	\$20,252,000	Loan Amount	1.00 Points	203,000	
Permanent Loan	⁷	\$14,176,000	Loan Amount	1.00 Points	142,000	
Total Financing Costs		14,811	Sf of GBA	\$121 /Sf of GBA		\$1,795,000
V. Total Construction Costs		14,811	Sf of GBA	\$1,367 /Sf of GBA		\$20,252,000
Total Development Costs		14,811	Sf of GBA	\$1,383 /Sf of GBA		\$20,482,000

¹ Based on the Developer's estimates. The land area is allocated on a pro rata basis between the Hotel Component and the Restaurant Component.

² Based on the Developer's estimates.

³ Based on the Developer's estimates. City staff should verify the accuracy of the estimates.

⁴ Based on a 24-month development period with a 100% average outstanding balance.

⁵ Based on 100% of the estimated construction costs. Assumes a 24-month development period with a 50% average outstanding balance.

⁶ Based on 100% of the estimated construction costs.

⁷ Based on 70% of the estimated construction costs.

APPENDIX B - TABLE 2

ESTIMATED STABILIZED NET OPERATING INCOME
RESTAURANT COMPONENT
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

I. Sales Revenues				
Restaurant Revenue	11,086	Sf of NLA	\$1,066 /Sf of NLA	\$11,813,000
Parking	1	17%	of Total Estimated Valet Parking Revenues	110,000
Total Sales Revenues				\$11,923,000
II. Department Expenses				
Promenade Bar & Café	62.0%	Department Sales		\$1,809,000
Flower Shop Lounge / Flex Space Concept	53.3%	Department Sales		1,229,000
Signature CP Restaurant	72.5%	Department Sales		4,777,000
Parking	55.0%	Department Sales		61,000
Total Department Expenses				\$7,876,000
III. Undistributed Expenses				
General & Administrative	4.1%	Sales Revenues		\$489,000
Information & Technology	1.4%	Sales Revenues		167,000
Sales & Marketing	3.5%	Sales Revenues		417,000
Property Operations & Maintenance	0.8%	Sales Revenues		95,000
Utilities	1.2%	Sales Revenues		143,000
Total Undistributed Expenses				\$1,311,000
IV. Management Fees				
	4.0%	Sales Revenues		\$477,000
V. Fixed Expenses				
Property Taxes	1.1%	Value	\$10 /Sf of GBA	\$11,000
Insurance	1.5%	Sales Revenues		179,000
FF&E Replacement Reserves	4.0%	Sales Revenues		477,000
Total Fixed Expenses				\$667,000
VI. Estimated Stabilized Net Operating Income	13%	Total Sales Revenues		\$1,592,000

¹ Based on the Developer's allocation of total value parking revenue among the proposed uses.

APPENDIX B - TABLE 3

ESTIMATED FINANCIAL GAP
RESTAURANT COMPONENT
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

I.	Estimated Stabilized Net Operating Income	See APPENDIX B - TABLE 2	\$1,592,000
II.	Threshold Stabilized Return on Total Development Costs		8.0%
III.	Estimated Supportable Investment		\$19,900,000
IV.	Estimated Development Costs	See APPENDIX B - TABLE 1	\$20,482,000
V.	Estimated Financial Gap	¹	\$582,000

¹ The estimated return on total development cost if no assistance is provided is 7.8%. This is equal to Estimated Stabilized Net Operating Income divided by Estimated Development Costs.

APPENDIX C
PRO FORMA ANALYSIS
LIMITED SERVICE HOTEL
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

APPENDIX C - TABLE 1

ESTIMATED DEVELOPMENT COSTS LIMITED SERVICE HOTEL FINANCIAL ANALYSIS HOTEL MOHI BY APPELLATION MORGAN HILL, CALIFORNIA

I. Property Acquisition	47,611	Sf of Land	\$23.60 /Sf of Land	\$1,124,000
II. Direct Costs				
Site Improvements	47,611	Sf of Land	\$27.00 /Sf of Land	\$1,285,000
Building Costs	76	Hotel Rooms	\$185,000 /Room	14,060,000
Hotel FF&E	76	Hotel Rooms	\$15,000 /Room	1,140,000
Contractor Costs	5.0%	Other Direct Costs		824,000
Total Direct Costs	76	Hotel Rooms	\$227,800 /Room	\$17,309,000
III. Indirect Costs				
Architecture, Engineering & Consulting	5.0%	Direct Costs		\$865,000
Public Permits & Fees	14,811	Sf of GBA	\$12.80 /Sf of GBA	190,000
Taxes, Insurance, Legal & Accounting	2.5%	Direct Costs		433,000
Marketing	14,811	Sf of GBA	\$5.00 /Sf of GBA	74,000
Hotel Pre-Opening & Working Capital	76	Hotel Rooms	\$2,000 /Room	152,000
Developer Fee / General & Administrative	3.0%	Direct Costs		519,000
Soft Cost Contingency Allowance	10%	Other Indirect Costs		223,000
Total Indirect Costs	76	Hotel Rooms	\$32,300 /Room	\$2,456,000
IV. Financing Costs				
Interest During Construction				
Land	\$1,124,000	Loan Amount	7.0% Interest	\$118,000
Construction Costs	\$21,369,000	Loan Amount	7.0% Interest	1,122,000
Loan Origination Fees				
Construction Loan	\$21,369,000	Loan Amount	1.00 Points	214,000
Permanent Loan	\$14,958,000	Loan Amount	1.00 Points	150,000
Total Financing Costs	76	Hotel Rooms	\$21,100 /Room	\$1,604,000
V. Total Construction Costs	76	Hotel Rooms	\$281,200 /Room	\$21,369,000
Total Development Costs	76	Hotel Rooms	\$296,000 /Room	\$22,493,000

¹ Based on the Developer's estimates. City staff should verify the accuracy of the estimates.

² Based on a 18-month development period with a 100% average outstanding balance.

³ Based on 100% of the estimated construction costs. Assumes a 18-month development period with a 50% average outstanding balance.

⁴ Based on 100% of the estimated construction costs.

⁵ Based on 70% of the estimated construction costs.

APPENDIX C - TABLE 2

ESTIMATED STABILIZED NET OPERATING INCOME
LIMITED SERVICE HOTEL
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

I. Sales Revenues				
Room Sales	1	\$170 /Room	76 Hotel Rooms	\$3,301,000
Parking	2	36% of Total Estimated Valet Parking Revenues		233,000
Miscellaneous Revenue		10.0% Sales Revenues		393,000
Total Sales Revenues				\$3,927,000
II. Department Expenses				
Hotel Rooms		25.0% Department Sales		\$825,000
Parking		55.0% Department Sales		128,000
Miscellaneous Revenue		25.0% Department Sales		98,000
Total Department Expenses				\$1,051,000
III. Undistributed Expenses				
General & Administrative		5.0% Sales Revenues		\$196,000
Franchise Fee		5.0% Sales Revenues		196,000
Sales & Marketing		5.0% Sales Revenues		196,000
Property Operations & Maintenance		3.0% Sales Revenues		118,000
Utilities		3.0% Sales Revenues		118,000
Total Undistributed Expenses				\$824,000
IV. Management Fees				
		3.0% Sales Revenues		\$118,000
V. Fixed Expenses				
Property Taxes		1.1% Value	\$2,360 /Room	\$179,000
Insurance		1.5% Sales Revenues		59,000
FF&E Replacement Reserves		4.0% Sales Revenues		157,000
Total Fixed Expenses				\$395,000
VI. Estimated Stabilized Net Operating Income				
		39% Total Sales Revenues		\$1,539,000

¹ Assumes a 70% average occupancy rate.

² Based on the Developer's allocation of total value parking revenue among the uses being proposed for development.

APPENDIX C - TABLE 3

ESTIMATED FINANCIAL GAP
LIMITED SERVICE HOTEL
FINANCIAL ANALYSIS
HOTEL MOHI BY APPELLATION
MORGAN HILL, CALIFORNIA

I.	Estimated Stabilized Net Operating Income	See APPENDIX C - TABLE 2	\$1,539,000
II.	Threshold Stabilized Return on Total Development Costs		<u>8.0%</u>
III.	Estimated Supportable Investment		\$19,238,000
IV.	Estimated Development Costs	See APPENDIX C - TABLE 1	<u>\$22,493,000</u>
V.	Estimated Financial Gap	¹	<u>\$3,255,000</u>

¹ The estimated return on total development cost if no assistance is provided is 6.8%. This is equal to Estimated Stabilized Net Operating Income divided by Estimated Development Costs.

APPENDIX D
PROPOSED ASSISTANCE PACKAGE
HOTEL MOHI BY APPELLATION
FINANCIAL ANALYSIS
MORGAN HILL, CALIFORNIA

APPENDIX D

PROPOSED ASSISTANCE PACKAGE HOTEL MOHI BY APPELLATION MORGAN HILL, CALIFORNIA

Year	TOT	Sales Tax Revenue			Total TOT + Sales Tax Revenue	Annual Rebate
		Hotel Food, Event & Spa	Restaurant	Total Sales Tax Revenue		
1 ²	\$316,134	\$26,825	\$38,993	\$65,818	\$381,952	\$99,952
2	651,237	56,096	81,543	137,639	788,876	498,416
3	718,687	86,237	125,357	211,594	930,280	631,107
4	740,247	88,824	129,118	217,942	958,189	650,040
5	762,455	91,489	132,991	224,480	986,935	669,541
6	785,328	94,234	136,981	231,214	1,016,543	689,627
7	808,888	97,061	141,090	238,151	1,047,039	710,316
8	833,155	99,972	145,323	245,295	1,078,450	731,626
9	858,149	102,972	149,683	252,654	1,110,804	753,574
10	883,894	106,061	154,173	260,234	1,144,128	776,182
11	910,411	109,243	158,798	268,041	1,178,451	799,467
12	937,723	112,520	163,562	276,082	1,213,805	823,451
13	965,855	115,895	168,469	284,365	1,250,219	848,155
14	994,830	119,372	173,523	292,896	1,287,726	873,599
15	1,024,675	122,953	178,729	301,682	1,326,358	899,807
Years 1 - 15						
Total	\$12,191,667	\$1,429,753	\$2,078,334	\$3,508,087	\$15,699,754	\$10,454,860
NPV ³	\$7,250,000	\$840,000	\$1,221,000	\$2,061,000	\$9,311,000	\$6,135,000

¹ Based on 100% of the Total TOT + Sales Tax Revenue generated annually above a base of \$282,000 escalated at 3% annually.

² Based on the first year of operation.

³ Based on a 6.5% Discount Rate.

Item # 11

AGENDA DATE: 06/26/2024

SUPPLEMENT # 1

From: Christina Turner

To: Michelle Bigelow

Subject: Wednesday, June 26, 2024 City Council Meeting Questions

Supplement for Item 11 - AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HOTEL MOHI BY APPELLATION FOR A TRANSIENT OCCUPANCY TAX AND SALES TAX SHARING AGREEMENT

Date: Monday, June 24, 2024

Staff Report: In the event the developer defaults on any of the development scope and/or operational standards imposed by the City assistance agreement, and that default is not cured within a defined time period, the City assistance payments to the Proposed Project will terminate.

Question: Could you explain further, what do you mean defined time period? What will happen to the proposed project if terminated?

Response: The final Agreement will establish the framework to cure defaults of the Agreement. The developer would lose access to any TOT or sales tax share if the Agreement terminated.

Staff Report: TOT and Sales Tax sharing agreements can help improve a project's viability. Many local jurisdictions have used these types of agreements to ensure a project is completed, and it is financially viable during its multiple-year start-up period.

Question: Could you name a few?

Response: The following is a brief list of California cities that have implemented TOT rebate programs: Anaheim, Cathedral City, Dublin, Fountain Valley, Hollister, Los Angeles, Palm Springs, Placerville, and Santa Ana.

From: [Christina Turner](#)
To: [CityClerk](#)
Subject: FW: [EXTERNAL] Public Comment for June 26th City Council Meeting, Agenda Item #11 - Assistance Package for MOHI hotel
Date: Tuesday, June 25, 2024 12:24:45 PM

Please supplement.

From: Matt Mahood <matt.mahood@morganhill.ca.gov>
Sent: Tuesday, June 25, 2024 10:44 AM
To: Joe Baranowski <joe.b@mh-rgc.org>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>; CityClerk <clerk@morganhill.ca.gov>
Subject: FW: [EXTERNAL] Public Comment for June 26th City Council Meeting, Agenda Item #11 - Assistance Package for MOHI hotel

Good Morning Joe.

The team has provided answers to your questions below in *red italics* below.

Sincerely,
Matt

From: Joe Baranowski <joe.b@mh-rgc.org>
Sent: Monday, June 24, 2024 9:33 AM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>; Matt Mahood <matt.mahood@morganhill.ca.gov>
Cc: Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Mark Turner <mark.turner@morganhill.ca.gov>; CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: [EXTERNAL] Public Comment for June 26th City Council Meeting, Agenda Item #11 - Assistance Package for MOHI hotel

Re. AGREEMENT WITH HOTEL MOHI BY APPELLATION FOR A TRANSIENT OCCUPANCY TAX AND SALES TAX SHARING AGREEMENT:

Hi Matt and Edith,

I have a few questions regarding the proposed City (Public) Assistance Package:

On November 16, 2022 the City Council approved a zoning amendment to add the planned development combining district and a design permit amendment to allow for a 5th floor for the MOHI hotel.

The Staff Report said:

"While Leal Vineyard Inc. is now prepared to move forward with completion of the hotel, another challenge has surfaced. The lodging industry has been one of the hardest industries hit by the pandemic. Today, hotels continue to operate at lower than normal occupancy levels and financing continues to be challenging for hotel projects, especially boutique hotels. The Economic Development Division has researched financing options to assist the Downtown boutique hotel and now understands hotel investors are seeking a minimum of 90-rooms to be considered operationally functional. The Conditional Use Permit and Design Permit approved in April of 2016 included a new 67,940 square foot, four-story building with **restaurants, bars, banquet halls, retail, and hotel lobby with 60-guest rooms with valet services.** The completion of the base of the hotel limits the design capabilities to expand the hotel in gaining more rooms. The owner/developer has secured a short-term bridge loan that will allow the construction of the hotel to resume if there is additional guest rooms added."

The staff report also noted that:

"In April of 2016, the Planning Commission reviewed and approved a Design Permit and a Conditional Use Permit for a new Downtown Hotel. The approvals included a new 67,940 square, four-story building with **restaurants, bars, retail, banquet halls(s), and hotel lobby with guest rooms, services including valet parking and amenities.** The Conditional Use Permit allows for an **outdoor green event space, conference/meeting rooms, banquet rooms, and ancillary prep kitchens with one main kitchen to serve the hotel.** The hotel also included **a pool with outdoor living / lounge area.** The project was approved by the City Council on May 18, 2016."

The developer submitted updated Building Plans at the November 2022 approval meeting. Those plans included **a market hall, hotel bar, market hall patio, hotel bar patio, large flex space, small flex space, floral, bar, sushi bar, kitchen, service/expo, amenity pool deck, bar, banquet hall, and kitchen / BOH areas.**

As part of any Planned Development approval, the applicant must commit to including a design element of "substantial public benefit" that is something otherwise not required by the zoning permit definition. The developer committed to providing a **Valet Service** for any downtown visitor.

Q1: Has there ever been a time from 2016 to November 2022, when the MOHI Hotel (or equivalent under other names) was represented to the Planning Commission, the City Council or *the residents of Morgan Hill* as a Limited-Service Hotel project?

No. The project has always been represented as a full-service hotel. However, the current MOU states that non-essential hotel amenities (restaurant, bar, meeting rooms, etc.) should not be completed prior to the completion of the hotel rooms. The proposed revenue sharing agreement should allow the developer to secure the funding needed to complete the majority of the project, including non-essential amenities simultaneously instead of in a longer, phased approach.

Q2: Has Morgan Hill ever entered into a Sales Tax Sharing Agreement with an auto dealership after the shell of the showroom or service buildings were under construction or already complete?

The City previously entered into a Sales Tax Sharing agreement with an existing and successful business, extending an existing Sales Tax Sharing Agreement for 10 years with The Ford Store Morgan Hill in 2013.

The staff report notes that:

"The estimated development costs of the project are \$75.75 million. These development costs include the previous investment of nearly \$20 million." (Note: 'project' in the above sentence means the MOHI by Appellation project.)

Q3: a) Did MH Staff ask KMA or any other financial consultant to review the project schedule, milestones, and probable terms and conditions the developer will have to meet in order to secure the ~\$55M needed to complete the Project?

KMA was contracted to evaluate the opportunity, identify the financial gap, ascertain projected revenues from an upgraded hotel and restaurant, develop a financial package that supports the project completion, and limit the City's financial risk. Additional performance measures will be included in the final contract, including a schedule of performance.

b) Was there any risk analysis done? *Yes, KMA reviewed the projects financial analysis to determine the accuracy and the level of support the project would need to be financially viable. The assistance is structured in a manner that limits the City's risk.*

c) If the Project experiences 10% cost overrun is the staff prepared to ask the city council to approve another \$5.5M in City Assistance or does the staff believe the risk factors associated with Covid-19, supply chain, inflation, material availability, worker availability, etc., but excluding force majeure or pandemic risks, are now well known and the developer, if provided with the proposed City (Public) Assistance, has the ability to complete the Project even in the event that required capital exceeds the updated estimate for a luxury, boutique, full-service hotel rebranded from the original luxury, boutique, full service MOHI hotel?

The proposed financial package allows the project to move forward with limited financial risk to the City. The financial package expects to provide up to \$6 million in support. However, should the project exceed revenue projections, it allows for the project to capture additional revenue within the 15-year term to support any additional capital investment needed.

Q4. Does the \$282,000 base at the expected MOHI by Appellation room rate of \$296 per night effectively mean the developer will receive 100% of TOT for every room above a **31.2% occupancy level** up to \$6M net present value then 50% of TOT for every room above a 31.2% occupancy level for the full 15-year term of the City Assistance package, even when excluding any sales tax from the restaurant or other on-site retail?

Yes. If we understand your calculations correctly and based on the current projections. However, actual room rates and occupancy levels will impact the percentages. Appendix D outlines the rebate levels in detail.

(Note: depending on the increase in room rate a unique luxury downtown hotel is able to realize vs the 3% annual increase in the 'base' level, the effective ~31% occupancy level may go up or down.)

Q5. The KMS financial analysis of the Assistance Package shows the developer would receive a total of **\$10.45M** in TOT and Sales Tax rebates from the City (public) over the 15-year term. Is that correct?

That is correct.

Q6. Has staff established any quantitative metrics to measure, track, and periodically report to the city council and to the public whether the stated Public Benefit of the City (Public) Assistance package including *broader multiplier effect of economic growth, transformative for the City and business community, especially the Downtown district, and cementing the City's place branding as a tourist destination* are being achieved assuming the developer receives the public assistance being proposed?

The City will continue to track Sales Tax and TOT revenue in the Downtown district and throughout the City.

Thank you for your anticipated reply. I am sure the unique opportunity which staff, KMA, and the developer has identified will be approved by the City Council and as a resident of Morgan Hill I am already looking forward to December 2025 and the defining moment for Morgan Hill the opening of MOHI by Appellation will undoubtedly be.

Joe Baranowski

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

From: [Joe Baranowski](#)
To: [Christina Turner](#); [Edith Ramirez](#); [Matt Mahood](#)
Cc: [Rene Spring](#); [Yvonne Martinez Beltran](#); [Marilyn Librers](#); [Mark Turner](#); [Michelle Bigelow](#); [CC Public Comment](#); [Dat Nguyen](#); [Donald Larkin](#); [Chris Ghione](#); [Planning Commission](#)
Subject: [EXTERNAL] Not Tax Adverse; Trust Starved
Date: Tuesday, June 25, 2024 8:40:51 AM

Staff,

In November 2022, the MH economic development staff and the developer of MOHI, a boutique, luxury, full-service hotel, came before the City Council because they “now understand hotel investors are seeking a minimum of 90-rooms to be considered operationally functional.”

A Zoning Amendment "allowing the addition of a partial fifth-story to gain 11 guest rooms, plus the conversion of the gym to two additional guest rooms (13-total)" was required because "the partial fifth-story exceeds the Downtown height standards and levels/stories allowed within the Downtown Specific Plan" The requested amendment was approved, giving full leeway for the staff and the applicant to figure out the most basic details of the required substantial public benefit element (valet parking for all was proposed) later.

On Friday June 21st you released the agenda for the July 26th City Council meeting. Lo and behold, the economic development team and the developer are coming back to the City Council after having come to another ‘understanding’: investors expect a return on their investment which is consistent with foreseeable economic and financial conditions in the United States.

Specifically, the latest understanding assumes that investors need to have confidence that a proposed project can deliver net operating income of at least 8% of total development costs. Apparently, when the developer gained City approval to add a fifth floor and secured a short-term bridge loan that allowed construction of the hotel to *resume*, nobody considered how the hotel would be completed. Until now.

Consultant KMA estimates that a 76-room, luxury, boutique, full-service hotel in downtown MH with a restaurant backed not only by the original developer but by a world-renowned chef and the Appellation Hospitality Group will be able to realize annual Net Operating Income of ~\$5.32M.

With an understanding that investors will demand an 8% return, MOHI rebranded as MOHI by Appellation, would only support an investment of $\sim \$5.32\text{M} / 8\% = \66.5M leaving a ‘GAP’ of ~\$9M to the estimated development cost of ~\$75.5M.

While the staff report leaves the consequences of ‘the City’ not filling the GAP unspecified, the implication of “*the subject property is at risk of meeting the levels of investment metrics required to successfully achieve full capitalization and completion of development*” is unmistakable. So, a Financial Assistance Package wrapped in a comparison between a never-imagined limited-service hotel and what the entire community has come to know as MOHI has been hatched.

KMA estimates the net result of the Financial Assistance Package will be that over

the first 15-years of operation, MOHI by Appellation owners/investors will receive at least \$10.45M in TOT and sales tax rebates that would otherwise be deposited in the City's General Fund and the residents of Morgan Hill will realize a 'leftover' public revenue benefit of \$5.24M

You expect the City Council to approve **that** Financial Assistance Package ~72 working hours after first releasing it to the public. For MOHI.

I think staff can ramrod literally anything through the current City Council and you might have just as well scheduled the MOHI by Appellation vote for the consent calendar. However, when voters in Morgan Hill are given an opportunity to be the ultimate decision-makers, stakeholders have more than 72-hours to engage with the community and are not limited to three-minute sound bites. You have implied that past attempts by the City to convince voters to approve additional revenue measures have failed because residents are "tax adverse". Other ballot measures the City supported not related to tax increases have also failed by wide margins. I believe this proposal, coming as five floors of exposed concrete and wood framing are nearing completion, to 'share' public revenue in a way that the City rebates ~68% of total hotel (TOT) plus sales taxes from a project the community has great interest in, while making it a certainty that a vote will take place before most residents even know about the proposal, is one more example among many other 'opportunity of a lifetime' decisions pushed by staff and approved by council that points to the actual problem the City has with getting voter approval.

Residents aren't tax adverse; they are trust starved.

Joe Baranowski

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

Item # 11

**AGENDA DATE: 06/26/2024
SUPPLEMENT # 4**

Paramit Corporation
18735 Madrone Parkway
Morgan Hill, CA 95037
USA

T +1 408 782 5600
F +1 408 782 9991
www.paramit.com
support@paramit.com

June 24, 2024

Mayor Mark Turner
Mayor Pro Tem Marilyn Lieber
Councilmember Gino Borgioli
Councilmember Yvonne Martinez-Beltran
Councilmember Rene Spring
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Subject: Authorization for City Manager to Enter into an Agreement with Hotel MOHI by Appellation

Dear Mayor Turner, Mayor Pro Tem Lieber, and Council Members,

We, Paramit, A Tecan Group Company, are writing to express our strong support for Agenda Item #11 at the upcoming City Council meeting scheduled for June 26, 2024. This item concerns the authorization for the City Manager to prepare and execute a Transient Occupancy Tax (TOT) and Sales Tax Sharing Agreement for the Hotel MOHI by Appellation project.

As part of the City of Morgan Hill's strategy to enhance its economic development through tourism, the rebranding of Hotel MOHI to Hotel MOHI by Appellation is a pivotal move towards establishing our city as a premier tourist destination. This initiative not only promises to elevate the project's caliber but also to attract top-tier talent, including a world-renowned chef, thus creating a four-star hotel appealing to both business and leisure travelers. The enhanced facility is expected to draw more visitors to our downtown area, bolstering support for local businesses.

The financial implications of this project are particularly compelling. The increase in Transient Occupancy Tax and Sales Tax generated will directly benefit the General Fund, which underwrites critical city services including Police and Fire, along with other community amenities. The projected rise in tax revenue underscores the project's potential to substantially bolster our city's financial health.

Additional considerations for the Council's approval include:

- The TOT and Sales Tax sharing agreements are essential for enhancing the project's financial feasibility.
- Such financial assistance aligns seamlessly with the goals of the City's Auto and Hotel Incentive Program.
- This is a common practice among cities seeking to attract large-scale projects that promise significant economic benefits.

Always there for you



Paramit Corporation
18735 Madrone Parkway
Morgan Hill, CA 95037
USA

T +1 408 782 5600
F +1 408 782 9991
www.paramit.com
support@paramit.com

- The inclusion of a Charlie Palmer restaurant will notably advance Morgan Hill's culinary prestige.
- The project is expected to be transformative for Morgan Hill's tourism identity, supporting not only the hotel but also the broader business community.
- It will attract a broader range of activities including meetings, and conferences, further enriching our city's tourism assets.

Given these substantial benefits, we urge the City Council to approve the authorization for the City Manager to move forward with this agreement as outlined in the Draft Deal Points by KMA.

Thank you for considering this pivotal opportunity for our community. We appreciate your support and leadership as we continue to advance Morgan Hill's economic and cultural development.

Sincerely,

Andrea Leslie
Vice President of Human Resources, America
Paramit, A Tecan Group Company





HOTEL MOHI BY APPELLATION



BACKGROUND

- Tourism is a key economic development strategy
- City needs more lodging options
- City is losing corporate and leisure hotel bookings
- Last hotel was developed in 2016
- 2022 City approved a Hotel Incentive Policy

HOTEL MOHI HISTORY



2016 – 60 Room Boutique Hotel Approved

2019 – Hotel Construction began

2020 – COVID-19 Pandemic—Construction halted

2020 – MOHI Social Pop-up Restaurant

2022 – City approves 13 more rooms and MOU

2022 – City approves Hotel Incentive Policy (HIP)

2024 – Hotel MOHI by Appellation Opportunity

HOTEL CHALLENGES

Difficult economic environment

- Rising cost of construction & materials
- Cost of capital
- COVID-19 pandemic impact on lodging & hospitality

Project costs have gone up

- 2016 – Project budgeted to cost \$16 million
- 2022 – Project budgeted to cost \$40 million
- 2024 – Project now expected to cost \$76 million

OPPORTUNITY



- Charlie Palmer - American chef, entrepreneur, hotelier, author, credited with 20 Michelin stars
- Co-founder of Appellation Hospitality focused on culinary excellence, luxury experience with a sense of place & community
- Projects in Healdsburg, Lodi, Pacific Grove, Petaluma, and Sun Valley

BENEFITS

- Rebrand project to Hotel MOHI by Appellation
- Upgrade project (quality of amenities)
- Attract a world-renowned chef
- 4-Star Hotel
- Attract leisure travel
- Retain corporate travel
- Attract weddings and conference events
- Increased TOT and Sales Tax Revenue
- Support new Fine Art Gallery and other businesses
- Creates a tourism asset

THE PROJECT



- 76 rooms (assumes 3 more rooms than currently designed)
- 14,000 SF of Food and Beverage areas
- 11,000 SF of Event space
- 2,100 SF Spa
- Swimming pool and pool deck

FINANCIAL ANALYSIS



City staff engaged Keyser Marston Associates (KMA) to:

- Evaluate the opportunity
- Identify the financial gap
- Ascertain projected revenues from upgraded hotel and restaurant
- Develop a financial package that supports project completion
- Limit the City's financial risk

FINDINGS



- Current project cost estimated at \$75.8 million
- The project's financials support a \$66.5 million investment of debt and equity.
- Total project feasibility gap is \$9.3 million
- Proposed project would yield \$182,000 in TOT and Sales Tax annually above City's previous estimates

POLICY QUESTION

Should the City Council consider a TOT and Sales Tax Sharing Agreement to support this project?

- Feasibility gap is approximately: \$9.3 Million
- Added benefit: \$182,000 Annually

What should be the structure of a financial package?

PROPOSED FINANCIAL ASSISTANCE PACKAGE



- City shares TOT and Sales Tax
- City receives a **base** of \$282,000 plus **3% annual increase**
- City caps assistance at 15 years
- City reduces assistance after project achieves \$6 million in rebates (NPV)

PROPOSED FINANCIAL ASSISTANCE PACKAGE (cont.)



- The Base is established by splitting the City's original projected annual revenue before Appellation and current projected annual revenue with the addition of the Appellation partnership

Hotel MOHI Budgeted	Hotel MOHI by Appellation	Proposed Base
\$200,000	\$382,000	\$282,000

- Proposed Base: \$282,000 plus annual 3% increases
- Project receives 100% of TOT and Sales Tax above the base, up to \$6 million (NPV)
- If the project achieves \$6 million in rebates (NPV), the project only receives 50% of TOT and Sales Tax above the base for the remainder of the term

FINANCIAL ASSISTANCE GUIDING PRINCIPLES



- ✓ Closing project's feasibility gap
- ✓ Increasing the City's projected revenue by \$82,000 annually
- ✓ Limiting the City's financial risk
- ✓ Providing financial assistance only after the project generates TOT and Sales Tax above established base
- ✓ Potentially lowers financial assistance over time

CONCLUSION



- TOT and Sales Tax sharing agreement improves the project's viability
- Financial assistance is consistent with City's Auto Incentive and Hotel Incentive Policy goals
- Common industry practice
- Redesigned project creates a lifestyle luxury hotel
- Charlie Palmer restaurant will further establish the City's culinary reputation
- Project will be transformational for Morgan Hill's tourism brand
- Project will support other businesses and other hotels

STAFF RECOMMENDATION



Authorize the City Manager to prepare and execute a Transient Occupancy Tax (TOT) and Sales Tax Sharing Agreement for the Hotel MOHI by Appellation project based on the draft deal points memorialized by KMA.

Questions?



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE WASTEWATER RATE STUDY REPORT, ADOPT RESOLUTION DECLARING INTENT TO IMPLEMENT NEW WASTEWATER RATES AND COMMENCING PROPOSITION 218 NOTICES, AND SET AUGUST 28, 2024, AS THE DATE FOR A PUBLIC HEARING

RECOMMENDATION(S)

1. Receive Wastewater Rate Study report;
2. Consider implementing an alternative rate structure of a 100% fixed wastewater rate charge for residential customers and/or an additional wastewater meter account charge for those residential customers with detached Accessory Dwelling Units (ADU);
3. Adopt resolution declaring intent to adjust wastewater rates and authorizing the commencement of Proposition 218 noticing; and
4. Set August 28, 2024, as the date for the Public Hearing and adoption of new wastewater rates.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Wastewater System Master Plan

REPORT NARRATIVE:

POLICY CONSIDERATIONS:

Should the City Council consider adopting an alternative rate structure of a 100% fixed wastewater rate charge for residential customers? Additionally, should the City Council consider implementing an additional wastewater meter charge for those residential customers with Accessory Dwelling Units (ADUs)?

BACKGROUND:

The City owns and operates the Wastewater Collection System within the Engineering and Utilities Department. The system collects wastewater from residences and businesses throughout the City and delivers the wastewater for treatment to the South County Regional Wastewater Facility.

Day-to-day operations of the system are managed by City staff while relying on consultants and contractors to provide expertise in the areas of planning, detailed engineering, and capital projects. Additionally, the City of Morgan Hill jointly owns and operates the Treatment Plant with the City of Gilroy through a joint power authority. Funding for the Wastewater System and Treatment Plant comes from two primary sources: rates charged to users of the system and developer impact fees. Rates are used to fund the ongoing operations of the Wastewater System and the Treatment Plant. Rates also fund capital projects which repair or replace existing components of the system. Impact fees are used for capital projects that increase capacity, expand the system, and/or construct new system components. Impact fees are charged to developers to ensure that ratepayers are not paying for costs associated with new development.

Residential customers pay a monthly sewer service charge consisting of a base fee associated with the meter size and a usage fee. The residential sewer usage fee is based on the average measured volume of water usage for the three lowest consecutive months between November and April of each year. The sewer charge for commercial and other nonresidential customers consists of a base rate plus a usage fee based on the measured volume of water usage. Currently, the sewer revenues from monthly customer bill payments are comprised of about 40% fixed and 60% variable, while the costs to provide the services are mainly fixed. It is recommended that in the proposed current rate structures, the rates for residential to be made up of 50% fixed charges and 50% variable (consumption) charges, similar to water.

Unlike private utility companies that benefit financially from increased rates associated with increased costs, the City strives to maintain low rates to support its residents and businesses. However, significant improvements to the City's aging wastewater infrastructure will be necessary in the near future. The City's system includes some pipe sections that are over 90 years old. As the system ages or is damaged by natural changes in the environment (such as tree roots), the sewer pipes begin allowing rainwater and groundwater to enter the wastewater system. During extremely wet conditions, this infiltration can cause the wastewater system to be overwhelmed and spill. To ensure the safety of residents and to meet the requirements established by the State of California and regulatory agencies, the City must continue to repair these issues.

On May 15, 2024, the City Council approved a Wastewater System Master Plan for future repairs and improvements to the City's wastewater system. The Master Plan identified \$57.9 million in expansion and capacity-related improvement projects (impact fee funded) and \$80.2 million in improvements necessary to repair the City's existing

system (ratepayer-funded). City staff have determined the impact fee funded projects can likely be funded through the projected impact fees and/or financed through bonding against future impact fees and user fees. However, staff still identified a significant shortage in funding to make the legally required repairs and improvements to the existing system. This, along with the ratepayers' share of the new trunk line, the end of the current 5-year rate adjustment approved in 2019, and the new debt service payments for potential new debt issuance, were the primary factors in moving forward with a rate study and proposed adjustments to the current rates ([link to the 2024 Wastewater Rate Study](#)).

Alternative Fixed Rate Structure

As part of this rate study, staff also asked the consultant to develop an alternative rate structure consistent with other jurisdictions of a 100% fixed wastewater rate charge for single- and multifamily customers. In this alternative structure, single-family residential charges are based on account, and multifamily residential customer charges are per dwelling unit. The rate structure for nonresidential customers remains unchanged. The benefits of adopting the alternative rate structure include simplifying the billing process, and providing residential customers with a known fixed monthly amount.

Additional Meter Account Wastewater Charges for Detached ADUs

There are currently about 50 detached ADUs in the City and the numbers are expected to increase as the State continues to pass new ADU laws lifting restrictions and making it easier and more affordable to build Accessory Dwelling Units. In order to equitably share the cost of providing the wastewater service, staff is recommending the City Council consider implementing additional meter account charges for those residential customers with a detached ADU. If implemented under the current rate structure, a fixed monthly charge of \$38.90 per detached ADU would generate additional revenue of approximately \$23,000/year. Under the alternative fixed rate structure, a single-family residential unit with a detached ADU would be charged as two multifamily residential units at a monthly fixed rate of \$70.13 for each unit, which would generate additional revenue of approximately \$41,000/year.

Lift Station Charge

Staff recommends continuing to assess the Lift Station Charge to benefit customers, as established during the 2015 rate study, and continuing the established annual adjustment rate, which is similar to the overall rate adjustments.

Low-Income Subsidy Recommendation

To help alleviate the financial impact of the proposed rate increase, and to assist Morgan Hill low-income and low-income senior residents, Council approved the wastewater subsidy with the approval of the 2019 rate study. Staff recommends extending the subsidy throughout the financial plan with an annual increase similar to the overall rate adjustments of the system.

		Recommended				
Wastewater	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028

Subsidy						
Amount	\$14.17	\$15.45	\$16.84	\$18.18	\$19.64	\$21.21
%	N/A	9%	9%	8%	8%	8%

Proposition 218

In order to implement the fee adjustments, the City is required to follow Proposition 218 majority protest proceedings. Proposition 218 requires specific procedures to be followed with regard to property-related fee increases. The California Constitution requires local governments to give mailed notice of any property-related proposed fee changes at least 45 days before holding a public hearing where the City Council may adopt or reject the changes. Those opposed to the proposed rate adjustments can submit written protests to the City. If a majority (50% plus 1) of customers oppose the proposed rate adjustments, City Council cannot implement the proposed increases. See attachments 1-4 with the rate structures alternatives and average cost per customer. Staff recommends alternative fixed rate structure with additional meter account charges for detached ADUs (Attachment 4).

A dedicated email address, prop218@morganhill.ca.gov, has been setup for customers to submit any Proposition 218 comments electronically. This dedicated email address is for customers to submit comments and/or inquiries about the proposed wastewater rate adjustments, but they will not be counted as written protest. Written protests can only be submitted by mail or in person. Staff anticipates August 28, 2024, as a tentative date for the City Council to hold a public hearing to review Proposition 218 comments and adopt the rate increases with a service period beginning October 1, 2024.

COMMUNITY ENGAGEMENT:

This staff report serves to inform the community of the wastewater rate study. On June 14, 2024, an email blast was sent to community members on the City's electronic distribution list of the wastewater rate study report and June 26, 2024 meeting.

ALTERNATIVE ACTIONS:

City Council could elect not to adopt the resolution of intent or could approve a lower rate adjustment than presented.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 15, 2024, the City Council adopted the Wastewater System Master Plan.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of preparing this report is included in the staff's annual workplan. The cost for the wastewater rate study, was budgeted in the Wastewater Operations Fund (640) in the current fiscal year.

If the Proposition 218 majority protest process is concluded without majority protest, and the wastewater rate adjustments are adopted as presented, the new rate increases

could generate an average of \$4.7 million annually, for the next five years, to assist in recovery of costs to provide and maintain infrastructure and services. In addition, the cost of Proposition 218 mailing will be borne by the Wastewater Operations Fund (640). Those costs are projected to be \$20,000.

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.



Hearing Date and Time: August 28, 2024, at 6:00 pm or as soon thereafter as possible
Hearing Location: City Council Chambers • 17555 Peak Avenue • Morgan Hill, CA 95037-4128

The City of Morgan Hill is proposing a five-year wastewater rate program adjustment for all customers. The proposal will be considered by the City Council at a Public Hearing on **August 28, 2024**. If approved, the wastewater rate adjustments will commence with the service period which contains October 1, 2024, and adjusted annually thereafter. You are receiving this notification in compliance with California Constitution Article XIII D Section 6 (Proposition 218) requirements that all impacted property owners are mailed notice of proposed rate changes at least 45 days prior to a public hearing. In addition, Section 53755 of the Government Code authorizes that notices be mailed to customers who are billed for the service. Proposition 218 also establishes a protest process for the public to follow if they wish to oppose the proposed rates.

BASIS OF PROPOSED RATES

The City is required by State law and City policy to collect revenues sufficient to cover the costs of operating the wastewater system. These revenues allow the City to protect public health and safely and reliably convey and treat wastewater. Costs that must be recovered through rate revenue include electricity, equipment, supplies and services, wastewater treatment, debt service, and salaries and benefits. Additionally, revenues generated from wastewater rates would be used to finance the repair and renovation of aging wastewater infrastructure and maintain reserve funds. The rates proposed herein were developed through a Wastewater Rate Study designed to meet all legal requirements and fairly and equitably recover the required revenue from all customer classes. The Rate Study is available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>.

WHAT DO WASTEWATER RATES FUND?

The City provides wastewater utility services to residential and commercial customers. All revenue generated from customer wastewater bills is used to pay for the ongoing operation, maintenance, repair and replacement of the existing wastewater systems. The cost of system expansions, to serve new development, is recovered through connection or impact fees imposed on the developer requesting City services. By State law, the City may not collect more revenue than is necessary to recover the costs of providing services.

WHY IS THE RATE ADJUSTMENT NEEDED?

Unlike private utility companies that benefit financially from increased rates associated with increased costs, the City strives to maintain low rates to support its residents and businesses. However, significant improvements to the City's aging wastewater infrastructure are necessary soon. The City's system includes certain pipe sections that are over 90 years old. As the system ages and is damaged by natural changes in the environment (such as tree roots) the sewer pipes begin allowing rainwater and groundwater to enter the wastewater system. During extremely wet conditions this infiltration can cause the wastewater system to be overwhelmed and spill. To ensure the safety of residents and to meet the requirements of the State of California, the City must repair these issues. The capital projects associated with the repair of the aging system require appropriate funding, which results in an increase to the wastewater rates. Additionally, rates are periodically adjusted to keep up with the rising cost of operating and maintaining the collection system and the cost of wastewater treatment.

The City plans to utilize municipal bonds to cover some of the City's existing wastewater infrastructure improvements. Financing allows the costs to be spread out over 20-30 years, reducing the immediate impact to rates. The City balanced the levels of financing and rate adjustments necessary to provide for moderate rate increases, while keeping debt at a manageable level.

PROPOSED WASTEWATER RATES

The City currently charges residential and non-residential customers a monthly fixed wastewater charge based on meter size. In addition to a fixed monthly charge, residential customers pay a variable charge (volumetric charge) of \$5.74 per unit of baseline water use for wastewater service, with a minimum volume of 2. Variable charges for residential customers are determined by the average monthly water usage for the three lowest consecutive months in the period between November and April of each year. As a general rule, a household's average monthly water use for the months of November through April provides a reasonable baseline estimate of the wastewater produced by the household each month of the year. Commercial and industrial customers are billed according to the volume of flow and strength of their wastewater discharges. The proposed wastewater rate charges for the next five years are presented in detail on *Table 1: Proposed Wastewater Rate Adjustment Schedule 2024-2028*, below.

Table 1: Proposed Wastewater Rate Adjustment Schedule 2024-2028.

Sewer Rate Schedule	Current Rates	Proposed Rates				
		10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
		9.00%	9.00%	8.00%	8.00%	8.00%
Monthly Fixed Charges:						
Residential (5/8-1 inch meters)	\$27.05	\$38.90	\$42.40	\$45.79	\$49.46	\$53.41
All Other Customers:						
5/8 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
3/4 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1.5 inch	\$101.27	\$139.52	\$152.08	\$164.24	\$177.38	\$191.57
2 inch	\$161.24	\$218.98	\$238.68	\$257.78	\$278.40	\$300.67
3 inch	\$351.26	\$470.73	\$513.10	\$554.15	\$598.48	\$646.36
4 inch	\$630.93	\$841.27	\$916.98	\$990.34	\$1,069.57	\$1,155.13
6 inch	\$1,400.38	\$1,860.72	\$2,028.18	\$2,190.43	\$2,365.67	\$2,554.92
8 inch	\$2,163.33	\$2,871.55	\$3,129.99	\$3,380.39	\$3,650.82	\$3,942.89
10 inch	\$2,704.16	\$3,589.02	\$3,912.04	\$4,225.00	\$4,563.00	\$4,928.04
Monthly Volumetric Charges:						
Single-Family (Applied to <u>Avg. Winter</u> Water Use)	\$5.74	\$5.18	\$5.64	\$6.10	\$6.58	\$7.11
Multi-Family (Applied to <u>Avg. Winter</u> Water Use)	\$5.74	\$5.18	\$5.64	\$6.10	\$6.58	\$7.11
Commercial Charge (Applied to <u>Monthly</u> Water Use):						
Commercial 1	\$5.49	\$7.51	\$8.18	\$8.84	\$9.54	\$10.31
Commercial 2	\$6.42	\$8.32	\$9.06	\$9.79	\$10.57	\$11.42
Commercial 3	\$7.81	\$9.68	\$10.55	\$11.39	\$12.30	\$13.29
Commercial 4	\$8.86	\$12.03	\$13.12	\$14.17	\$15.30	\$16.52
Commercial 5	\$10.52	\$19.44	\$21.19	\$22.88	\$24.71	\$26.69
Commercial 6	\$17.56	\$32.26	\$35.17	\$37.98	\$41.02	\$44.30

LIFT STATION SERVICE CHARGES

Due to Morgan Hill's varying topography, additional infrastructure is required to provide wastewater services to residents living at different elevations within the City. Lift station charges based on the cost of service to operate and replace this additional infrastructure will be charged to those residents living in the areas requiring the use of the additional infrastructure. Proposed lift station service charges are included on *Table 2: Proposed Lift Station Service Charge*. Maps

that allow customers to determine if they fall within an area serviced by lift stations are available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/24457/Customer-Sewer-Lift-Map?bidId=>

Table 2: Proposed Lift Station Service Charge per Account

Lift Station Service Charge (As Applicable)						
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
	\$11.23	\$12.24	\$13.34	\$14.41	\$ 15.56	\$ 16.81
Total Percent Increase	N/A	9%	9%	8%	8%	8%

IMPACT TO WASTEWATER CHARGE ON THE BILL

If approved, wastewater rate increases would commence with the service period which contains October 1, 2024, and adjust annually for service periods containing July 1 thereafter.

The total amount of a customer’s wastewater charge will depend on the amount of water used between the months of November and April. For an average single-family residence (7 units of wastewater), the wastewater charge on the utility bill will increase as shown below.

Table 3: Average Monthly Single-Family Residence Wastewater Charge (7 units)

Under Proposed Rates						
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Wastewater	\$67.23	\$75.16	\$81.88	\$88.49	\$95.52	\$103.18
Total Percent Increase	N/A	9%	9%	8%	8%	8%

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes. If the City receives written protests against proposed wastewater rates by a majority of the affected property owners or tenants or utility customers on record prior to the end of the hearing, the Council will not approve the change. Only one written protest will be counted per identified parcel.

You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing. The City Council will count all written protests received (not postmarked) prior to the conclusion of the public hearing. The City Council will not count written protests submitted after the conclusion of the public hearing.

A written protest must include (1) your name; (2) identification of the parcel by address or assessor’s parcel number; (3) whether you are the owner of the parcel or the person receiving the service for which the fee is charged; and (4) your statement of the specific rate changes for which you protest the increase in the fee; and (5) your original signature. Written protests will not be accepted by e-mail or by fax. Verbal protests will not be counted. Written protests may be submitted by mail or in person to:

City of Morgan Hill
Attn: Rate Protest
17575 Peak Avenue
Morgan Hill, CA 95037-4128

For more information, visit <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>

This material is available in alternative formats upon request to accommodate persons with disabilities or non-English speakers. To order information in an alternative format, or to arrange for a sign language or oral interpreter at the August 28, 2024, hearing, please call or email the Clerk’s office by 5 pm on Thursday, August 15, 2024.

City Clerk: (408) 779-7259, cityclerk@morganhill.ca.gov

**Proposition 218 Notification**
**Notice of Public Hearing
On Wastewater Rate Adjustments**

17555 PEAK AVENUE
MORGAN HILL, CA 95037-4128
WWW.MORGANHILL.CA.GOV

Hearing Date and Time: August 28, 2024, at 6:00 pm or as soon thereafter as possible
Hearing Location: City Council Chambers • 17555 Peak Avenue • Morgan Hill, CA 95037-4128

The City of Morgan Hill is proposing a five-year wastewater rate program adjustment for all customers. The proposal will be considered by the City Council at a Public Hearing on **August 28, 2024**. If approved, the wastewater rate adjustments will commence with the service period which contains October 1, 2024, and adjusted annually thereafter. You are receiving this notification in compliance with California Constitution Article XIII D Section 6 (Proposition 218) requirements that all impacted property owners are mailed notice of proposed rate changes at least 45 days prior to a public hearing. In addition, Section 53755 of the Government Code authorizes that notices be mailed to customers who are billed for the service. Proposition 218 also establishes a protest process for the public to follow if they wish to oppose the proposed rates.

BASIS OF PROPOSED RATES

The City is required by State law and City policy to collect revenues sufficient to cover the costs of operating the wastewater system. These revenues allow the City to protect public health and safely and reliably convey and treat wastewater. Costs that must be recovered through rate revenue include electricity, equipment, supplies and services, wastewater treatment, debt service, and salaries and benefits. Additionally, revenues generated from wastewater rates would be used to finance the repair and renovation of aging wastewater infrastructure and maintain reserve funds. The rates proposed herein were developed through a Wastewater Rate Study designed to meet all legal requirements and fairly and equitably recover the required revenue from all customer classes. The Rate Study is available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>.

WHAT DO WASTEWATER RATES FUND?

The City provides wastewater utility services to residential and commercial customers. All revenue generated from customer wastewater bills is used to pay for the ongoing operation, maintenance, repair and replacement of the existing wastewater systems. The cost of system expansions, to serve new development, is recovered through connection or impact fees imposed on the developer requesting City services. By State law, the City may not collect more revenue than is necessary to recover the costs of providing services.

WHY IS THE RATE ADJUSTMENT NEEDED?

Unlike private utility companies that benefit financially from increased rates associated with increased costs, the City strives to maintain low rates to support its residents and businesses. However, significant improvements to the City's aging wastewater infrastructure are necessary soon. The City's system includes certain pipe sections that are over 90 years old. As the system ages and is damaged by natural changes in the environment (such as tree roots) the sewer pipes begin allowing rainwater and groundwater to enter the wastewater system. During extremely wet conditions this infiltration can cause the wastewater system to be overwhelmed and spill. To ensure the safety of residents and to meet the requirements of the State of California, the City must repair these issues. The capital projects associated with the repair of the aging system require appropriate funding, which results in an increase to the wastewater rates. Additionally, rates are periodically adjusted to keep up with the rising cost of operating and maintaining the collection system and the cost of wastewater treatment.

The City plans to utilize municipal bonds to cover some of the City's existing wastewater infrastructure improvements. Financing allows the costs to be spread out over 20-30 years, reducing the immediate impact to rates. The City balanced the levels of financing and rate adjustments necessary to provide for moderate rate increases, while keeping debt at a manageable level.

PROPOSED WASTEWATER RATES

The City currently charges residential and non-residential customers a monthly fixed wastewater charge based on meter size. In addition to a fixed monthly charge, residential customers pay a variable charge (volumetric charge) of \$5.74 per unit of baseline water use for wastewater service, with a minimum volume of 2. Variable charges for residential customers are determined by the average monthly water usage for the three lowest consecutive months in the period between November and April of each year. An alternative Fixed rate structure is proposed that will simplify the billing process for residential customers. The City is proposing an alternative rate structure of a 100% fixed wastewater rate charge for both single-family and multi-family residential customers. In this alternative structure, single-family residential charges are based on account and multi-family residential customers charges are per dwelling unit. The rate structure for non-residential customers remains unchanged. The proposed alternative rate structure is shown in Table 1 *Proposed Wastewater Rate Adjustment Schedule 2024-2028*, below.

Table 1: Proposed Wastewater Rate Adjustment Schedule 2024-2028.

Sewer Rate Schedule	Current Rates	Proposed Rates				
		10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
		9.00%	9.00%	8.00%	8.00%	8.00%
Monthly Fixed Charges:						
Single-Family Residential (100% Fixed Charge)	N/A	\$71.89	\$78.37	\$84.63	\$91.41	\$98.72
Multi-Family Residential (100% Fixed, per DU)	N/A	\$70.13	\$76.44	\$82.56	\$89.16	\$96.30
All Other Customers:						
5/8 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
3/4 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1.5 inch	\$101.27	\$139.52	\$152.08	\$164.24	\$177.38	\$191.57
2 inch	\$161.24	\$218.98	\$238.68	\$257.78	\$278.40	\$300.67
3 inch	\$351.26	\$470.73	\$513.10	\$554.15	\$598.48	\$646.36
4 inch	\$630.93	\$841.27	\$916.98	\$990.34	\$1,069.57	\$1,155.13
6 inch	\$1,400.38	\$1,860.72	\$2,028.18	\$2,190.43	\$2,365.67	\$2,554.92
8 inch	\$2,163.33	\$2,871.55	\$3,129.99	\$3,380.39	\$3,650.82	\$3,942.89
10 inch	\$2,704.16	\$3,589.02	\$3,912.04	\$4,225.00	\$4,563.00	\$4,928.04
Monthly Volumetric Charges:						
Commercial Charge (Applied to <u>Monthly</u> Water Use):						
Commercial 1	\$5.49	\$7.51	\$8.18	\$8.84	\$9.54	\$10.31
Commercial 2	\$6.42	\$8.32	\$9.06	\$9.79	\$10.57	\$11.42
Commercial 3	\$7.81	\$9.68	\$10.55	\$11.39	\$12.30	\$13.29
Commercial 4	\$8.86	\$12.03	\$13.12	\$14.17	\$15.30	\$16.52
Commercial 5	\$10.52	\$19.44	\$21.19	\$22.88	\$24.71	\$26.69
Commercial 6	\$17.56	\$32.26	\$35.17	\$37.98	\$41.02	\$44.30

LIFT STATION SERVICE CHARGES

Due to Morgan Hill's varying topography, additional infrastructure is required to provide wastewater services to residents living at different elevations within the City. Lift station charges based on the cost of service to operate and replace this additional infrastructure will be charged to those residents living in the areas requiring the use of the additional infrastructure. Proposed lift station service charges are included on *Table 2: Proposed Lift Station Service Charge*. Maps that allow customers to determine if they fall within an area serviced by lift stations are available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/24457/Customer-Sewer-Lift-Map?bidId=>

Table 2: Proposed Lift Station Service Charge

Lift Station Service Charge (As Applicable)						
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
	\$11.23	\$12.24	\$13.34	\$14.41	\$ 15.56	\$ 16.81
Total Percent Increase	N/A	9%	9%	8%	8%	8%

IMPACT TO WASTEWATER CHARGE ON THE BILL

If approved, wastewater rate increases would commence with the service period which contains October 1, 2024, and adjust annually for service periods containing July 1 thereafter.

The total amount of customer's wastewater charge will be fixed and for a single-family residence the wastewater charge on the utility bill will change as shown below.

Table 3: Average Monthly Single-Family Residence Wastewater Charge

		Under Proposed Rates				
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Wastewater	N/A	\$71.89	\$78.37	\$84.63	\$91.41	\$98.72
Total Percent Increase	N/A	9%	9%	8%	8%	8%

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes. If the City receives written protests against proposed wastewater rates by a majority of the affected property owners or tenants or utility customers on record prior to the end of the hearing, the Council will not approve the change. Only one written protest will be counted per identified parcel.

You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing. The City Council will count all written protests received (not postmarked) prior to the conclusion of the public hearing. The City Council will not count written protests submitted after the conclusion of the public hearing.

A written protest must include (1) your name; (2) identification of the parcel by address or assessor's parcel number; (3) whether you are the owner of the parcel or the person receiving the service for which the fee is charged; and (4) your statement of the specific rate changes for which you protest the increase in the fee; and (5) your original signature. Written protests will not be accepted by e-mail or by fax. Verbal protests will not be counted. Written protests may be submitted by mail or in person to:

**City of Morgan Hill
Attn: Rate Protest
17575 Peak Avenue
Morgan Hill, CA 95037-4128**

For more information, visit <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>

This material is available in alternative formats upon request to accommodate persons with disabilities or non-English speakers. To order information in an alternative format, or to arrange for a sign language or oral interpreter at the August 28, 2024, hearing, please call or email the Clerk's office by 5 pm on Thursday, August 15, 2024.

City Clerk: (408) 779-7259, cityclerk@morganhill.ca.gov



**Notice of Public Hearing
On Wastewater Rate Adjustments**

Hearing Date and Time: August 28, 2024, at 6:00 pm or as soon thereafter as possible
Hearing Location: City Council Chambers • 17555 Peak Avenue • Morgan Hill, CA 95037-4128

The City of Morgan Hill is proposing a five-year wastewater rate program adjustment for all customers. The proposal will be considered by the City Council at a Public Hearing on **August 28, 2024**. If approved, the wastewater rate adjustments will commence with the service period which contains October 1, 2024, and adjusted annually thereafter. You are receiving this notification in compliance with California Constitution Article XIII D Section 6 (Proposition 218) requirements that all impacted property owners are mailed notice of proposed rate changes at least 45 days prior to a public hearing. In addition, Section 53755 of the Government Code authorizes that notices be mailed to customers who are billed for the service. Proposition 218 also establishes a protest process for the public to follow if they wish to oppose the proposed rates.

BASIS OF PROPOSED RATES

The City is required by State law and City policy to collect revenues sufficient to cover the costs of operating the wastewater system. These revenues allow the City to protect public health and safely and reliably convey and treat wastewater. Costs that must be recovered through rate revenue include electricity, equipment, supplies and services, wastewater treatment, debt service, and salaries and benefits. Additionally, revenues generated from wastewater rates would be used to finance the repair and renovation of aging wastewater infrastructure and maintain reserve funds. The rates proposed herein were developed through a Wastewater Rate Study designed to meet all legal requirements and fairly and equitably recover the required revenue from all customer classes. The Rate Study is available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>.

WHAT DO WASTEWATER RATES FUND?

The City provides wastewater utility services to residential and commercial customers. All revenue generated from customer wastewater bills is used to pay for the ongoing operation, maintenance, repair and replacement of the existing wastewater systems. The cost of system expansions, to serve new development, is recovered through connection or impact fees imposed on the developer requesting City services. By State law, the City may not collect more revenue than is necessary to recover the costs of providing services.

WHY IS THE RATE ADJUSTMENT NEEDED?

Unlike private utility companies that benefit financially from increased rates associated with increased costs, the City strives to maintain low rates to support its residents and businesses. However, significant improvements to the City's aging wastewater infrastructure are necessary soon. The City's system includes certain pipe sections that are over 90 years old. As the system ages and is damaged by natural changes in the environment (such as tree roots) the sewer pipes begin allowing rainwater and groundwater to enter the wastewater system. During extremely wet conditions this infiltration can cause the wastewater system to be overwhelmed and spill. To ensure the safety of residents and to meet the requirements of the State of California, the City must repair these issues. The capital projects associated with the repair of the aging system require appropriate funding, which results in an increase to the wastewater rates. Additionally, rates are periodically adjusted to keep up with the rising cost of operating and maintaining the collection system and the cost of wastewater treatment.

The City plans to utilize municipal bonds to cover some of the City's existing wastewater infrastructure improvements. Financing allows the costs to be spread out over 20-30 years, reducing the immediate impact to rates. The City balanced the levels of financing and rate adjustments necessary to provide for moderate rate increases, while keeping debt at a manageable level.

PROPOSED WASTEWATER RATES

The City currently charges residential and non-residential customers a monthly fixed wastewater charge based on meter size. In addition to a fixed monthly charge, residential customers pay a variable charge (volumetric charge) of \$5.74 per unit of baseline water use for wastewater service, with a minimum volume of 2. Variable charges for residential customers are determined by the average monthly water usage for the three lowest consecutive months in the period between November and April of each year. As a general rule, a household's average monthly water use for the months of November through April provides a reasonable baseline estimate of the wastewater produced by the household each month of the year. Commercial and industrial customers are billed according to the volume of flow and strength of their wastewater discharges. The proposed wastewater rate charges for the next five years are presented in detail on *Table 1: Proposed Wastewater Rate Adjustment Schedule 2024-2028*, below.

Table 1: Proposed Wastewater Rate Adjustment Schedule 2024-2028.

Sewer Rate Schedule	Current Rates	Proposed Rates				
		10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
		9.00%	9.00%	8.00%	8.00%	8.00%
Monthly Fixed Charges:						
Residential (5/8-1 inch meters)	\$27.05	\$38.90	\$42.40	\$45.79	\$49.46	\$53.41
All Other Customers:						
5/8 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
3/4 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1.5 inch	\$101.27	\$139.52	\$152.08	\$164.24	\$177.38	\$191.57
2 inch	\$161.24	\$218.98	\$238.68	\$257.78	\$278.40	\$300.67
3 inch	\$351.26	\$470.73	\$513.10	\$554.15	\$598.48	\$646.36
4 inch	\$630.93	\$841.27	\$916.98	\$990.34	\$1,069.57	\$1,155.13
6 inch	\$1,400.38	\$1,860.72	\$2,028.18	\$2,190.43	\$2,365.67	\$2,554.92
8 inch	\$2,163.33	\$2,871.55	\$3,129.99	\$3,380.39	\$3,650.82	\$3,942.89
10 inch	\$2,704.16	\$3,589.02	\$3,912.04	\$4,225.00	\$4,563.00	\$4,928.04
Monthly Volumetric Charges:						
Single-Family (Applied to <u>Avg. Winter</u> Water Use)	\$5.74	\$5.18	\$5.64	\$6.10	\$6.58	\$7.11
Multi-Family (Applied to <u>Avg. Winter</u> Water Use)	\$5.74	\$5.18	\$5.64	\$6.10	\$6.58	\$7.11
Commercial Charge (Applied to <u>Monthly</u> Water Use):						
Commercial 1	\$5.49	\$7.51	\$8.18	\$8.84	\$9.54	\$10.31
Commercial 2	\$6.42	\$8.32	\$9.06	\$9.79	\$10.57	\$11.42
Commercial 3	\$7.81	\$9.68	\$10.55	\$11.39	\$12.30	\$13.29
Commercial 4	\$8.86	\$12.03	\$13.12	\$14.17	\$15.30	\$16.52
Commercial 5	\$10.52	\$19.44	\$21.19	\$22.88	\$24.71	\$26.69
Commercial 6	\$17.56	\$32.26	\$35.17	\$37.98	\$41.02	\$44.30

DETACHED ACCESSORY DWELLING UNIT (ADU)

Residential properties with a detached Accessory Dwelling Unit (ADU) will be classified as multi-family residential and will be charged with additional monthly fixed charges for each detached ADU.

LIFT STATION SERVICE CHARGES

Due to Morgan Hill's varying topography, additional infrastructure is required to provide wastewater services to residents living at different elevations within the City. Lift station charges based on the cost of service to operate and replace this

additional infrastructure will be charged to those residents living in the areas requiring the use of the additional infrastructure. Proposed lift station service charges are included on *Table 2: Proposed Lift Station Service Charge*. Maps that allow customers to determine if they fall within an area serviced by lift stations are available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/24457/Customer-Sewer-Lift-Map?bidId=>

Table 2: Proposed Lift Station Service Charge per Account

Lift Station Service Charge (As Applicable)						
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
	\$11.23	\$12.24	\$13.34	\$14.41	\$ 15.56	\$ 16.81
Total Percent Increase	N/A	9%	9%	8%	8%	8%

IMPACT TO WASTEWATER CHARGE ON THE BILL

If approved, wastewater rate increases would commence with the service period which contains October 1, 2024, and adjust annually for service periods containing July 1 thereafter.

The total amount of a customer’s wastewater charge will depend on the amount of water used between the months of November and April. For an average single-family residence (7 units of wastewater), the wastewater charge on the utility bill will increase as shown below.

Table 3: Average Monthly Single-Family Residence Wastewater Charge (7 units)

		Under Proposed Rates				
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Wastewater	\$67.23	\$75.16	\$81.88	\$88.49	\$95.52	\$103.18
Total Percent Increase	N/A	9%	9%	8%	8%	8%

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes. If the City receives written protests against proposed wastewater rates by a majority of the affected property owners or tenants or utility customers on record prior to the end of the hearing, the Council will not approve the change. Only one written protest will be counted per identified parcel.

You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing. The City Council will count all written protests received (not postmarked) prior to the conclusion of the public hearing. The City Council will not count written protests submitted after the conclusion of the public hearing.

A written protest must include (1) your name; (2) identification of the parcel by address or assessor’s parcel number; (3) whether you are the owner of the parcel or the person receiving the service for which the fee is charged; and (4) your statement of the specific rate changes for which you protest the increase in the fee; and (5) your original signature. Written protests will not be accepted by e-mail or by fax. Verbal protests will not be counted. Written protests may be submitted by mail or in person to:

City of Morgan Hill
Attn: Rate Protest
17575 Peak Avenue
Morgan Hill, CA 95037-4128

For more information, visit <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>

This material is available in alternative formats upon request to accommodate persons with disabilities or non-English speakers. To order information in an alternative format, or to arrange for a sign language or oral interpreter at the August 28, 2024, hearing, please call or email the Clerk’s office by 5 pm on Thursday, August 15, 2024.

City Clerk: (408) 779-7259, cityclerk@morganhill.ca.gov



Hearing Date and Time: August 28, 2024, at 6:00 pm or as soon thereafter as possible
Hearing Location: City Council Chambers • 17555 Peak Avenue • Morgan Hill, CA 95037-4128

The City of Morgan Hill is proposing a five-year wastewater rate program adjustment for all customers. The proposal will be considered by the City Council at a Public Hearing on **August 28, 2024**. If approved, the wastewater rate adjustments will commence with the service period which contains October 1, 2024, and adjusted annually thereafter. You are receiving this notification in compliance with California Constitution Article XIII D Section 6 (Proposition 218) requirements that all impacted property owners are mailed notice of proposed rate changes at least 45 days prior to a public hearing. In addition, Section 53755 of the Government Code authorizes that notices be mailed to customers who are billed for the service. Proposition 218 also establishes a protest process for the public to follow if they wish to oppose the proposed rates.

BASIS OF PROPOSED RATES

The City is required by State law and City policy to collect revenues sufficient to cover the costs of operating the wastewater system. These revenues allow the City to protect public health and safely and reliably convey and treat wastewater. Costs that must be recovered through rate revenue include electricity, equipment, supplies and services, wastewater treatment, debt service, and salaries and benefits. Additionally, revenues generated from wastewater rates would be used to finance the repair and renovation of aging wastewater infrastructure and maintain reserve funds. The rates proposed herein were developed through a Wastewater Rate Study designed to meet all legal requirements and fairly and equitably recover the required revenue from all customer classes. The Rate Study is available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>.

WHAT DO WASTEWATER RATES FUND?

The City provides wastewater utility services to residential and commercial customers. All revenue generated from customer wastewater bills is used to pay for the ongoing operation, maintenance, repair and replacement of the existing wastewater systems. The cost of system expansions, to serve new development, is recovered through connection or impact fees imposed on the developer requesting City services. By State law, the City may not collect more revenue than is necessary to recover the costs of providing services.

WHY IS THE RATE ADJUSTMENT NEEDED?

Unlike private utility companies that benefit financially from increased rates associated with increased costs, the City strives to maintain low rates to support its residents and businesses. However, significant improvements to the City's aging wastewater infrastructure are necessary soon. The City's system includes certain pipe sections that are over 90 years old. As the system ages and is damaged by natural changes in the environment (such as tree roots) the sewer pipes begin allowing rainwater and groundwater to enter the wastewater system. During extremely wet conditions this infiltration can cause the wastewater system to be overwhelmed and spill. To ensure the safety of residents and to meet the requirements of the State of California, the City must repair these issues. The capital projects associated with the repair of the aging system require appropriate funding, which results in an increase to the wastewater rates. Additionally, rates are periodically adjusted to keep up with the rising cost of operating and maintaining the collection system and the cost of wastewater treatment.

The City plans to utilize municipal bonds to cover some of the City's existing wastewater infrastructure improvements. Financing allows the costs to be spread out over 20-30 years, reducing the immediate impact to rates. The City balanced the levels of financing and rate adjustments necessary to provide for moderate rate increases, while keeping debt at a manageable level.

PROPOSED WASTEWATER RATES

The City currently charges residential and non-residential customers a monthly fixed wastewater charge based on meter size. In addition to a fixed monthly charge, residential customers pay a variable charge (volumetric charge) of \$5.74 per unit of baseline water use for wastewater service, with a minimum volume of 2. Variable charges for residential customers are determined by the average monthly water usage for the three lowest consecutive months in the period between November and April of each year. An alternative Fixed rate structure is proposed that will simplify the billing process for residential customers. The City is proposing an alternative rate structure of a 100% fixed wastewater rate charge for both single-family and multi-family residential customers. In this alternative structure, single-family residential charges are based on account and multi-family residential customers charges are per dwelling unit. The rate structure for non-residential customers remains unchanged. The proposed alternative rate structure is shown in Table 1 *Proposed Wastewater Rate Adjustment Schedule 2024-2028*, below.

Table 1: Proposed Wastewater Rate Adjustment Schedule 2024-2028.

Sewer Rate Schedule	Current Rates	Proposed Rates				
		10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
		9.00%	9.00%	8.00%	8.00%	8.00%
Monthly Fixed Charges:						
Single-Family Residential (100% Fixed Charge)	N/A	\$71.89	\$78.37	\$84.63	\$91.41	\$98.72
Multi-Family Residential (100% Fixed, per DU)	N/A	\$70.13	\$76.44	\$82.56	\$89.16	\$96.30
All Other Customers:						
5/8 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
3/4 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1 inch	\$27.05	\$38.89	\$42.39	\$45.78	\$49.45	\$53.40
1.5 inch	\$101.27	\$139.52	\$152.08	\$164.24	\$177.38	\$191.57
2 inch	\$161.24	\$218.98	\$238.68	\$257.78	\$278.40	\$300.67
3 inch	\$351.26	\$470.73	\$513.10	\$554.15	\$598.48	\$646.36
4 inch	\$630.93	\$841.27	\$916.98	\$990.34	\$1,069.57	\$1,155.13
6 inch	\$1,400.38	\$1,860.72	\$2,028.18	\$2,190.43	\$2,365.67	\$2,554.92
8 inch	\$2,163.33	\$2,871.55	\$3,129.99	\$3,380.39	\$3,650.82	\$3,942.89
10 inch	\$2,704.16	\$3,589.02	\$3,912.04	\$4,225.00	\$4,563.00	\$4,928.04
Monthly Volumetric Charges:						
Commercial Charge (Applied to <u>Monthly</u> Water Use):						
Commercial 1	\$5.49	\$7.51	\$8.18	\$8.84	\$9.54	\$10.31
Commercial 2	\$6.42	\$8.32	\$9.06	\$9.79	\$10.57	\$11.42
Commercial 3	\$7.81	\$9.68	\$10.55	\$11.39	\$12.30	\$13.29
Commercial 4	\$8.86	\$12.03	\$13.12	\$14.17	\$15.30	\$16.52
Commercial 5	\$10.52	\$19.44	\$21.19	\$22.88	\$24.71	\$26.69
Commercial 6	\$17.56	\$32.26	\$35.17	\$37.98	\$41.02	\$44.30

DETACHED ACCESSORY DWELLING UNIT (ADU)

Residential properties with a detached Accessory Dwelling Unit (ADU) will be classified as multi-family residential and will be charged with additional monthly fixed charges of per Dwelling Unit for each detached ADU.

LIFT STATION SERVICE CHARGES

Due to Morgan Hill's varying topography, additional infrastructure is required to provide wastewater services to residents living at different elevations within the City. Lift station charges based on the cost of service to operate and replace this additional infrastructure will be charged to those residents living in the areas requiring the use of the additional infrastructure. Proposed lift station service charges are included on *Table 2: Proposed Lift Station Service Charge*. Maps

that allow customers to determine if they fall within an area serviced by lift stations are available for review at <https://www.morganhill.ca.gov/DocumentCenter/View/24457/Customer-Sewer-Lift-Map?bidId=>

Table 2: Proposed Lift Station Service Charge per Account

Lift Station Service Charge (As Applicable)						
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
	\$11.23	\$12.24	\$13.34	\$14.41	\$ 15.56	\$ 16.81
Total Percent Increase	N/A	9%	9%	8%	8%	8%

IMPACT TO WASTEWATER CHARGE ON THE BILL

If approved, wastewater rate increases would commence with the service period which contains October 1, 2024, and adjust annually for service periods containing July 1 thereafter.

The total amount of customer's wastewater charge will be fixed and for a single-family residence the wastewater charge on the utility bill will change as shown below.

Table 3: Average Monthly Single-Family Residence Wastewater Charge

		Under Proposed Rates				
	Current	10/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028
Wastewater	N/A	\$71.89	\$78.37	\$84.63	\$91.41	\$98.72
Total Percent Increase	N/A	9%	9%	8%	8%	8%

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes. If the City receives written protests against proposed wastewater rates by a majority of the affected property owners or tenants or utility customers on record prior to the end of the hearing, the Council will not approve the change. Only one written protest will be counted per identified parcel.

You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing. The City Council will count all written protests received (not postmarked) prior to the conclusion of the public hearing. The City Council will not count written protests submitted after the conclusion of the public hearing.

A written protest must include (1) your name; (2) identification of the parcel by address or assessor's parcel number; (3) whether you are the owner of the parcel or the person receiving the service for which the fee is charged; and (4) your statement of the specific rate changes for which you protest the increase in the fee; and (5) your original signature. Written protests will not be accepted by e-mail or by fax. Verbal protests will not be counted. Written protests may be submitted by mail or in person to:

**City of Morgan Hill
Attn: Rate Protest
17575 Peak Avenue
Morgan Hill, CA 95037-4128**

For more information, visit <https://www.morganhill.ca.gov/DocumentCenter/View/49150/2024-Sewer-Rate-Study-PDF>

This material is available in alternative formats upon request to accommodate persons with disabilities or non-English speakers. To order information in an alternative format, or to arrange for a sign language or oral interpreter at the August 28, 2024, hearing, please call or email the Clerk's office by 5 pm on Thursday, August 15, 2024.

City Clerk: (408) 779-7259, cityclerk@morganhill.ca.gov

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS INTENTION TO ADJUST WASTEWATER RATES AND SETTING THE TIME AND PLACE FOR A PROPOSITION 218 PUBLIC HEARING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO PROVIDE NOTICE IN COMPLIANCE WITH STATE-MANDATED TIMING REQUIREMENTS

WHEREAS, the City of Morgan Hill has identified ongoing operational and capital needs associated with the City’s wastewater utility system; and

WHEREAS, in order to fund the identified wastewater system’s operational and capital costs, it will be necessary to adjust the City’s current wastewater rates; and

WHEREAS, on November 5, 1996, California voters approved Proposition 218, requiring specific procedures be followed with regard to “property-related” fee increases, including the need to provide written notice at least 45 days in advance of a public hearing; and

WHEREAS, on July 24, 2006, the California Supreme Court confirmed that charges for water, wastewater (sewer), and solid waste services are subject to Proposition 218 procedures (Bighorn-Desert View Water Agency v. Verjil (2006) 39 Cal. 4th 205); and

WHEREAS, on April 20, 2015, the California Court of Appeal ruled that water rate surcharges and by analogy wastewater surcharges may be charged as long as they are based upon the actual cost of service to the ratepayers receiving the surcharge. (Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano (2015) 235 Cal.App.4th 1493); and

WHEREAS, the City Council believes it is in the public interest to and desires to proceed through the requisite processes pursuant to the provisions of Proposition 218 in order to consider adjustments to the City of Morgan Hill's fees, rates and charges related to its wastewater system.

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

1. A Proposition 218 Public Hearing is hereby set and will be held before the City Council on August 28, 2024 in order for the City Council to consider adjustments to the City’s wastewater service fees, rates and/or charges; and
2. The City Manager, or designee, is hereby authorized and directed to cause a notice of Public Hearing that provides details related to adjustments to the specific wastewater service fees, rates and/or charges being proposed to be mailed no later than July 13, 2024, in a manner that complies with applicable laws, including without limitation, the State-mandated minimum 45-day required notice under Proposition 218.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at its regular meeting held on this 26th day of June, 2024 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

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. XX-XXX, adopted by the City Council at a regular meeting held on June 26, 2024.

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

DATE: _____

Michelle Bigelow, CITY CLERK

Item # 12
AGENDA DATE: 06/26/2024
SUPPLEMENT # 1

From: [Christina Turner](#)
To: [D. Muirhead](#)
Cc: [Dat Nguyen](#); [CityClerk](#)
Subject: RE: [EXTERNAL] comment Morgan Hill City Council June 26, 2024 #12 Wastewater Rate Study and Proposition 218 Notice
Date: Tuesday, June 25, 2024 1:01:40 PM
Attachments: [image001.png](#)

Hi Doug – we do count tenants or utility customers on record, not just owner of the parcel. Please see below.

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes. If the City receives written protests against proposed water rates by a majority of the affected property owners or tenants or utility customers on record prior to the end of the hearing, the Council will not approve the change. Only one written protest will be counted per identified parcel.

You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing. The City Council will count all written protests received (not postmarked) prior to the conclusion of the public hearing. The City Council will not count written protests submitted after the conclusion of the public hearing.

A written protest must include (1) your name; (2) identification of the parcel by address or assessor's parcel number; (3) whether you are the owner of the parcel or the person receiving the service for which the fee is charged; (4) your statement of the specific rate changes for which you protest the increase in the fee; and (5) your original signature. Written protests will not be accepted by e-mail or by fax. Verbal protests will not be counted. Written protests may be submitted by mail or in person to:

From: D. Muirhead <doug.muirhead@stanfordalumni.org>
Sent: Saturday, June 22, 2024 10:22 AM
To: CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: [EXTERNAL] comment Morgan Hill City Council June 26, 2024 #12 Wastewater Rate Study and Proposition 218 Notice

Greetings Morgan Hill City Council and City Staff,
A comment for your June 26, 2024 meeting
#12. Wastewater Rate Study and Proposition 218 Notice

I repeat my request at the previous 2019 rate increase that the Proposition 218 Notice accurately reflect the protest counting process used by the City, which in the past has differed from the description of the Proposition 218 Notice.

Proposition 218 Notification

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes.

The Proposition 218 Notice disenfranchises those of us who live in multi-unit dwellings and pay the bill for water/wastewater services, granting protest standing only to "owner or customer of record of a parcel".

However in the previous rate increase (City Council May 01 2019) the City said that they would count all protests including those of us who pay the wastewater bill but are not "owner or customer

of record of a parcel". Given the wording of the Notice, the residents of the 80 units in my complex would not know that they could have a voice in the new rate proposal.

For the record, the previous Wastewater Rates included a Community Meeting (February 25, 2019) where the Council Staff Report noted:

Two community members attended the meeting.

The following topics were discussed:

Proposition 218 notice and vote count

Changing topics, under 2024 Study 3.4 Current vs. Proposed Wastewater Rates, to "simplify the billing process", single-family residential charges are based on account and multi-family residential customers charges are per dwelling unit.

As a one-person household using 1/2 CCF/month in a multi-family complex, I probably don't benefit from this alternative "simplification."

Thank you for your consideration. Doug Muirhead, Morgan Hill

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

Wastewater Rates Adjustment



June 26, 2024

Overview



- Background
- Wastewater System Master Plan
- Proposed Wastewater Rates Adjustment
- Recommendation

Background



- 2019 Rate Study
 - Final annual rate adjustment - July 2023
- 2024 Wastewater System Master Plan
 - \$138 million in Total Improvement Costs
 - \$58 million to be paid by future users (impact fees)
 - \$80 million to be paid by existing users
- 2024 Wastewater Rate Study

Wastewater System Master Plan



- Key highlights from MP
 - Need for resiliency for existing users
 - New trunk line
 - Rehabilitation and replacement program for new sewer lines
 - Construction of new sewer lines and upsizing of existing lines
- New users will pay their share for growth through impact fees

Operational Cost Impacts



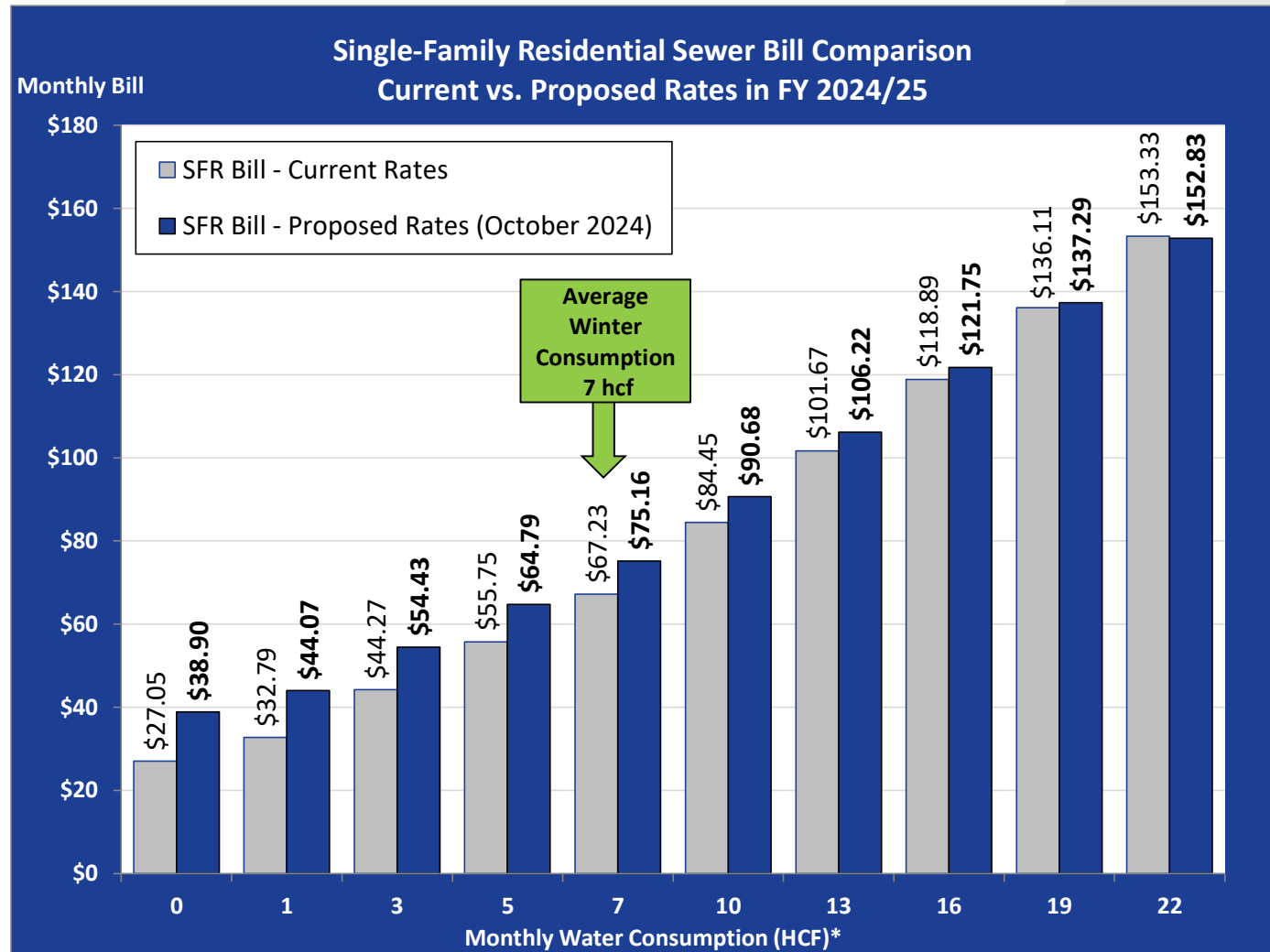
- Significant electricity cost increases
- High inflationary costs for personnel, supplies, and contract repairs
- Increased operation and maintenance charges from South County Regional Wastewater Authority (SCRWA)

Proposed Annual Rate Adjustment



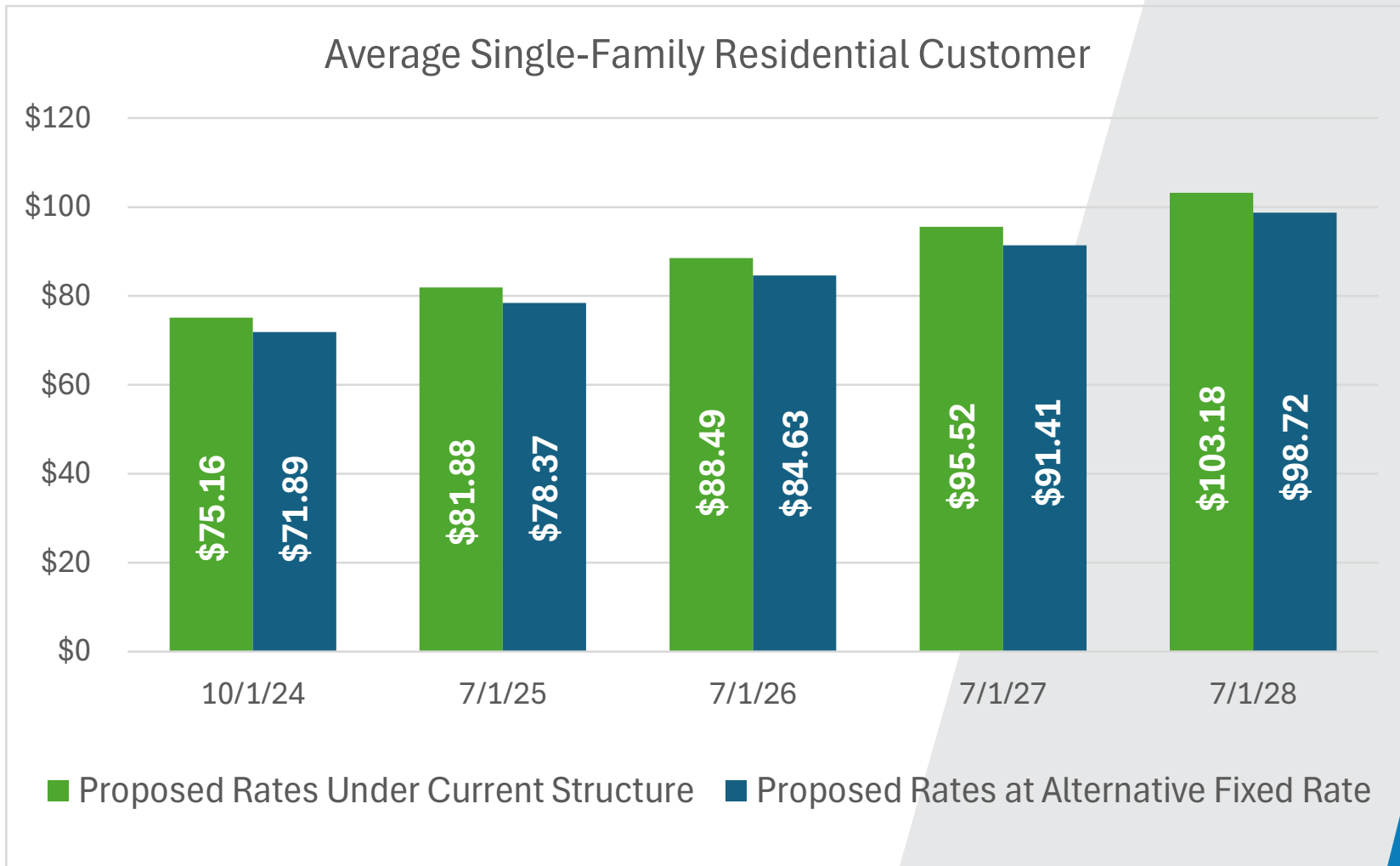
Summary of Sources and Uses of Funds and Net Revenue Requirements	Budget	Projected				
	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29
Sources of Wastewater Funds						
Rate Revenue Under Prevailing Rates	\$ 15,200,000	\$ 15,519,200	\$ 15,845,103	\$ 16,177,850	\$ 16,517,585	\$ 16,864,455
Other Operating Revenue	329,403	344,116	359,522	375,654	392,548	410,241
Interest Earnings	518,214	853,499	613,968	906,415	804,839	731,339
Use of Impact Fees for Debt Service	682,453	682,145	681,543	1,605,956	1,605,581	1,605,769
Total Sources of Funds	\$ 16,730,070	\$ 17,398,960	\$ 17,500,137	\$ 19,065,876	\$ 19,320,554	\$ 19,611,802
Uses of Wastewater Funds						
Operating Expenses	\$ 15,482,153	\$ 16,161,217	\$ 17,841,704	\$ 19,962,928	\$ 20,994,830	\$ 22,124,254
Existing Debt Service	1,280,963	1,280,288	1,278,663	1,279,238	1,278,638	1,278,938
Planned Debt Service	-	-	-	1,290,292	1,290,292	1,290,292
Total Use of Funds	\$ 16,763,116	\$ 17,441,505	\$ 19,120,367	\$ 22,532,458	\$ 23,563,760	\$ 24,693,484
Surplus (Deficiency) before Rate Increase	\$ (33,046)	\$ (42,545)	\$ (1,620,231)	\$ (3,466,582)	\$ (4,243,206)	\$ (5,081,682)
Additional Revenue from Rate Increases	-	1,047,546	2,980,464	4,580,726	6,372,482	8,375,965
Surplus (Deficiency) after Rate Increase	\$ (33,046)	\$ 1,005,001	\$ 1,360,233	\$ 1,114,144	\$ 2,129,276	\$ 3,294,283
Projected Annual Increase to Rate Revenue	5.00%	9.00%	9.00%	8.00%	8.00%	8.00%
Net Revenue Requirement	\$ 15,233,046	\$ 15,561,745	\$ 17,465,334	\$ 19,644,432	\$ 20,760,791	\$ 21,946,136
Projected Debt Coverage After Rate Increase	5.15	5.86	6.19	3.75	4.35	4.98
Debt Coverage Requirement	1.25	1.25	1.25	1.25	1.25	1.25

Bill Comparison – Current Rate Structure



* Hundred Cubic Feet (HCF) = 748 gallons

Bill Comparison – Proposed Current Rates vs. Alternative Rates



Bill Comparison (cont'd)



Average Single Family Residential						
	Current	FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
Current Rate Structure ¹	\$67.23	\$75.16	\$81.88	\$88.49	\$95.52	\$103.18
Alternative Fixed Rate	N/A	\$71.89	\$78.37	\$84.63	\$91.41	\$98.72

¹ Water consumption of 7 HCF/month

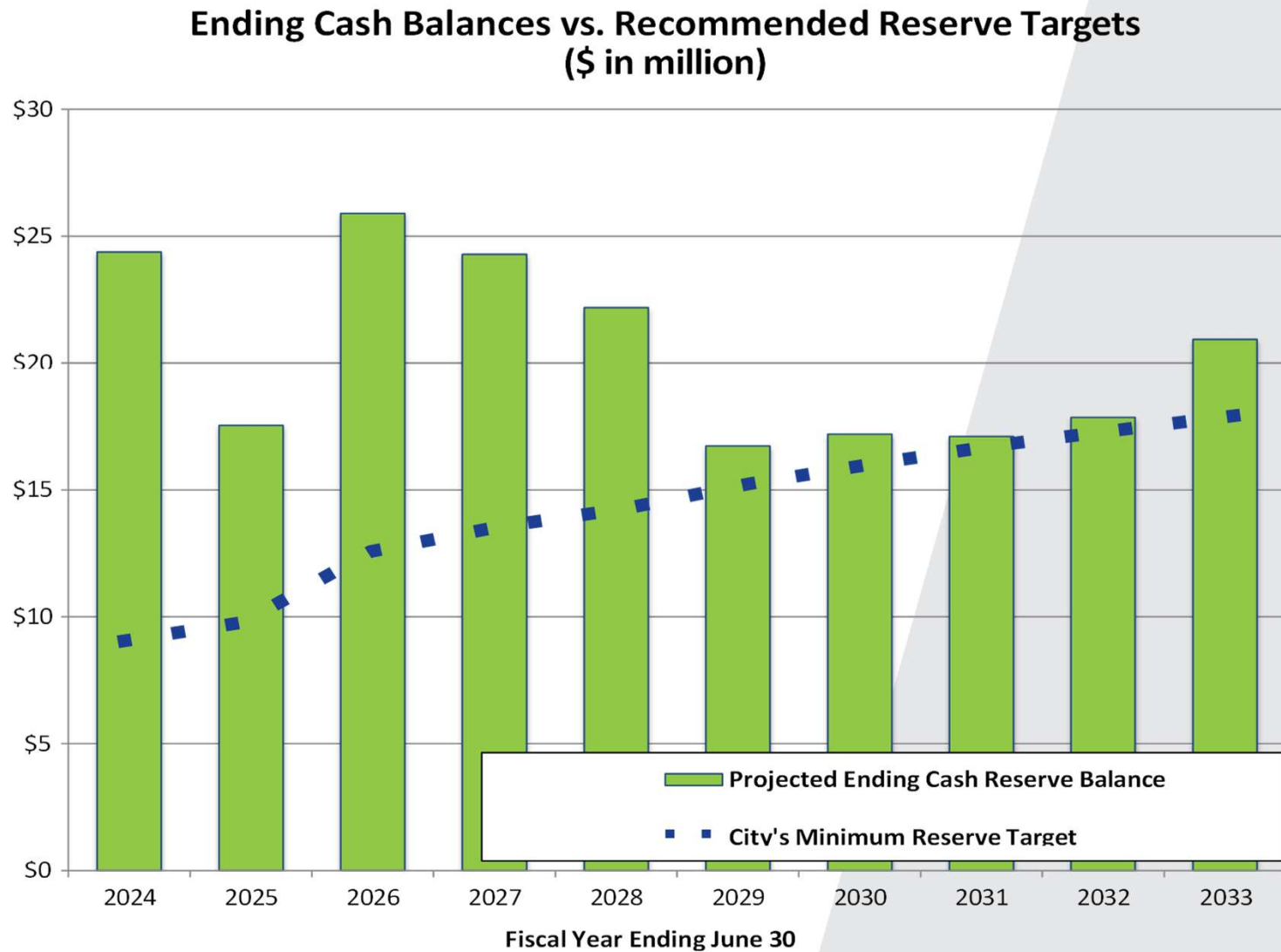
City	Rates ¹
San Jose	\$49.59
Gilroy	\$51.07
Palo Alto	\$55.93
Milpitas	\$64.22
Morgan Hill	\$71.89 ²
Morgan Hill	\$75.16 ³
Redwood City	\$97.74
Menlo Park	\$114.25

¹ July 1, 2024

² Alternative or fixed rate structure

³ Current rate structure

Cash Balances and Reserve



Lift Station Surcharges



- About 2,100 accounts out of 13,400

	Current	Proposed 10/1/2024	Proposed 7/1/2025	Proposed 7/1/2026	Proposed 7/1/2027	Proposed 7/1/2028
Lift Station Charge	\$11.23	\$12.24	\$13.34	\$14.41	\$15.56	\$16.81
% Change	N/A	9%	9%	8%	8%	8%

Low Income Subsidy



	Current	10/1/2024	7/1/25	7/1/26	7/1/27	7/1/28
Subsidy Amount	\$14.17	\$15.45	\$16.84	\$18.18	\$19.64	\$21.21
Percentage Increase	N/A	9%	9%	8%	8%	8%

- Those in PG&E Care Program
- Currently 332 customers
- Using “general” revenues, not from wastewater rates

Detached Accessory Dwelling Unit (ADU)



- Currently about 50 in the City
- Expecting more
- Fair and equitable rates for dwellings
- Additional fixed amount charge of \$38.90 per detached ADU at current rate structure - \$23K/year
- Alternative fixed rate structure at multifamily rate - \$41K/year

Recommendation



Adopt resolution:

- Intent to Adjust Wastewater Rates at:
 - 1) Current rate structure; or
 - 2) Alternative fixed rate structure; or
 - 3) Current rate structure with detached ADU; or
 - 4) **Alternative fixed rate structure with detached ADU (Staff Recommendation); and**
- Commence Proposition 218 Notices; and
- Set Public Hearing Date – August 28, 2024

Questions and Answers



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2024

PREPARED BY:

Christina Turner, City Manager

APPROVED BY: City Manager

PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEM

RECOMMENDATION(S)

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

Bring Viva Calle to Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety and Quality of Life

Supporting our Youth, Seniors, and Entire Community

2024-2025 Strategic Priorities

Community Engagement

Economic Development and Tourism

REPORT NARRATIVE:

Section 4.2 of City Council Policy 97-01 (Attachment 1) allows members of the City Council to request items be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" section of the agenda. A City Council report will then be placed on an upcoming agenda for Council discussion and consideration.

Below is a brief description of a recent item proposed for Council consideration.

Consider a public discussion on bringing Viva Calle to Morgan Hill (requested by Council Member Martinez Beltran, Attachment 2)

On May 15, 2024, Council Member Martinez Beltran requested the City Council consider a public discussion on bringing Viva Calle to Morgan Hill.

Staff is seeking direction from the City Council on whether they would like to agendize this item for a formal discussion. The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 12 hours.

COMMUNITY ENGAGEMENT:

This report seeks direction from the City Council on whether or not to further agendize this topic for Council consideration.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior actions.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with seeking direction from the Council on this item.

CEQA (California Environmental Quality Act):

Not a Project.

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

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-97-01

SUBJECT: RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

EFFECTIVE DATE: May 7, 1997

REVISED DATE: March 15, 2023, 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).
- 4.4 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.
- 4.5 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.
- 4.6 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.
- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 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.
- 4.11 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.

4.12 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.

4.13 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.

4.14 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:

DocuSigned by:

9581D1D2BBAF481...
MARK TURNER, MAYOR

Date: June 20, 2024
TO: Christina Turner
FROM: Yvonne Martínez Beltrán, Councilwoman
RE: Agenda Item To Consider & Approve Bringing Viva Calle to Morgan Hill

Per my request at our prior Council meeting I would like to refer an agenda item requesting the Council consider and approve bringing Viva Calle to Morgan Hill. Viva Calle is a free recreation program that temporarily opens miles of streets to bring communities together in the streets to walk, bike, skate, play and explore the city like never before!

Viva CalleSJ was inspired by similar programs hosted in Los Angeles; San Francisco; Portland; Guadalajara, Mexico; and other cities around the world. VivaCalleSJ is managed by the City of San José's Department of Parks, Recreation, and Neighborhood Services which brings over 120k people to neighboring San Jose. While we might not expect as many visitors the first time, it would create a buzz about an incredible experience in Morgan Hill and a chance for local and regional participants to explore our wineries, downtown, and beautiful landscape as well as our business and recreation opportunities.

I have attended Viva Calle in San Jose the past few years and similar types of programs in other countries that open miles of streets. This is a unique opportunity for us to showcase Morgan Hill and all its wonder and for participants to experience Morgan Hill in a more connected way than in their vehicles. This program is brought to you with \$58k in funds secured by the County for a Viva Calle program with miles of open streets for Morgan Hill and embodies the essence of our Strategic Priorities and furthers our Council Ongoing Priorities. It would enable the City to double down on our Tourism and Economic Development strategic priority to implement activations with partner organizations to increase tourism and vibrancy. It provides Community Engagement opportunities for every member of the community to participate, addresses multi-modal Transportation, promotes Healthy Living, protects the environment by encouraging people to connect with open space, all while supporting our youth, seniors and entire community.

The miles of open streets course includes activity hubs where participants can stop for water, food, resources and enjoy entertainment and inspires participants to veer off the course and discover. Many organizations and local businesses that have been in preliminary contact, and learned about Viva Calle are excited about the opportunity this would bring to Morgan Hill. Our community is prime for a family outdoor event like this for all ages. Bringing Viva Calle to Morgan Hill clearly presents the opportunity to

increase tourism, recreation, and economic activity, promote livable streets and open space enjoyment, as well as environmental awareness and healthy living through a fun and all ages family friendly walking and biking for miles open streets experience.

In Community,

A handwritten signature in black ink, reading "Yvonne Martínez Beltrán". The signature is fluid and cursive, with the first name "Yvonne" and last name "Beltrán" clearly legible, and "Martínez" in the middle.

Yvonne Martínez Beltrán
Councilwoman
City of Morgan Hill