



Regular Meeting Agenda
City Council

<i>Mark Turner</i>	-	<i>Mayor</i>
<i>Yvonne Martínez Beltrán</i>	-	<i>Mayor Pro Tem</i>
<i>Soraida Iwanaga</i>	-	<i>Council Member</i>
<i>Marilyn Librers</i>	-	<i>Council Member</i>
<i>Miriam Vega</i>	-	<i>Council Member</i>

Wednesday, March 5, 2025 6:00 PM

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

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

MEETING PARTICIPATION

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

As a courtesy, and technology permitting, members of the public may attend online. However, the City cannot guarantee that the public's access to online technology will be uninterrupted, and technical difficulties may occur from time to time. Unless required by the Ralph M. Brown Act, the meeting will continue despite technical difficulties for participants using the online option.

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. Public comment is limited to three minutes, but the Mayor may adjust time limits for individual or total comments while ensuring all viewpoints are heard, encouraging speakers to avoid repetition, and allowing a designated spokesperson for organized support or opposition to present longer if needed.

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

- Consent Calendar
- Other Business
- Public Hearings
- Closed Session

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

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

Written public comment may be submitted to the City Clerk:

- In person at the City Council Meeting;
- Via email to ccpubliccomment@morganhill.ca.gov; or
- Hand delivered or mailed to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037

Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) so that your comments can be submitted to the members of the City Council with sufficient time to review them. You may continue to provide written comments up to noon on Wednesday (the day of the meeting), although Council Members may not have sufficient time to review them before the meeting. Public comments submitted to the City Clerk after noon (12:00 p.m.) the day of the meeting will be provided to the City Council as time allows.

Written comments WILL NOT be read aloud during the City Council Meeting. Please note that written comments are posted on the City's website. It is recommended that you do not include any personal information that you do not want to be posted on the web. Please be advised that communications directed to the City Council are public records and are subject to disclosure pursuant to the California Public Records Act and Brown Act unless exempt from disclosure under the applicable law. Communications will NOT be edited for redactions and will be printed/posted as submitted.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and

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

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Youth Arts Month

PRESENTATIONS

YAC Presentation

CITY COUNCIL REPORTS

Council Member Vega

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

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

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

Public Comment Supplement 1

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. **ACCEPTANCE OF THE CONDIT ROAD SEWER CAPACITY UPGRADE PROJECT IN THE AMOUNT OF \$1,895,930**

Recommendation:

1. Accept as complete the Condit Road Sewer Capacity Upgrade Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

2. **ADOPT A RESOLUTION AUTHORIZING GRANT APPLICATIONS FOR GRANT FUNDS FROM VALLEY WATER'S SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM**

Recommendation:

Adopt a resolution authorizing the City Manager to submit grant applications for grant funds from Valley Water's Safe, Clean Water and Natural Flood Protection Program.

3. **ADOPT EDITS TO THE SUSTAINABLE MORGAN HILL DOCUMENT**

Recommendation:

Adopt edits to the Sustainable Morgan Hill document.

4. **ADOPT ORDINANCE NO. 2363, NEW SERIES AMENDING CHAPTER 12.32 (RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES) WITHIN TITLE 12 (STREET, SIDEWALKS, AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AMENDING SECTION 17.20.040 (FORM AND CONTENTS) OF CHAPTER 17.20 (MAP REQUIREMENTS-FIVE OR MORE PARCELS) AND SECTION 17.24.030 (FORM AND CONTENT) OF**

CHAPTER 17.24 (MAP REQUIREMENTS-FOUR OR LESS PARCELS) WITHIN TITLE 17 (SUBDIVISIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO INCONSISTENCIES, AND AMENDING TABLE 18.22-2 (DEVELOPMENT STANDARDS IN MIXED USE ZONING DISTRICTS) WITHIN SECTION 18.22.040 (DEVELOPMENT STANDARDS) OF CHAPTER 18.22 (MIXED USE ZONING DISTRICTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REMOVE THE MAXIMUM FLOOR AREA RATIO (FAR) AND BUILDING COVERAGE WITHIN THE (MIXED USE FLEX) MU-F ZONING DISTRICT

Recommendation:

Waive the reading, adopt Ordinance No. 2363, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

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

Recommendation:

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

6. APPROVE THE FEBRUARY 7, 2025 GOAL REVIEW WORKSHOP MEETING MINUTES AND THE FEBRUARY 19, 2025 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve minutes.

7. AWARD ON-CALL GENERAL CONTRACTOR SERVICES CONTRACTS

Recommendation:

1. Award two-year on-call public works contracts for general contractor services to Castlewood Construction Company, Inc., Pueblo Construction, Inc. and Tucker Construction, Inc. in a not-to-exceed amount of \$220,000 each; and
2. Authorize the City Manager to execute and administer the contracts.

8. RECEIVE MONTHLY BUDGET UPDATE AND JANUARY 2025 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Receive and file reports.

OTHER BUSINESS

9. **CONSIDER ADOPTION OF A RESOLUTION AUTHORIZING THE DISPLAY OF THE DONATE LIFE FLAG**

Recommendation:

Adopt or do not adopt a resolution authorizing the display of the Donate Life Flag for the month of April.

10. **ADOPT RESOLUTION FURTHER REAFFIRMING THE CITY'S COMMITMENT TO A DIVERSE, SUPPORTIVE, INCLUSIVE COMMUNITY AND PROTECTING THE CONSTITUTIONAL RIGHTS OF ITS RESIDENTS**

Recommendation:

Adopt resolution further reaffirming the City's commitment to a diverse, supportive, inclusive community and protecting its residents' constitutional rights.

11. **PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEM REGARDING USE OF CELL PHONES DURING COUNCIL MEETINGS**

Recommendation:

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

Prohibiting the use of cell phones by Council Members during Council meetings.

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 you wish to address the City Council on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

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

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

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

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

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

SUSTAINABLE MORGAN HILL



Vision

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

Choose Morgan Hill

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

Strategic Priorities 2024-2025

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

City Council Ongoing Priorities

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

LETTER TO EDITOR, OR GUEST EDITORIAL?--TRUTH-IN-TRANSPORTATION? NOT WHAT WE GET FROM THE CAHSRA BULLET TRAIN ADVOCATES

From: Joseph P Thompson (translaw@pacbell.net)

To: echalhoub@weeklys.com; mmoore@weeklys.com; editor@garlic.com; editor@gilroydispatch.com

Cc: allcouncilmembers@ci.gilroy.ca.us; chamber@gilroy.org; mark.turner@morganhill.ca.gov; cityclerk@hollister.ca.gov; supervisor kosmicki@cosb.us; supervisorzanger@cosb.us; sbcsuper@supervisor.co.san-benito.ca.us; supervisors@cosb.us; supervisor gonzales@cosb.us; supervisorsotelo@cosb.us; supervisorcurro@cosb.us; info@sanbenitocog.org

Date: Sunday, February 23, 2025 at 11:48 AM PST

U.S. Transportation Secretary Duffy Announces Review of California High-Speed Rail Project

→ PUBLIC COMMENT: NEXT MEETING; REAL OR VIRTUAL; REGULAR OR SPECIAL; STUDY SESSION OR PUBLIC WORKSHOP:--

Dear Friends:--

Referring to the U.S.D.O.T. Secretary's announcement of the federal government investigation of CAHSRA's SuperMassive Black Hole Bullet Train, taxpayers deserve truth-in-transportation, which we are not getting from public sector transit advocates, e.g., CAHSRA high speed rail Trojan Horse Monstrosity.

Taxpayers say, "Get Real." We cannot afford the additional gas taxes and other taxes/fees that will be required to pay for the construction and capital costs, plus the estimated \$1B/year annual operating losses, that independent experts predict. What are they smoking at CAHSRA? Worse than the public sector transit model that we already subsidize with our gas taxes, sales taxes, etc., you can see that they are lying, again, if you do the math yourself, and don't swallow the BS-Baloney from CAHSRA and public sector transit advocates. Using their numbers, 1,000,000 annual riders from Merced to Bakersfield means 500,000 round trips. \$50,000,000,000.00 capital & construction costs, plus \$1,000,000,000.00

annual operating costs equals \$51,000,000,000.00; if paid by 500,000 riders means fully amortized fares,

- fully remunerative fares (i.e., fares cover all costs), puts a round-trip fare price at \$102,000.00. At that price it would be cheaper for taxpayers to buy each HSR rider his own Mercedes or BMW.

If you stretch recovery of capital & construction costs over a 20 year period, then the fare price drops to only \$5,100.00 for a round trip ticket. How many riders are going to pay that fare price? Zero.

So, to get riders aboard HSR, you will need to collect the majority (99%) of the fare price from the California taxpayers (federal taxpayers are not going along for this socialist ride as they do for Amtrak).

If you tax California's taxpayers out of their cars, how will you pay for public sector transit of any kind?

Since October 2008 when the Gilroy & Morgan Hill Chambers of Commerce had me debate the Honorable Rod Diridon on pros & cons of Prop. 1A, CAHSRA's advocates have lied to the voters.

In concluding my side of the debate, I pointed out that UPRR would not permit CAHSRA on, over, or under its properties, and that since the Class Ones have federal eminent domain authority, the CAHSRA's inferior (State) eminent domain authority would fall to the Class One under federal preemption principles in the U.S. Constitution. The two Chambers' members knew the HSR advocates were lying on hearing Rod's closing response to my conclusion: "Don't worry," he told the audience, "We'll run on BNSF tracks and make Gilroy a South Bay Hub of the Bullet Train."

Since the closest BNSF tracks to Gilroy are on Stockton-Fresno Corridor in SJV, the audience could see how the Bullet Train advocates lied to the voters.

Since then, nothing has changed, except CAHSRA's lies have grown bigger and bigger. And taxpayers are getting ripped-off to pay government's Utopian pipe-dreams, real nightmares for those paying for them.

Voters deserve the truth in transportation, and I believe that we ought to give it to them.

Want more?

See my testimony before the Assembly Transportation Committee at the State Capitol in 2010 in support of legislation to defund the Bullet Train on YouTube.

Caveat viator.

Joseph P. Thompson, Esq.
Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.
* (408) 848-5506
E-Mail: TransLaw@PacBell.Net

PRESS RELEASE:

Thursday, February 20, 2025

WASHINGTON – Today, at the direction of Secretary of Transportation Sean P. Duffy, the Federal Railroad Administration (FRA) initiated a review of the California High-Speed Rail Authority (CHSRA). This review will help determine whether roughly \$4 billion in taxpayer money should remain committed to the proposed project to build high-speed rail in the California Central Valley between Merced and Bakersfield.

The entire San Francisco to Los Angeles project was initially supposed to be completed by 2020 and cost \$33 billion. Today, the Merced-to-Bakersfield segment alone would cost more than the original total. The latest estimate for San Francisco to Los Angeles is \$106 billion — more than three times the original cost estimate.

“For too long, taxpayers have subsidized the massively over-budget and delayed California High-Speed Rail project,” said U.S. Transportation Secretary Sean P. Duffy. “President Trump is right that this project is in dire need of an investigation. That is why I am directing my staff to review and determine whether the CHSRA has followed through on the commitments it made to receive billions of dollars in federal funding. If not, I will have to consider whether that money could be given to deserving infrastructure projects elsewhere in the United States.”

As recently noted by the California High-Speed Rail Office of the Inspector General, just the Merced-to-Bakersfield segment has a funding gap of at least \$6.5 billion. That gap remains despite California being due to receive over \$4 billion from the Biden Administration. The CHSRA Inspector General also found that even this limited project, with barely 2 million in annual projected ridership because it fails to connect California’s larger cities, is unlikely to be completed by 2033.

In March of 2023, the CHSRA Peer Review Group, charged with evaluating CHSRA’s funding plans, reported an “unfunded gap of \$92.6 billion to \$103.1 billion between estimated costs and known State and Federal funding” for the San Francisco-to-Las Angeles connection. Given the red flags raised about this project, FRA will investigate the delays and cost overruns through a compliance and performance review.

The slow progress by CHSRA contrasts with the impressive work of Brightline West to build a high-speed rail system. Brightline West plans to begin service between the Los Angeles region and Las Vegas in 2028.

At the direction of Secretary Duffy, FRA will review CHSRA and the progress on the Merced-to-Bakersfield Corridor. The detailed review will look at CHSRA’s compliance under the FRA-

administered grant agreements to determine whether CHSRA has fully met its obligations under the award terms.

Joseph P. Thompson
ATTORNEY AT LAW
952 SCHOOL STREET #376
NAPA, CALIFORNIA 94559

FRESNO CA 936
24 FEB 2025 PM 1 L



Public Comment-NEXT MEETING:--

Clerk
City Council
17575 Peak Ave.
Morgan Hill, CA 95037-4128

95037-4128

95037-4128

E-mail: TransLaw@PacBell.Net

Public Comment

Joseph P. Thompson
Attorney at Law



952 School St. #376
Napa, CA 94559

TEL: 408/848-5506

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Kristian Wallace, Associate Engineer

APPROVED BY: City Manager

ACCEPTANCE OF THE CONDIT ROAD SEWER CAPACITY UPGRADE PROJECT IN THE AMOUNT OF \$1,895,930

RECOMMENDATION(S)

1. Accept as complete the Condit Road Sewer Capacity Upgrade Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Wastewater System Master Plan

REPORT NARRATIVE:

On April 24, 2024, the Condit Road Sewer Capacity Upgrade Project was awarded to SubTerra Construction Inc. in the amount of \$1,824,097 with a contingency of \$364,820. The project scope of the work included the installation of approximately 3,400 linear feet of new 12" sewer main along Condit Road between East Dunne Avenue and Barrett Avenue. Additional work completed with the project included slurry sealing the full width of Condit Road from East Dunne Avenue to approximately 800 feet south of the intersection and slurry sealing the northbound lane of Condit Road from Barrett Avenue to approximately 800 feet south of the East Dunne Avenue intersection. With the completion of this project, the capacity of the sanitary sewer system in the project area has been increased and the reliance on the East Dunne Avenue sewer siphon crossing Highway 101 has been reduced with the diversion of sewer flows to the larger sewer siphon crossing Highway 101 at Barrett Avenue (see Attachment 1 for Vicinity Map). With the diversion of this sewer flow, the need to upsize the sewer siphon crossing under Highway 101 at East Dunne Avenue is no longer necessary.

Construction of this project began in July 2024 and was substantially completed by February 3, 2025. Three change orders were authorized in the amount of \$71,833 due to plan changes and unforeseen conditions (see Attachment 2). The final construction contract with SubTerra Construction Inc. is \$1,895,930. Staff recommends accepting this project as it has been completed in accordance with the plans and specifications. Additionally, staff recommends directing the City Clerk to file the Notice of Completion for the project (see Attachment 3).

COMMUNITY ENGAGEMENT:

Inform.

Prior to and during construction of this project, City Staff and the Contractor worked closely to keep immediate residents informed of daily construction activities. Furthermore, Staff have informed the community regarding the progress of this project using the media, social media, and the City's website.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the Contractor per California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

October 18, 2017 - City Council adopted Sanitary Sewer Master Plan.

June 15, 2022 - City Council adopted Fiscal Year 2022-23 through 2027-28 Capital Improvement Program Budget which identifies funding for the proposed sewer projects.

April 24, 2024 - City Council awarded the Condit Road Sewer Capacity Upgrade Project to SubTerra Construction Inc.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Condit Road Sewer Capacity Upgrade Project is \$1,895,930. The project was awarded to SubTerra Construction Inc. in the amount of \$1,824,097 with a contingency of \$364,820 (total of \$2,188,917). The project is funded within the FY 2023-24 and FY 2024-25 Budget through Sewer Impact Fee Fund 641 and Sewer Capital Project Fund 643.

CEQA (California Environmental Quality Act):

Categorically Exempt.

The proposed improvements of the Condit Road Sewer Capacity Upgrade Project are categorically exempt under CEQA Section 15302 (c) Replacement or Reconstruction of Existing Utilities and Section 15303 (d) New Construction or Conversion of Small Structures, as the subject work involves the removal and replacement of a sewer main within an existing paved roadway to eliminate a flow deficiency.



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

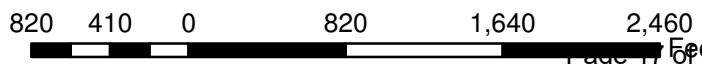


CITY OF MORGAN HILL

Public Services Department
CIP Engineering Division

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Condit Sewer Capacity Upgrade Project



820 410 0 820 1,640 2,460 Feet

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CIP Contract Acceptance Funding Closeout Statement

Project:	Condit Road Sewer Capacity Upgrade Project			
Project No:	WW3009			
Date of Project Award:	24-Apr-24	Project Award Amount:		\$1,824,097
Funding Source:	F641 and F643	Contingency Authorized:		\$364,820
Date of Project Acceptance:	5-Mar-25	Total Authorized:		\$2,188,917
		Actual Base Contract Spent:		\$1,824,097

Change Orders				
	Description	Date	Council Approval Reqd? (Y/N)	
C.O. #1:	2nd Street Sewer Siphon Repair	20-Jun-24	N	\$128,000.00
C.O. #2:	Sewer Main Alignment Change, Conflict Storm Drain Manhole, Unforeseend Trench Conditions, Contract Add and Deducts	13-Dec-24	N	-\$57,022.38
C.O. #3:	Sanitary Sewer Manhole Cover Replacement	27-Jan-25	N	\$855.76
			Total C.O.:	\$71,833.38

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	\$292,986.62	Total Construction Amount (Base Contract plus CO's):	\$1,895,930.38
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Recording Requested By:

When Recorded Mail To:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the Owner or agent of the Project described below.
2. Owner's full name is City of Morgan Hill.
3. Owner's address is 17575 Peak Avenue, Morgan Hill, CA.
4. The nature of Owner's interest in the Project is:
☒ Fee ownership ☐ Lessee ☐ Other: _____
5. Construction work on the Project performed on Owner's behalf is generally described as follows: installation of approximately 3,400 linear feet of new 12" sanitary sewer main, 12 new manholes, and all appurtenances thereto.
.
6. The name of the original Contractor for the Project is: SubTerra Construction Inc.
7. The Project was completed on: March 5, 2025.
8. The Project is located at: Condit Road from East Dunne Avenue to Barrett Avenue

Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Signature

Date

Scott Creer – City Engineer

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

ADOPT A RESOLUTION AUTHORIZING GRANT APPLICATIONS FOR GRANT FUNDS FROM VALLEY WATER'S SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM

RECOMMENDATION(S)

Adopt a resolution authorizing the City Manager to submit grant applications for grant funds from Valley Water's Safe, Clean Water and Natural Flood Protection Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

2024-2025 Strategic Priorities

Healthy Community

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

Valley Water currently has an open call for its Standard Grants Program. The Valley Water Standard Grants Program supports projects that promote safe, clean drinking water, water conservation, flood protection, and environmental stewardship in Santa Clara County. The program has three categories of grant funding: Education, Planning, and Stewardship. The City is recommending applying for a Planning Grant for trails near Silveira Lake and Llagas Creek and a Stewardship Grant to refresh the drought-tolerant demonstration gardens at various City facilities.

For the trail planning project, the grant funds would be used towards completing environmental analysis and designs for additional trails, bridges and other amenities in the area. City staff are currently working on the planning for projects to extend and add trails in this area in alignment with the City's Bikeways, Trails, Parks and Recreation Master Plan. Current information on the trail planning is available on the City website here: <https://www.morganhill.ca.gov/1720/West-Little-Llagas-Creek-Trail-Extension>. The grant funds would be used to develop conceptual design and environmental analysis to support future trails in the area.

For the drought-tolerant demonstration gardens project, the grant funds would be utilized to update signage, irrigation, and plantings at existing demonstration sites. Demonstration gardens are landscaping areas comprised of low-water native plants, which provide residents and businesses with ideas to improve their own property. The City currently has sites at the Civic Center, near the new Fire Station, and the Community and Cultural Center.

COMMUNITY ENGAGEMENT:

Involve

City staff have met with residents on this project over the last year. These meetings have been with numerous residents and neighborhood groups as well as a general community meeting. If the grant for the trail planning is obtained, the City would continue to meet with residents as the planning of the project progresses.

ALTERNATIVE ACTIONS:

The City Council could choose not to authorize the grant applications and provide staff with alternate direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously approved grant applications with Valley Water.

FISCAL AND RESOURCE IMPACT:

The grants may bring in up to \$300,000 to the City if successful. The City would be required to pay a 15% match on the projects if successful. The City has available funds for the trail project to use for the match in Capital Improvement Project PR1002 (West Little Llagas Creek Trail) and would utilize funds from the various facility maintenance budgets for the match at the demonstration garden sites.

CEQA (California Environmental Quality Act):

Categorical Exemption

The demonstration garden sites would be improving existing facilities and exempt, as the planned maintenance and management of city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities. The planning work for the trails is also exempt under Categorical Exemption 15262:

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors.

RESOLUTION NO. 25-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY MANAGER TO APPLY FOR GRANT FUNDS UNDER THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM

WHEREAS, the Santa Clara Valley Water District has enacted the FY2025 Safe Clean Water Grant Program (Safe Clean Water), which provides funds for Education Grants, Planning Grants, and Stewardship (Program) Grants; and

WHEREAS, the Santa Clara Valley Water District's Office of Civic Engagement has been delegated the responsibility for the administration of the grant program, and establishing necessary implementation procedures; and

WHEREAS, said procedures established by the Santa Clara Valley Water District require Applicant's Governing Body to certify by resolution Applicant's approval to apply for and accept grant program funds; and

WHEREAS, Applicant will enter into a Grant Agreement with the Santa Clara Valley Water District.

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

1. Approves the submission of an Application for grant funds from the Safe, Clean Water and Natural Flood Protection Program;
2. Approves the acceptance of grant funds from the Safe, Clean Water and Natural Flood Protection Program, upon approval of grant funding for the Project by appropriate authorities;
3. Certifies that City of Morgan Hill has or will have sufficient funds to operate and maintain the Project(s);
4. Certifies that Applicant will maintain an accounting system that:
 - a) Accurately reflects fiscal transactions, with the necessary controls and safeguards;
 - b) Provides good audit trails, especially the source documents; and
 - c) Provides accounting data so the total cost of each individual project can be readily determined.
5. Certifies that Applicant will review and agree to all terms and conditions stated in the Agreement including the Special Provisions, General Provisions, Financial Provisions, and Insurance Requirements contained in the Agreement; and
6. Appoints the City Manager as its authorized agent to conduct all negotiations, execute and submit all documents and reports including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the performance and completion of the Project.

PASSED AND ADOPTED by the City Council of Morgan Hill on this 5th day of March 2025 by the following vote:

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

APPROVED:

ATTEST:

MARK TUNER, 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. 25-XXX, adopted by the City Council at its meeting held on March 5, 2025.

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

DATE: _____

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Christina Turner, City Manager

APPROVED BY: City Manager

ADOPT EDITS TO THE SUSTAINABLE MORGAN HILL DOCUMENT

RECOMMENDATION(S)

Adopt edits to the Sustainable Morgan Hill document.

COUNCIL PRIORITIES, GOALS & STRATEGIES

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

2024-2025 Strategic Priorities

Fiscal Sustainability

Affordable Housing and Homelessness

Community Engagement

Economic Development

Transportation

Healthy Community

REPORT NARRATIVE:

On February 7, 2025, the City Council held its annual Goal Setting Workshop where they reviewed and discussed:

- a. 2024 Accomplishments
- b. Rules for the Conduct of City Council Meetings (CP 97-01)
- c. City Council Appointments to Outside Agencies
- d. 2024-2025 Strategic Priorities Workplan
- e. 2024-2025 Sustainable Morgan Hill
- f. Financial Update
- g. Economic Development Update

h. Housing Update

The City Council reaffirmed the current vision, ongoing priorities, and the strategic priorities. Minor edits were made to the definitions of the strategic priorities to better align with the current staff workplan. Attached is the updated 2024-2025 Sustainable Morgan Hill document.

COMMUNITY ENGAGEMENT:

Involve - the City Council Goal Setting Workshops were open to the public and recorded for later viewing on the City's website.

ALTERNATIVE ACTIONS:

City Council could decide to make additional or no changes to Sustainable Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council reviews its goals and priorities at the beginning and middle of each year.

FISCAL AND RESOURCE IMPACT:

Updating Sustainable Morgan Hill does not have an immediate fiscal or resource impact.

CEQA (California Environmental Quality Act):

Not a Project - Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

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

2024-2025 STRATEGIC PRIORITIES

Fiscal Sustainability

The City will continue to be financial stewards of its resources and assets to ensure long-term fiscal sustainability. Through the budget development process, the City, within the fiscal sustainability path, will prudently carry out the City Council's priorities, while maintaining adequate fund balance reserves. The City will continue to explore new or expand existing revenue sources to ensure fiscal sustainability.

Affordable Housing and Homelessness

Morgan Hill will continue to improve, preserve, and develop new safe, quality, rental, and ownership housing for [workers and](#) residents at all income levels. To the extent possible, the City will respond to and reconcile new housing initiatives and legislative mandates. The City is guided by the vision of its General Plan, a long-term plan for the physical development of the Community. The vision includes the preservation of agriculture, incentives to foster infill development, and new housing for families of various sizes, ages, and incomes. Like many other cities in the Bay Area, Morgan Hill is experiencing transformative growth and working to meet the housing needs of its current and future residents. The City's Housing Program is grounded in five key pillars:

- **Production of New Affordable Housing Units:** Morgan Hill will continue to improve, preserve, and develop new safe, quality, rental and ownership housing for [workers and](#) residents at all income levels through the implementation of its Inclusionary Housing Ordinance. The City will seek partnerships that create new housing opportunities directly aligned with the City's "fair share" Regional Housing Needs Allocation (RHNA).
- **Preservation of Existing Affordable Housing Inventory:** The City has a robust inventory of Below Market Rate ([BMR](#)) housing units. Through the City's thoughtful planning, affordable housing ~~ishas been~~ integrated throughout the Community and balanced throughout new developments. The City's Inclusionary Housing Ordinance further ensures future production of income-restricted units. The City will coordinate the [sale of and](#) lease up process of upcoming affordable developments to ensure residents are aware of and accessing upcoming housing opportunities.
- **Promotion of Housing Program:** The City manages an inventory of Below Market Rate deed-restricted units and collaborates with the County of Santa Clara and local non-profits to connect residents to resources. Staff will focus on communications, engagement, and education of housing [resources and](#) services with particular attention to the Spanish-speaking residents.
- **Prevention of Homelessness:** Implement the Countywide Community Plan to End Homelessness by continuing to identify barriers and housing problem solving at the local level [through with](#) the assistance of the Unhoused Specialist, and advance efforts to increase coordination in South County among its service providers. The City will continue to employ a balanced approach, offering resources and referrals to services, partnering with the faith-based community and non-profits to create appropriate local service points, while also utilizing available resources to reduce encampments.

- **Protection of Quality of Life for New and Existing Neighborhoods:** The City will continue to seek quality development ~~that~~^{and} balances the needs of existing and new neighborhoods.

Community Engagement

The City's Communications, Outreach, and Engagement Plan defines the communication, priorities, strategies, and tools the City will use when communicating with the Community. Through the Plan, the City will share the Morgan Hill story and work to build trust with the Community and ensure that we provide effective engagement opportunities. The ~~rough-effective~~ application of effective communication strategies ~~ensures, the Plan will ensure~~ that all City Council Members, Commissioners, and teammates have the tools to provide accurate, timely, and relevant information to the Community. The Plan aligns communication resources with the goals to set clear communications expectations for the Community, ensuring that the City can continue providing excellent services that reflect the strength of the City's outreach initiatives while supporting the implementation of the City Council's strategic priorities.

- Encourage Community engagement through audience-appropriate two-way communication, and ensure opportunities for constructive feedback.
- Share accurate, non-biased information promptly through a variety of communication channels.
- Maximize opportunities to engage with the Spanish-speaking community by sharing information and resources in Spanish and holding workshops, town halls, and other meetings in Spanish.
- Build trust in local government by creating a sense of belonging and value with all members of the Community, especially those that are traditionally marginalized.
- Work directly with the Council, staff, and Community partners to ensure communication and outreach efforts, objectives, and outcomes align with the strategic priorities and promote Community understanding.
- Keep City teammates informed and involved in public dialogue to aid in telling the Morgan Hill story.

Economic Development and Tourism

The City's Economic Development efforts focus on implementing the Economic Blueprint strategies and actions to help build long-term fiscal sustainability and improve quality of life for residents. This will be achieved by attracting jobs and commercial investment which generate revenues to support essential City services and improve critical City infrastructure. The Economic Blueprint is focused on advancing economic prosperity and vitality by attracting investment, development, and jobs in four key industries:

- **Healthcare:** Grow and foster medical and diagnostic services by advancing and supporting the entitlement process for new medical facilities. Promote and market Morgan Hill as a desired location for medical and diagnostic providers.
- **Innovation and Advanced Manufacturing:** Grow existing companies, attract new industry, and grow high-quality jobs. Support and advance the entitlement

and permit process of new developments. Promote and market Morgan Hill as a premier location for commercial and industrial investment.

- **Retail:** Grow retail offerings and strengthen commercial nodes. Utilize incentives and available tools to attract new investments that increase both jobs and revenue to the Community.
- **Tourism:** Grow leisure, agriculture, wine country, and sports and recreational tourism. Continue to nurture Downtown's transformation as a Community gathering place. Support the Downtown Property Based Improvement District and manage parking supply. Support and incentivize additional lodging investments, implement activations with partner organizations, and partner with Visit Morgan Hill to support increased tourism and vibrancy.

Transportation

The City has clearly identified traffic and transportation issues facing Morgan Hill as regional in nature. Morgan Hill will continue to partner with the City of Gilroy to advocate for improvements and funding for the South Santa Clara County Transportation Corridor. The City will actively advocate on regional transportation planning issues. Locally, the City will prioritize funding for Vision Zero safety strategies over congestion management. The City will take actions to implement its goal to create a culture that prioritizes safety, creates livable streets, and seeks to eliminate traffic fatalities. Safety of pedestrians, bicyclists, drivers, and passengers is paramount.

- ~~Complete the development of a~~Implement the comprehensive Transportation Master Plan.
- Complete construction of Hale Avenue Extension.
- Advocacy will include:
 - Working with the Valley Transportation Authority (VTA), Caltrain, the County, the HSRA and the State to enhance service, secure funding for transportation projects and road maintenance, and protect the Community from negative impacts of regional projects
 - Expansion of Highway 101 between Morgan Hill and Gilroy to reduce pass-through traffic and improve commute traffic for South County residents
 - Electrification of commuter rail from San Francisco to Gilroy
 - Funding for priority projects in the South County
- Advocate for grade separations and the design of a Downtown station and emergency response design solutions as it relates to the High-Speed Rail Authority's (HSRA) project.
- Advocate for the ongoing provision of funding of innovative local transit services that matches the needs of the Morgan Hill Community and supports paratransit needs.

Healthy Community

The City's 2035 General Plan's Healthy Community Element addresses elements of the built environment, programs, and partnerships that contribute to the overall health and well-being of Morgan Hill's residents. Morgan Hill promotes a healthy community through City policies, projects, and programs. The foundation of a healthy community is to help ensure basic needs (food, water, shelter, income, safety, and employment) are met for all people. With that foundation in place, a person's health is next a product of their environment. A healthy community is one in which all residents have access to housing, employment, transportation, healthcare services and amenities, such as parks, open spaces, and recreational facilities, that combine to provide a safe and welcoming environment in which people can lead healthy and fulfilling lives.

To achieve this vision, the City of Morgan Hill is committed to:

- Creating, improving, and preserving a wide range of quality housing at all income levels.
- Planning policies that promote a well-planned City that ensures adequate services (roads, streets, water, sewer, police, fire, [internet connectivity](#), etc.) while providing plentiful amenities including restaurants, retail stores, and access to healthcare resources.
- Building better and safer streets that prioritize safety, and livability, working to eliminate traffic fatalities as identified in Vision Zero Morgan Hill.
- Promoting a healthy environment as identified in the City's Climate Action Plan by advocating for adoption of electric vehicles in the Community and decarbonizing existing buildings by reducing the use of fossil fuels.
- Promoting active lifestyles through its efforts to invest in sports and Community facilities, youth sports and adult recreation programs, parks, and walking and biking trails.
- Providing fresh and healthy food options at City facilities and encouraging local farmers' markets and community gardens in an effort to improve availability of nutritious food.
- Providing services to the unhoused community by building relationships and trust with a trauma-informed approach.
- Connecting people to resources to support mental health, combat the opioid crisis, and treating those struggling with substance abuse and mental health issues with dignity and care.

By implementing these strategies and prioritizing the health and well-being of our residents, Morgan Hill will create a vibrant and thriving community where everyone can lead healthy, active, and fulfilling lives. The City of Morgan Hill seeks to create a welcoming, inclusive, and safe Community for everyone by fostering social connections and a sense of belonging for all.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

ADOPT ORDINANCE NO. 2363, NEW SERIES AMENDING CHAPTER 12.32 (RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES) WITHIN TITLE 12 (STREET, SIDEWALKS, AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AMENDING SECTION 17.20.040 (FORM AND CONTENTS) OF CHAPTER 17.20 (MAP REQUIREMENTS-FIVE OR MORE PARCELS) AND SECTION 17.24.030 (FORM AND CONTENT) OF CHAPTER 17.24 (MAP REQUIREMENTS-FOUR OR LESS PARCELS) WITHIN TITLE 17 (SUBDIVISIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO INCONSISTENCIES, AND AMENDING TABLE 18.22-2 (DEVELOPMENT STANDARDS IN MIXED USE ZONING DISTRICTS) WITHIN SECTION 18.22.040 (DEVELOPMENT STANDARDS) OF CHAPTER 18.22 (MIXED USE ZONING DISTRICTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REMOVE THE MAXIMUM FLOOR AREA RATIO (FAR) AND BUILDING COVERAGE WITHIN THE (MIXED USE FLEX) MU-F ZONING DISTRICT

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2363, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

2024-2025 Strategic Priorities

Economic Development and Tourism

Healthy Community

Guiding Documents

Climate Action Plan

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On February 19, 2025, the City Council introduced Ordinance No. 2363, New Series, by the following roll call votes: AYES: Turner, Vega, Librers, Iwanaga, Martinez Beltran; NOES:None; ABSTAIN: None; ABSENT: None;

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

- Amend Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 (Streets, Sidewalks and Public Places) to be renamed as the Protected and Significant Trees Chapter. Text within the Code is to be revised to update language, provide internal consistency, and to be consistent with the Tree Removal Application process.
- Amend Section 17.20.040 (Form and Contents) of Chapter 17.20 (Map Requirements-Five or More Parcels) and Section 17.24.030 (Form and Content) of Chapter 17.24 (Map Requirements-Four or Less Parcels) of Title 17 (Subdivisions) to be consistent with the proposed changes within Chapter 12.32.
- Amend Table 18.22-2 (Development Standards in Mixed Use Zoning Districts) within Section 18.22.040 (Development Standards) of Chapter 18.22 (Mixed Use Zoning Districts) to be consistent with the General Plan to remove the maximum FAR and building coverage within the (Mixed Use Flex) MU-F zoning district.

COMMUNITY ENGAGEMENT:

Inform

A 10-day public hearing notice was published in the Friday, February 7, 2025, edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and email/social media with the City's 411 distribution. On January 15, 2025, the City Council held a public hearing regarding the proposed General Plan text amendments and the draft Ordinance amendments in which a 10-day public hearing notice was published in the Friday, January 3, 2025, edition of the Morgan Hill Times. On August 27, 2024, the Planning Commission held a public hearing regarding the proposed General Plan text amendments in which a 10-day public hearing notice was published in the Friday, August 16, 2024, edition of the Morgan Hill Times. On December 10, 2024, the Planning Commission held a public hearing regarding the proposed Municipal Code amendments in which a 10-day public hearing notice was published in the Friday, November 29, 2024, edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 15, 2016, the City Council adopted Ordinance No. 2205 N.S., amending

Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 – Streets, Sidewalks and Public Places in its entirety.

On July 27, 2016, the City Council adopted Resolution No. 16-128, adopting a comprehensive update of the Morgan Hill General Plan entitled "Morgan Hill 2035 General Plan."

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

On August 27, 2024, the Planning Commission considered and recommended, unanimously, the City Council approve the proposed Mixed Use Flex General Plan text Amendment.

On December 10, 2024, the Planning Commission considered and recommended, unanimously, the City Council approve the proposed draft Ordinance.

On January 15, 2025, the City Council considered the proposed Mixed Use Flex General Plan text Amendment and the draft Ordinance amendments, and ultimately decided to continue the removal of the FAR within the Mixed Use Flex designation and zoning district, as well as all associated proposed changes to Chapter 12.32 (Restrictions on Removal of Significant Trees) to a future public hearing.

On February 19, 2025, the City Council considered and unanimously approved the proposed draft ordinance.

FISCAL AND RESOURCE IMPACT:

The cost of City-initiated General Plan Amendments is borne, and work is accommodated, within the respective division's annual workplan and budget. Staff regularly brings forward municipal code amendments as necessary to enhance, correct, and/or refine the Code; and therefore, the cost is borne, and work is accommodated, within the respective division's annual workplan and budget.

CEQA (California Environmental Quality Act):

The proposed amendments are categorically exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed project is covered by the common-sense exemption that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed project will not result in any direct impact upon the physical environment. Any development that occurs in the future subject to such standards will undergo an independent analysis per the requirements of CEQA.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

ORDINANCE NO. 2363, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 12.32 (RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES) WITHIN TITLE 12 (STREET, SIDEWALKS AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AMENDING SECTION 17.20.040 (FORM AND CONTENTS) OF CHAPTER 17.20 (MAP REQUIREMENTS-FIVE OR MORE PARCELS) AND SECTION 17.24.030 (FORM AND CONTENT) OF CHAPTER 17.24 (MAP REQUIREMENTS-FOUR OR LESS PARCELS) WITHIN TITLE 17 (SUBDIVISIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO INCONSISTENCIES, AND AMENDING TABLE 18.22-2 (DEVELOPMENT STANDARDS IN MIXED USE ZONING DISTRICTS) WITHIN SECTION 18.22.040 (DEVELOPMENT STANDARDS) OF CHAPTER 18.22 (MIXED USE ZONING DISTRICTS) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REMOVE THE MAXIMUM FLOOR AREA RATIO (FAR) AND BUILDING COVERAGE WITHIN THE (MIXED USE FLEX) MU-F ZONING DISTRICT

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

Section 1. Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows:

Chapter 12.32 PROTECTED AND SIGNIFICANT TREES

12.32.010 Council determinations.

The city council finds and declares:

- A. The intent of promoting the preservation and establishment of a diverse, abundant tree canopy in the city is vital to the health and character of the community. The existing and future trees and tree communities located in the city are a valuable and distinctive natural resource. The trees and tree communities of the city enhance the economic base through agricultural production, encouragement of tourism and enrichment of the living environment.

- B. The following environmental consequences are among those which could result from the indiscriminate removal or destruction of trees and tree communities in the city:
1. Modification of microclimates;
 2. Change or elimination of animal habitat, possibly including habitats of endangered species;
 3. Change in soil conditions, resulting in modified biological activity and erosion of soils;
 4. Creation of increased susceptibility of flood hazards;
 5. Increased risk of landslides;
 6. Increased cost of construction and maintenance of drainage systems through increased flow and diversion of surface waters;
 7. Degradation of the human habitat;
 8. Loss of environmental benefits of trees in neighborhoods, such as noise reduction, oxygen replacement, carbon dioxide reduction, interception of particulates and aesthetic qualities; and/or
 9. Potential for irreparable wind damage to adjacent trees.
- C. The preservation and replacement of significant tree communities on private and public property is necessary to protect the ecology of the area and prevent undesirable changes to the natural and built environment.
- D. It is necessary to enact the ordinance codified in this chapter for the reasons stated in this section and to promote the public health, safety, general welfare and prosperity of the city, while respecting and recognizing individual rights to develop, maintain and enjoy private property to the fullest possible extent, consistent with the public interest, convenience and necessity.

12.32.020 Definitions.

For the purposes of this chapter, the following words shall have the meaning ascribed to them in this section:

- A. "Arborist" means any person certified in the professional care, examination, and maintenance of trees.
- B. "City" means the city of Morgan Hill, California, acting by and through its authorized representatives.
- C. "Community of trees" means a group of trees of any size which are ecologically or

aesthetically related to each other, with a combined canopy cover of more than ten percent, and that loss of such community would cause a significant ecological, aesthetic, or environmental impact in the immediate area.

- D. "Development services director" means the development services director of the city, including their authorized or appointed representatives.
- E. "Diameter at breast height (DBH)" means the standard measurement for a tree trunk diameter, measured 4.5 feet above the average ground level.
- F. "Native tree" means any tree which is native to the Morgan Hill region. Such trees include, but are not limited to, oaks (all types), California Bays, Madrones, Sycamore, and Alder.
- G. "Nonnative tree" means any tree that is not native to the Morgan Hill region.
- H. "Person" means an individual, public agency, including the city and its departments, firms, associations, and corporations, and their employees, agents, or representatives.
- I. "Private property" means all property not owned by the city or any other public agency.
- J. "Prohibited tree" means any trees that become liabilities due to structural weaknesses, disease or insect susceptibility, short life, destructive root systems, or requiring excessive watering or maintenance as defined in Chapter 12.28.050.
- K. "Protected tree" means any native tree, significant tree, any tree designated for protecting during review and approval of a development project, public or street trees, and otherwise designated as significant status.
- L. "Prune" means the selective removal or modification of twenty-five percent or more of the tree branches, roots, buds, or limbs in such a manner that impacts the structure of the tree.
- M. "Public tree" means any tree located in any street, park, or public place or planted or maintained by the city.
- N. "Public property" means all property owned by the city, and any other city, county, city and county, special district, or other public agency in the incorporated area of the city.
- O. "Significant Tree" means any live woody plant rising above the ground with a single stem or trunk a diameter at breast height (DBH) of thirteen inches or more for nonnative tree species and a diameter at breast height (DBH) of six inches or more for native tree species. All commercial tree farms and orchards (including individual fruit trees) are exempted from the definition of tree for the purpose of this chapter.
- P. "Street Tree" is a tree, of any size, situated within the public street right-of-way or publicly accessible private street (e.g., trees within a landscape park strip), or within five feet of a publicly accessible sidewalk adjacent to a public or private street in the case of a street without a landscape park strip.

- Q. “Trimming” means the removal of less than twenty-five percent of the canopy, including overgrown or obstructing branches from a tree to maintain the shape and health of the tree, and to protect nearby structures or utilities.

12.32.030 Permit—Required.

It is unlawful for any person to cut down, prune, remove, poison, or otherwise kill or destroy, or cause to be removed, any protected tree, significant tree, street tree, public tree, or a community of trees on any public or private property without first securing a permit as provided in this chapter; provided, however, that a permit shall not be required for commercial tree farms.

12.32.040 Permit—Application.

Any person desiring to cut down, prune, remove, destroy, or cause to be removed any tree regulated in this chapter shall apply to the development services department for a tree removal permit application provided by the department. The application shall be accompanied by such drawings including a site plan, written material such as a statement of request, photographs, arborist report, and other necessary information concerning trees within the affected area and which shall include:

- A. The diameter and height of the tree;
- B. The species of each tree;
- C. A site plan or accurate sketch of location and trees proposed to be cut down, pruned, removed, or destroyed (showing other significant trees, shrubs, buildings or proposed buildings; photographs may be used to show the area);
- D. Method for marking the tree proposed to be cut down, pruned, removed, or destroyed;
- E. Description of methods to be used in cutting down, pruning, removing, or destroying the tree;
- F. Description of tree planting or replacement program;
- G. Reasons for proposing to cut down, prune, remove, or destroy the tree;
- H. Address where tree is located;
- I. Percentage of tree canopy to be removed or pruned;
- J. Arborist report indicating general health of tree to be cut down, pruned, removed, or destroyed; and
- K. Other information or materials which the development services director may require.
- L. Payment of fees shall be due upon submittal of a tree removal application as designated on the current fee schedule. The date of submittal shall be designated by receipt of payment.

12.32.050 Permit—Public notice procedures.

Within five days after submission of a completed application, the applicant shall post a public notice of the tree removal or pruning application request, provided by the development services department, in at least two conspicuous locations clearly visible to the public on or close to the property affected, indicating the date of the application, a brief description thereof, identification of the subject property, the address to which comments may be directed and from which further information may be obtained, and the final date for receipt of comments. No action shall be taken upon any application until the applicant has filed an affidavit that such posting has been completed and posted for ten days.

12.32.060 Permit—Review and action.

The development services director or their designee shall review the application and, if necessary, inspect the site, and shall determine on the basis of the information provided, the site inspection, and the criteria contained in this chapter whether to grant, grant with conditions, or deny the permit. Such action shall be taken within thirty days after receipt of the affidavit referred to in the preceding section and after the expiration of the ten-day public noticing period. Upon taking action, the development services director or their designee shall provide the applicant with a written statement indicating the action taken, any conditions of approval imposed, and the findings made in support thereof.

12.32.070 Permit—Approval—Criteria.

The development services director or any other person or body charged with determining whether to grant, conditionally grant, or deny a tree removal permit may approve a permit only if one or more of the following findings are made:

- A. Removal of the tree is warranted because the tree meets one of the following conditions:
 - 1. Is diseased as demonstrated in a report provided by a qualified arborist or tree surgeon documenting the extent and nature of the disease and how the diseased conditions warrants the trees removal,
 - 2. Could adversely affect the general public health and safety,
 - 3. Could cause substantial damage,
 - 4. Is a public nuisance (e.g., obstructing the public right-of-way),
 - 5. Is in danger of falling,
 - 6. Is too closely located to existing structures,
 - 7. All practical design alternatives for site layout have been exhausted without being able to design around the tree(s), etc.
 - 8. Interferes with utility service,

9. Acts as a host for a plant which is parasitic to another species of tree which is in danger of being infested or exterminated by the parasite,
 10. Is a substantial fire hazard,
 11. Is necessary for the continuing agricultural use of the property, or
 12. Is a street tree that is not identified on a list of suitable street trees maintained by the development services director.
- B. The required action is necessary:
1. To utilize the property in a manner which is of greater public value than any environmental degradation caused by the action, or
 2. To allow reasonable economic or other enjoyment of the property.
- C. The tree will be replaced by plantings approved by the development services director, unless special conditions indicate otherwise.

12.32.080 Permit—Approval—Conditions.

In granting any permit as provided in this chapter, the development services director, planning commission, or city council may attach reasonable conditions to ensure compliance with the intent and purpose of this chapter including, but not limited to:

- A. All protected or significant trees proposed for removal shall be replaced at a 1:1 ratio with a similar native tree species of at least minimum 15-gallon in size. In the case of nonnative trees to be removed, the replacement tree shall be a native species and at least minimum 15-gallon in size. The development services director may require additional replacement trees as necessary to mitigate the impact from the loss of tree canopy.
- B. Use of measures to affect erosion control, soil and water retention and diversion or control of increased flow of surface waters;
- C. Use of measures to ensure that the contemplated action will not have adverse environmental effects relating to shade, noise buffers, protection from wind, air pollution and historic features; and/or
- D. Posting of a bond to ensure maintenance of substitute landscaping pursuant to the requirements of Chapter 18.64 (Landscaping) of this code.

12.32.090 Application constitutes permission to enter property.

Filing of an application for a tree removal permit shall constitute a grant of permission for city personnel concerned with administering this part to enter the subject permit area during normal working hours from the date of application to the completion of any approved action for the purpose of inspecting the area for compliance with the provisions of this chapter and applicable

law.

12.32.100 Inspection—Notification of violations.

The development services department may cause sufficient inspections to be made of the permit area to assure compliance with the provisions of this chapter and the requirements of any applicable law. Upon completion of any inspection, the permittee shall be given a written notice of any violations observed at the time of inspection for correction thereof.

12.32.110 Commencement of work—Time limitations.

If work authorized by an approved permit is not commenced within a period of one (1) year from the date of approval, the permit shall be considered void.

12.32.120 Emergencies.

In case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, such necessary action may be taken to remove the tree or otherwise reduce or eliminate the hazard without complying with the other provisions of this chapter, except that the person responsible for the cutting or removal of the tree shall report such action to the development services director within five working days thereafter and provide retroactive payment of the tree removal permit fee.

12.32.130 Appeal procedures.

The applicant or any other person who is aggrieved by the issuance or denial of the permit or any conditions thereof may appeal in the manner set forth in Chapter 18.112 (Appeals).

12.32.140 Removal or pruning without a permit unlawful.

It is unlawful for any property owner, lessee, their agent, or representative to engage in removal or pruning or any other action that would result in tree removal or pruning without a valid tree removal permit. In addition to any other remedies that may exist by law, such party shall be liable to the city for an administrative penalty to be determined by the development services director as follows:

1. A fine equal to three times the valuation of the removed tree, as determined by a certified arborist; or
2. The amount of the cost of replacing a removed public tree with a new tree as comparable to the removed tree as is reasonably feasible; or
3. A fine equal to three times the amount of the current tree removal application permit fee.

Section 2. Subsection b of Subsection 7 of Subsection B of Section 17.20.040 (Form and Contents) of Chapter 17.20 (Map Requirements-Five or More Parcels) of Title 17 (Subdivisions) is hereby amended to read as follows:

- b. Type, diameter at breast height, and canopy of any protected trees, significant trees, street trees, public trees, or a community of trees as defined by Chapter 12.32 (Protected and Significant Trees) on public and private property. Any trees proposed to be removed shall be so indicated and shall obtain a permit as required by Chapter 12.32 (Protected and Significant Trees),

Section 3. Subsection b of Subsection 7 of Subsection A of Section 17.24.030 (Form and Content) of Chapter 17.24 (Map Requirements-Four or Less Parcels) of Title 17 (Subdivisions) is hereby amended to read as follows:

- b. Type, diameter at breast height, and canopy of any protected trees, significant trees, street trees, public trees, or a community of trees as defined by Chapter 12.32 (Protected and Significant Trees) on public and private property. Any trees proposed to be removed shall be so indicated and shall obtain a permit as required by Chapter 12.32 (Protected and Significant Trees);

Section 4. Table 18.22-2 (Development Standards in Mixed Use Zoning Districts) within Section 18.22.040 (Development Standards) of Chapter 18.22 (Mixed Use Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.22-2: Development Standards in Mixed Use Zoning Districts

	MU-D	MU-N	MU-F	Additional Standards
Site Requirements				
Lot Area, Minimum	3,500 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	
Lot Width, Minimum	40 ft.	60 ft.	60 ft.	
Lot Depth, Minimum	80 ft.	100 ft.	100 ft.	
Floor Area Ratio, Maximum	2.0 [1]	1.0	None	
Residential Density				
Minimum	None	8 du/acre	7 du/acre	
Maximum	None	20 du/acre	24 du/acre	
Building Coverage, Maximum	None	75%	None	

Structure Requirements				
Setbacks	See Table 18.22-3			18.56.030
Height, Maximum	3 stories and 45 ft. [2]	35 ft. [3,4]	35 ft. [3]	18.56.020

Notes:

[1] 2.25 FAR permitted on sites 22,000 sq. ft. or more.

[2] Four stories and 55 ft. permitted on sites 22,000 sq. ft. or more.

[3] 45 ft. permitted with a minimum of 10 ft. devoted to a roof element.

[4] 40 ft. allowed for vertical mixed use, regardless of roof form.

Section 5. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 6. **Effective Date; Posting.** This Ordinance shall take effect on the 31st day following adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 19TH DAY OF FEBRUARY, 2025, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF MARCH, 2025, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2363, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th day of March, 2025.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

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

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

Best practices in municipal finance recommend investment policies be reviewed annually or at a minimum, the internal treasury staff should conduct a review annually. An update in the investment policy is warranted if staff's review results in a material change in policy due to either a change in statute or a shift in the City's investment objectives. Finance continues to monitor changes to the California Government Code regarding investment parameters and allowable investments that may impact the City's investment policy. The redlined version of the City's investment policy is attached for review and approval.

The proposed changes to the investment policy aim to more accurately define the City's authorized investments in United States Treasuries and government-sponsored enterprises. These revisions have been reviewed and approved by the City's Treasurer.

COMMUNITY ENGAGEMENT:

Inform.

Finance periodically renders to City Council for review and approval any changes to the investment policy at a public meeting. In addition, the City's investment policy is available on the City's website.

ALTERNATIVE ACTIONS:

City Council could decide not to update the policy.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the last revision to its investment policy in February 2024.

FISCAL AND RESOURCE IMPACT:

Updating and maintaining the City's investment policy is a part of the Finance Department's ongoing workplan. There is no additional cost associated with the approval of the Investment Policy.

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

POLICY NUMBER: CP-94-04

TITLE: INVESTMENT POLICY

EFFECTIVE DATE: June 8, 1988

REVISED DATE: March 5, 2024; February 21, 2024; June 7, 2023; August 17, 2022; May 6, 2020; July 20, 2016; July 15, 2015; January 26, 2011; September 26, 2007; June 15, 1994

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CITY OF MORGAN HILL
Statement of Investment Policy

SCOPE

The City of Morgan Hill's (the City's) Investment Policy (the Policy) applies to all funds under the control of the City and includes the general revenues of the City, Successor Agency to the former Morgan Hill Redevelopment Agency (Agency), enterprise fund revenues, and proceeds of bond sales, debt service revenues, and trust funds in the custody of the City.

For simplicity, this Policy shall refer to "City" even when it applies to the Agency, except that the City and Agency shall be distinguished whenever the role of the City Council or Agency Board is described, whenever the role of the City Manager or Executive Director is described, or whenever the role of the City Treasurer or Director of Finance is described.

INVESTMENT OBJECTIVES

The City's funds shall be invested in accordance with all applicable City policies and codes, State statutes, Federal regulations, and bond covenants, and in a manner designed to accomplish the following objectives, which are listed in priority order:

A. Safety of Principal

Safety of principal is the City's foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to minimize capital losses by avoiding credit risk and market risk, as defined below:

1. Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in only the highest quality securities (see authorized investments) and by diversifying the investment portfolio so that the failure of any one issuer would not unduly harm the City's cash flows.
2. Market risk, defined as the risk of market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by structuring the portfolio so that securities mature at the same time that major cash outflows occur, thus eliminating the need to sell securities prior to maturity. It is explicitly recognized, however, that in a diversified portfolio, occasional measured losses may occur, and must be considered within the context of the overall investment return.

B. Liquidity

Liquidity is the second most important objective of the investment program. The investment portfolio shall remain sufficiently liquid to enable the City to meet all reasonably anticipated operating requirements.

C. Yield

The City portfolio shall be invested to attain a market average rate of return through economic cycles, as long as it does not diminish the superior objectives of safety and liquidity. The market rate of return is defined as the average return on the 1-year U.S. Treasury Bill. Whenever possible, and after the objectives of safety of principal and liquidity have been met, a yield higher than the market rate of return shall be sought.

DELEGATION OF AUTHORITY FOR CITY FUNDS

The City Council has appointed the City Treasurer responsible for undertaking investment transactions on behalf of the City. Unless specifically designated by the City Council, the only officials authorized to undertake investment transactions on behalf of the City are the City Treasurer, Finance Director, and City Manager. The City Manager or designee, as applicable, shall review all investment purchases before they occur. The City Treasurer and the Finance Director will observe, review, and react to the changing conditions that affect the investment portfolio. They will meet on a regular basis to discuss current market conditions, future trends and how each of these affects the investment portfolio and the City.

The City Treasurer, Finance Director and City Manager shall develop and maintain administrative procedures and internal controls, consistent with this Policy, for the operation of the City's investment program. Such procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the City.

DELEGATION OF AUTHORITY FOR AGENCY FUNDS

The Agency Board has appointed the Director of Finance responsible for undertaking investment transactions on behalf of the Agency. Unless specifically designated by the Agency Board, the only officials authorized to undertake investment transactions on behalf of the Agency are the Director of Finance and Agency Executive Director. The Executive Director or designee, as applicable, shall review all investment purchases before they occur. The Director of Finance and Executive Director will observe, review, and react to the changing conditions that affect the investment portfolio. They will meet on a regular basis to discuss current market conditions, future trends and how each of these affects the investment portfolio and the Agency.

The Director of Finance and Executive Director shall develop and maintain administrative procedures and internal controls, consistent with this Policy, for the operation of the Agency's investment program. Such procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the Agency.

ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officers shall disclose any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any larger personal financial/investment positions that could be related to the performance of the City's portfolio. Employees and officers shall subordinate their personal investment transactions to those of the City, particularly with regard to the timing of purchases and sales, and shall avoid transactions that might impair public confidence in the City's ability to govern effectively.

EVALUATION OF INVESTMENTS

The standard of prudence to be used for managing the City's investment program is California Government Code Section 53600.3, the prudent investor standard which states, "When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

City investment officers acting in accordance with this Policy and the "prudent person" standard and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that substantial deviations from expectations are reported by the City Treasurer or by the Director of Finance (for the Agency) to the City Manager or Executive Director, as applicable, within three days of discovery. Mutually agreeable remedial action will be taken by the City Treasurer and City Manager (for the City) or by the Director of Finance and Executive Director (for the Agency) and reported to the City Council or Agency Board, as applicable, at their next regularly scheduled meeting.

SELECTION OF BROKER/DEALERS

The City Treasurer (for the City) and Director of Finance (for the Agency) shall jointly maintain a list of broker/dealers approved for investment purposes, and it shall be the policy jointly of the City and the Agency to purchase securities only from those brokers and the firms they represent. Each approved broker/dealer must possess an authorizing certificate from the California Commissioner of Corporations as required by Section 25210 of the California Corporations Code.

To be eligible, a firm must meet at least one of the following criteria:

1. be recognized as Primary Dealers by the Federal Reserve Bank of New York or have a primary dealer within their holding company structure, or
2. report voluntarily to the Federal Reserve Bank of New York, or
3. qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

The City Treasurer (for the City) and Director of Finance (for the Agency) will select broker/dealers on the basis of their expertise in public cash management and their ability to provide service to the account(s). Each authorized broker/dealer shall submit and annually update an approved Broker/Dealer Information Request form that includes the firm's most recent financial statements.

The City Treasurer (for the City) and Director of Finance (for the Agency) shall determine if the broker/dealers are adequately capitalized, make markets on securities appropriate to the City's needs and are recommended by managers of portfolios similar to the City's. The City Treasurer (for the City) or Director of Finance (for the Agency) shall submit findings and recommendations to the City Council or Agency Board, as applicable. The City Council and Agency Board will determine which broker/dealers will be authorized to trade with the City as part of their annual review of this Policy,

In the event that an external investment advisor is not used in the process of recommending a particular transaction in the City's or Agency's portfolio, authorized broker/dealers shall attest in writing that they have read and understand this Policy.

AUTHORIZED INVESTMENTS

All investments and deposits of the City shall be made in accordance with California Government Code Sections 16429.1, 53600-53609 and 53630-53686. The City has further limited the types of allowable securities to those shown in the following list:

- A. United States Treasury Bills, Bonds, and Notes or those for which the full faith and credit of the United States are pledged for payment of principal and interest, with maturities not exceeding five years from the date of trade settlement. There is no limitation on the percentage of the portfolio which can be invested in this category.
- B. Federal Instrumentality (government sponsored enterprise) debentures, discount notes, callable and step-up securities, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government sponsored enterprises, with a final maturity not exceeding five years from the date of trade ~~settlement issued by the following only: the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA or Fannie Mae), the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mae), the Tennessee Valley Authority (TVA), and the Government National Mortgage Association (GNMA, but only if the security is backed by the full faith and credit of the U.S. government).~~ Although there is no percentage limitation of the dollar amount or percentage of the portfolio that can be invested in these issuers, the "prudent person" rule shall apply for any single agency name.
- C. The Local Agency Investment Fund (LAIF), established by the State Treasurer for the benefit of local agencies and identified under Government Code Section 16429.1, is authorized up to the maximum amount pursuant to California Government Code Section 16429.1

- D. Inactive deposits with Banks and Savings and Loans with a branch within California that has a rating of at least A-1 or the equivalent from a nationally recognized statistical rating organization (NRSRO), and has an equity to total assets ratio of at least 4%. All deposits shall be secured in accordance with Sections 53651 and 53652 of the California Government Code and comply with Schedule I (Policy Statement of Collateralized Time Deposits) attached. If deposits are not collateralized, the maximum placed at any one institution will be \$250,000. The maximum amount of collateralized inactive deposits placed at any one institution shall not constitute more than 10% of the total assets of the institution or \$2,000,000, whichever is less, and shall not exceed the total shareholders' equity of the issuing institution.
- E. Money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 that (1) are “no-load” (meaning no commission or fee shall be charged on purchases or sales of shares); (2) have a constant net asset value per share of \$1.00; (3) invest only in the securities and obligations authorized in the applicable California statutes and (4) have a rating of at least AA+ or the equivalent by at least two NRSROs. The aggregate investment in money market funds shall not exceed 20% of the City’s total portfolio. The City shall use only those money market funds consisting of investments considered prudent in nature for any fiduciary.
- F. Certificates of Deposit (CD) is authorized up to the maximum Federal Deposit Insurance Corporation (FDIC) legal limit amount per FDIC-insured institution.

INVESTMENT POOLS

The Local Agency Investment Fund (LAIF) is authorized under provisions in Section 16429.1 of the California Government Code. The City's participation in the pool was previously approved by the City Council and Agency Board.

The California Cooperative Liquid Assets Securities System Class (CLASS) is authorized under provisions in Section 53601(p) of the California Government Code, California public agencies may invest in shares of beneficial interest issued by a joint powers authority.

City Council review and approval is required prior to investment in any other local government investment pool or joint powers authority.

SAFEKEEPING OF SECURITIES

The City Treasurer (for the City) and the Director of Finance (for the Agency) shall select one or more banks to provide safekeeping and custodial services for the City. A Safekeeping Agreement approved by the City shall be executed with each custodian bank prior to utilizing that bank's safekeeping services.

Custodian banks will be selected on the basis of their ability to provide services for the City's account and the competitive pricing of their safekeeping related services.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. All securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities, except non-negotiable Certificates of Deposit, Money Market Funds and LAIF, purchased by the City will be delivered by either book entry or physical delivery and will be held in third-party safekeeping by a City approved custodian bank, its correspondent bank or its Depository Trust Company (DTC) participant account.

All Fed wireable book entry securities owned by the City shall be held in the Federal Reserve System in a customer account for the custodian bank which will name the City as “customer.”

All DTC eligible securities shall be held in the custodian bank’s DTC participant account and the custodian bank shall provide evidence that the securities are held for the City as “customer.”

DIVERSIFICATION

The City will diversify its investments by security type and investment to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. With the exception of bond reserve funds, bond escrow funds, and any other funds approved by the City Council, at all times at least 50% of the total portfolio shall mature in three years or less; at least 30% of the total portfolio shall mature in two years or less; and at least 20% of the portfolio shall mature in one year or less.

MAXIMUM MATURITIES

The City will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, as approved by the City Council or Agency Board, as applicable, and otherwise allowed by law, the City will not directly invest in securities maturing more than five years from the date of trade settlement. Bond reserve funds, bond escrow funds, and any other funds approved by the City Council or Agency Board, as applicable, may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as possible with the expected use of the funds. The weighted average final maturity of the investment portfolio shall not exceed two and one-half years.

PERFORMANCE BENCHMARKS

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the investment portfolio shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the investment portfolio’s weighted average effective maturity. When comparing the performance of the investment portfolio, all fees involved with managing it shall be included in the computation of its rate of return net of fees.

BOND PROCEEDS

Proceeds of bond sales and debt service reserve funds and other bond-related monies (or funds) may be invested in any investments authorized under both California Government Code Section 53600, et. seq. and the applicable bond covenants related to a bond sale. Securities authorized by a bond covenant that are not authorized by this Policy will only be used if they are specifically approved by the City Council or Agency Board, as applicable. Unless otherwise approved by the City Council or Agency Board, as applicable, all securities will be held in third-party safekeeping with the bond trustee, and all delivery-versus-payment rules will apply. Fees will be collected annually to compensate for administration costs.

COMPETITIVE TRANSACTIONS

All investment transactions shall be conducted competitively with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction, except when purchasing new issue securities, and their bid or offering prices shall be recorded.

If the City is offered a security for which there is no other readily available competitive offering, then the City Treasurer (for the City) or the Director of Finance (for the Agency) will document quotations for comparable or alternative securities.

REPORTING REQUIREMENTS

The City Treasurer (for the City) and Director of Finance (for the Agency) shall render, at least quarterly, reports of investment activity to the City Council and Agency Board within 30 days following the end of the quarter. Each report will include the following information:

1. Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the City;
2. A description of the funds, investments and programs managed by contracted parties;
3. A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of the valuation;
4. A statement of compliance with the investment policy or an explanation for non-compliance; and
5. A statement of the City's ability to meet expenditure requirements for six months, and an explanation of why money will not be available if that is the case.

INVESTMENT POLICY REVIEW

The City Treasurer (for the City), working with the Director of Finance (for the Agency), shall periodically review and make recommendations regarding the City's Investment Policy to ensure its consistency with the overall objectives of preservation of principal, liquidity, yield and diversification and its relevance to current law and economic trends. Amendments to this Investment Policy shall be approved by the City Council.

CITY OF MORGAN HILL
POLICY STATEMENT ON COLLATERALIZED TIME DEPOSITS
SCHEDULE I

Before the City Treasurer can place a time deposit with a local bank or savings and loan, the following criteria must be met:

1. The bank must provide the City with an executed copy of the "Contract for Deposit for Moneys" as specified in Section 53649 of the California Government Code.
2. The interest rate on the Time Certificate of Deposit must be competitive with rates offered by other banks and savings and loans and must exceed the interest rate for treasury bills for a similar maturity period.
3. For investments less than \$250,000, FDIC insurance will be sufficient without requiring any collateral to be pledged with the Federal Reserve to secure the public fund deposit.
4. For investments exceeding \$250,000, there may be a waiver of collateral for the first \$250,000 deposited, and all of the funds placed on deposit must be collateralized by 110% of U.S. Treasury or Federal Agency securities, or by 150% of mortgages having maturities less than five years in accordance with Section 53652 of the California Government Code. The City must receive confirmation that these securities have been pledged in repayment of the time deposit. The securities pledged must be maintained at a current market value 10% greater than the dollar amount of the deposit.
5. The City must be given a current audited financial statement for the financial year just ended as well as the most recent quarterly statement of financial condition. The financial reports must both include a "statement of financial condition" as well as an "income statement" depicting current and prior year operations.
6. The City will not place a fund deposit for more than \$2,000,000, or 10% of the assets of the institution, whichever is less.
7. The City must receive a certificate of deposit which specifically expresses the terms governing the transaction, (i.e., the period of time, name of depositor, interest rate, etc.).
8. All time certificates must have a maturity period not exceeding two years from the date of deposit with quarterly payments of interest based upon the stated interest rate.
9. The City must also receive a letter from the comptroller and/or treasurer of the bank at the time the deposit is made, that there is no known pending financial disclosure or public announcement of an adverse financial event involving the bank or savings and loan, nor is there any knowledge that a conflict of interest situation exists with any City official, officer or employee at the time the bank is receiving this deposit. The City has a fiduciary responsibility to make prudent investment of public funds, and to assure its investment practices are absent of any financial inducement or conflict in interest whatsoever.
10. Time deposits will only be made with qualified banks and savings and loans having branch office locations within Santa Clara County. However, time deposits with a bank or savings

and loan must be centralized at one designated office location rather than making separate deposits with each branch office.

CITY OF MORGAN HILL
POLICY CRITERIA FOR SELECTING BROKER/DEALERS
SCHEDULE II

1. Each approved broker/dealer must possess an authorizing certificate from the California Commissioner of Corporations as required by Section 25210 of the California Corporations Code.

To be eligible, a firm must meet at least one of the following criteria:

1. be recognized as Primary Dealers by the Federal Reserve Bank of New York or have a primary dealer within their holding company structure, or
2. report voluntarily to the Federal Reserve Bank of New York, or
3. qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

The City Treasurer (for the City) and Director of Finance (for the Agency) will select broker/dealers on the basis of their expertise in public cash management and their ability to provide service to the account(s). Each authorized broker/dealer shall submit and annually update an approved Broker/Dealer Information Request form that includes the firm's most recent financial statements.

The City Treasurer (for the City) and Director of Finance (for the Agency) shall determine if the broker/dealers are adequately capitalized, make markets on securities appropriate to the City's needs and are recommended by managers of portfolios similar to the City's. The City Treasurer (for the City) or Director of Finance (for the Agency) shall submit his findings and recommendations to the City Council or Agency Board, as applicable. As part of their periodic review of the Investment Policy, the City Council and Agency Board will determine which broker/dealers will be authorized to trade with the City.

In the event that an external investment advisor is not used in the process of recommending a particular transaction in the City's or Agency's portfolio, authorized broker/dealers shall attest in writing that they have read and understand a copy of this Policy.

2. The net capital position of the firm shall be in excess of \$100 million.
3. The intent of the City Treasurer (for City) and Director of Finance (for Agency) is to enter into a long-term relationship. Therefore, the integrity of the firm and the personnel assigned to our account is of primary importance.
5. The firm must provide an active secondary market for the securities it sells.
6. The firm must specify the types of securities it specializes in and will be made available for the City's account.
7. It is important that the firm provide related services that will enhance the account relationship which could include:

- a) An active secondary market for its securities.
 - b) Internal credit research analysis on commercial paper, banker's acceptances and other securities it offers for sale.
 - c) Be willing to trade securities on the City's portfolio.
 - d) Be capable of providing market analysis, economic projections, newsletters.
 - e) Provide market education on new investment products, security spread relationships, graphs, etc.
- 8. The firm must be willing to provide annual financial statements.
 - 9. If requested, the firm must be willing to provide a list of local government clients or other references, particularly those client relationships established within the State of California.
 - 10. The City is prohibited from the establishment of a broker/dealer account for the purpose of holding the City's securities. All securities must be subject to delivery at the City's custodial bank.
 - 11. Without exception, all transactions are to be conducted on a "delivery vs. payment" basis.
 - 12. The broker/dealer shall be headquartered or have a branch office in California. The City will not conduct security transactions with any firm located out of state.
 - 13. The broker/dealer must have been in operation for more than 5 years.
 - 14. No business relationship shall be established with firms primarily engaged in the sale of "exotic" products. Exotic means "unusually high yields," no ready secondary market, "high price volatility" on the security.
 - 15. The firm must be registered with the State of California's regulatory agency.
 - 16. No broker/dealer or security firm shall be selected who has made a political contribution to the City Treasurer or any member of the City Council or Agency Board or to any candidate for these offices.

Broker/Dealer Questionnaire

Name of Firm:

Address:

Telephone No.:

Primary representative

Manager

Name:

Title:

Telephone No:

1. Are you a recognized primary dealer in Government securities?

() Yes

() No

2. If so, how long has your firm been a primary dealer?
_____ years.

3. Are you a retail or institutional broker?

4. What was your firm's total volume in U. S. Government and agency securities trading last year?

Firm-wide \$ _____

Your office \$ _____

5. Which instruments are offered regularly by your trading desk?

() T-bills

() BA's (domestic)

() T-notes and bonds

() BA's (foreign)

() Agencies (specify)

() Commercial Paper

FFCB, FHLB, FNMA () Bank C. D.'s

FHLMC, SLMA, TVA, GNMA () S & L C. D.'s

WORLD BANK

() Repurchase Agreements

() Medium Term Corporate Notes

() Reverse Repurchase
Agreements

() Mutual Funds (eligible for public
investment)

6. Identify all personnel who will be trading with or quoting securities to the City.

Name

Title

Phone

7. Please identify your most directly comparable City/Local Agency clients in our geographical area.

Entity

Contact Person

Phone

Client Since

8. Is there anything in your background in the government securities business that makes you stand-out above the rest? Why should the City of Morgan Hill deal with you?
9. Have any of your public sector clients ever sustained a loss on a securities transaction arising from a misunderstanding or misrepresentation of the risk characteristics of a particular instrument? If so, please explain.
10. Has any public sector client ever claimed in writing that your firm was responsible for investment losses? Explain.
11. Has your firm consistently complied with the Federal Reserve's capital adequacy guidelines? Include certified documentation of your capital adequacy as measured by Federal Reserve standards.
12. Please provide certified financial statements and other statements regarding your firm's capitalization.
13. Please include samples of research reports that your firm regularly supplies to public sector clients.

14. Are you a Broker instead of a Dealer (i.e., you DO NOT own positions of securities)?
15. What reports, transactions, confirmations and paper trail would the City receive?
16. What training information would you provide to our employees and investment officers?
17. How many and what percentage of your transactions failed last month? Last year?
18. What portfolio information do you require from clients?

--CERTIFICATION--

I hereby certify that I have personally read the City of Morgan Hill's Investment Policy and the California Government Codes pertaining to the investments of the City of Morgan Hill, and have implemented reasonable procedures and a system of controls designed to preclude imprudent investment activities arising out of transactions conducted by our firm on behalf of the City of Morgan Hill, considering the City's investment objectives, strategies and risk constraints. We pledge to exercise due diligence in informing the City Treasurer and staff of all foreseeable risks associated with financial transactions conducted with our firm. I attest to the accuracy of our responses to the above questionnaire.

NOTE: Completion of this questionnaire is only part of the City of Morgan Hill's Certification process and DOES NOT guarantee that the applicant will be approved to do business with the City.

SIGNED
(Account Representative)

SIGNED
(Countersigned by Company President or person in charge of government securities operations.)

DATED

CITY OF MORGAN HILL
FIRMS AUTHORIZED TO CONDUCT INVESTMENT TRANSACTIONS
SCHEDULE III

The City is authorized to conduct investment security transactions with the following investment firms and broker/dealers, many of which are designated by the Federal Reserve as primary government dealers. Security transactions with firms other than those appearing on this list are prohibited.

A. Firms designated by the Federal Reserve as Primary Government Dealers:

ASL Capital Markets Inc.
Bank of Montreal, Chicago Branch
Bank of Nova Scotia, New York Agency
BNP Paribas Securities Corp.
Barclays Capital Inc.
BofA Securities, Inc.
Cantor Fitzgerald & Co.
Citigroup Global Markets Inc.
Daiwa Capital Markets America Inc.
Deutsche Bank Securities Inc.
Goldman, Sachs & Co.
HSBC Securities (USA) Inc.
Jefferies LLC
J.P. Morgan Securities, LLC
Mizuho Securities USA, LLC
Morgan Stanley & Co. LLC
NatWest Markets Securities Inc.
Nomura Securities International, Inc.
RBC Capital Markets, LLC
Santander US Capital Markets LLC
Societe Generale, New York Branch
TD Securities (USA) LLC
UBS Securities, LLC
Wells Fargo Securities, LLC

B. Other authorized firms:

D. A. Davidson and Company
Fundamental Capital Markets
Morgan Keegan & Company, Inc.
UnionBanc Investment Services
U.S. Bank Investment Services

CITY OF MORGAN HILL
Authorized Investments Ranked by Authority and Degree of Risk
~~February 21, 2024~~March 5, 2025

SCHEDULE IV

AUTHORIZED INVESTMENTS	DIVERSIFICATION	PURCHASE RESTRICTIONS
U.S. TREASURY BILLS & NOTES	No Limit	No Limit
DREYFUSS TREASURY CASH MANAGEMENT FUND	No Limit	No Limit
U.S. GOVERNMENT AGENCIES AND GOVERNMENT SPONSORED ENTERPRISES	No Limit	No Limit
LOCAL AGENCY INVESTMENT FUND	No Limit	Maximum Set by Gov't Code
CALIFORNIA CLASS	Max 20% of portfolio	No Limit
TIME DEPOSITS	Max 5% of portfolio	Max \$2 million per institution Collateral = 110% to 150%
MONEY MARKET MUTUAL FUNDS	Max 20% of portfolio	No Limit
REPURCHASE AGREEMENTS	Not Authorized	Not Authorized
BANKERS' ACCEPTANCES	Not Authorized	Not Authorized
COMMERCIAL PAPER	Not Authorized	Not Authorized
MEDIUM-TERM CORPORATE NOTES	Not Authorized	Not Authorized
NEGOTIABLE CD'S	Max 5% of portfolio	Up to FDIC insured legal limit per FDIC insured institution
REVERSE REPURCHASE AGREEMENTS	Not Authorized	Not Authorized
ASSET BACKED SECURITIES	Not Authorized	Not Authorized
STATE & LOCAL INDEBTEDNESS	Not Authorized	Not Authorized

GLOSSARY

AGENCY: Debt issued by an agency of the federal government that is explicitly guaranteed by the full faith and credit of the United States government. The Government National Mortgage Association (GNMA or Ginnie Mae), is an example of an agency issuer.

ASKED: The price at which securities are offered. (The price at which a firm will sell a security to an investor.)

BANKERS' ACCEPTANCE (BA): A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BASIS POINT: One one-hundredth of a percent (i.e., 0.01%).

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.)

BROKER: A broker brings buyers and sellers together for a commission. A broker does not take a position.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COUPON: a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. b) A certificate attached to a bond evidencing interest due on a payment date.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for its own account.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT: There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value (e.g., U.S. Treasury Bills).

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FANNIE MAE (FNMA): FNMA was chartered under the Federal National Mortgage Association Act in 1938. The corporation's purpose is to purchase and securitize mortgages in order to ensure that funds are consistently available to the institutions that lend money to home buyers. It is the largest single provider of residential mortgage funds in the United States. On September 7, 2008, Fannie Mae was placed into conservatorship of the FHFA. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions (e.g. S&L's, Small business firms, students, farmers, farm cooperatives, and exporters).

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A Federal agency that insures bank deposits, currently up to \$250,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

FEDERAL INSTRUMENTALITY SECURITY: Debt issued by a government sponsored enterprise that is fully guaranteed as to principal and interest by federal agencies or United States government sponsored enterprises~~carries an implicit guarantee of the United States government~~. Examples of instrumentality issuers include the Federal National Mortgage Association (FNMA or Fannie Mae), the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac), the Federal Home Loan Banks (FHLB), and the Federal Farm Credit Bank (FFCB).

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven-member Board of Governors in Washington, D.C.; 12 regional banks and about 5,700 commercial banks are member of the system.

GINNIE MAE (GNMA): GNMA was created by the United States Federal Government through a 1968 partition of the Federal National Mortgage Association to provide guarantees on mortgage-backed securities (MBS) backed by federally insured or guaranteed loans. Ginnie Mae securities are the only MBS that are backed by the full faith and credit of by the United States government.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL: A local government investment pool is an investment option offered to public entities for the aggregate investment of public funds from political subdivisions. The funds are placed in the custody of the manager, frequently a State Treasurer, for investment and reinvestment. These pools are investments tools that offer safety with a competitive yield and their managers are vested with a public trust that the pool will maintain liquidity, diversity, and follow the investment pool's guidelines.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MARKET REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase reverse repurchase agreements that establish each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See “Asked” and “Bid”.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit. Sales have the opposite effect. Open market operations are the Federal Reserve’s most important and most flexible monetary policy tool.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker/dealers, banks and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state--the so-called “legal list”. In other states, the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity; on a bond, the current income return.

REPURCHASE AGREEMENT (RP or REPO): a holder of securities sells these securities to an investor with an agreement to

purchase them at a fixed date. The security “buyer” in effect lends the “seller” money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank’s vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three month, six months or one year.

TREASURY BOND: Long-term U.S. Treasury securities having initial maturities of more than 10 years.

TREASURY NOTES: Intermediate-term coupon bearing U.S. Treasury securities having initial maturities of from one year to ten years.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD or YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.



City Council

Meeting Minutes

Mark Turner - Mayor
Yvonne Martínez Beltrán - Mayor Pro Tem
Soraida Iwanaga - Council Member
Marilyn Librers - Council Member
Miriam Vega - Council Member

Friday, February 7, 2025 9:00 AM

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

CALL TO ORDER

Mayor Turner called the meeting to order at 9:00 a.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

PUBLIC COMMENT

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

Public comment opened at 9:01 a.m.
Erica Elliott was called to speak.
There were no further requests to speak, so the public comment was closed.

ADOPTION OF AGENDA

The meeting recessed at 9:20 a.m. and reconvened at 9:27 a.m.

MOTION:

Adopting the agenda as posted.

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

WORKSHOP

CITY COUNCIL GOAL SETTING WORKSHOP

1. Review and discuss:
 - a. 2024 Accomplishments
 - b. Rules for the Conduct of City Council Meetings (CP 97-01)
 - c. City Council Appointments to Outside Agencies
 - d. 2024-2025 Strategic Priorities Workplan
 - e. 2024-2025 Sustainable Morgan Hill
 - f. Financial Update
 - g. Economic Development Update
 - h. Housing Update

City Manager Christina Turner kicked off the workshop with an icebreaker. She then reviewed the detailed agenda and plan for the day.

The leadership team shared a few of the many accomplishments of each department from 2024.

Public comment opened at 9:56 a.m. The following people were called to speak.

Yvonne Smith

Sarah Millar

There were no further requests to speak, so the public comment was closed.

The council discussed City Council Policy 97-01 and then moved on to City Council Assignments to Outside Agencies.

Public comment opened at 10:52 a.m. The following people were called to speak:

Yvonne Smith
Brian Sullivan
Deborah Africa
Russell Blalack
Nick Gaich
Sarah Millar

There were no further requests to speak, so the public comment was closed.

The council reviewed the staff workplan and the council's strategic priorities.

Public comment opened at 11:45 a.m. The following people were called to speak:

Nancy Lowe
Diya Khandra
Yvonne Smith
Margaret McCann
Deborah Africa

The meeting recessed for lunch at noon and reconvened at 12:32 p.m.

The workshop moved to the financial update, with Finance Director Dat Nguyen providing the update.

Public comment opened at 1:21 p.m. The following people were called to speak:

Yvonne Smith
Sarah Millar

There were no further requests to speak, so the public comment was closed.

Assistant City Manager Edith Ramirez and Economic Development Director Matt Mahood provided an update on economic development.

Public comment opened at 1:41 p.m. The following people were called to speak:

Yvonne Smith
Sarah Millar

There were no further requests to speak, so the public comment was closed.

The meeting recessed at 1:45 p.m. and reconvened at 1:51 p.m.

Assistant City Manager Edith Ramirez and Housing and Economic Mobility Director John Lang provided an update on housing. Development Services Director Jennifer Carman provided an update and information on the development process.

Public comment opened at 2:47 p.m. The following people were called to speak:

Brian Sullivan

Sarah Millar

There were no further requests to speak, so public comment was closed.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 2:53 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk



City Council

Meeting Minutes

Mark Turner - Mayor
Yvonne Martínez Beltrán - Mayor Pro Tem
Soraida Iwanaga - Council Member
Marilyn Librers - Council Member
Miriam Vega - Council Member

Wednesday, February 19, 2025 5:00 PM

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

SPECIAL/REGULAR MEETING

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

SPECIAL MEETING

5:00 p.m. Closed Session

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 5:01 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Mark Turner, Yvonne Martinez Beltran, Soraida Iwanaga, Marilyn Librers, Miriam Vega
ABSENT	None

Mayor Pro Tem Martinez Beltran arrived at 6:00 p.m.

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

Conference with Legal Counsel—Existing Litigation (§54956.9)

Mary Volz v. RJ Cassiba, et al.

Santa Clara County Case No. 23-CV-413053

Esmarelda Johl v. City of Morgan Hill, et al.

Santa Clara County Case No. 23-CV-428058

Conference with Legal Counsel—Anticipated Litigation

Initiation of litigation pursuant to § 54956.9(c):

(One Case)

OPPORTUNITY FOR PUBLIC COMMENT

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

ADJOURN TO CLOSED SESSION

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

REGULAR MEETING

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

Aquatics Foundation donation

Dairy Delight

PRESENTATIONS

CITY COUNCIL REPORTS

Mayor Pro Tem Martinez Beltran shared that she attended the Silicon Valley Clean Energy Leadership in Sacramento last week. The main topics were on affordability, rising costs of energy and how Sacramento can support. She attended a United Against Hate vigil on February 8th in Gilroy. She has been re-elected as the chair of the VTA PAC board. She was also elected as the Vice President of the Executive Committee for

Silicon Valley Clean Energy. Was able to help with another Know Your Rights workshop. She announced that she will be nominated for Senate District 15 Woman of the Year.

CITY MANAGER'S REPORT

City Manager Christina Turner recognized Doug Muirhead and his dedication of over four years to roadside trash cleanup. She asked that everyone join her in giving Doug a heartfelt thank you for his dedication, hard work, and commitment to keeping our community clean. She announced that the Panthers will have their first home game on March 30 at 5:30 p.m. at the SAP Center. She announced that Coffee with the Mayor is back. Join Mayor Mark Turner and guest, Jennifer Carman, Development Services Director, for a cup of coffee and an informal conversation about housing development in Morgan Hill this Saturday, February 22nd, 9 - 11 a.m. at the Centennial Recreation Center Multipurpose Room. In addition, the State of the City will be held on Wednesday, March 12th. Doors open at 5:30 p.m., and the event starts at 6 p.m. at the Granada theatre in downtown Morgan Hill.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action from the closed session that took place earlier in the meeting.

OTHER REPORTS

None.

PUBLIC COMMENT

Public comment opened at 6:10 p.m., there being no requests to speak, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

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

MOTION:

Approving consent calendar items 1 through 4, 5 through 8, and 10 through 12.

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

1. **ACCEPT \$30,000 DONATION FROM THE FRIENDS OF MORGAN HILL SENIOR CENTER**

Recommendation:

1. Accept a \$30,000 donation from the Friends of the Morgan Hill Senior Center to support services at the Centennial Recreation Senior Center; and
2. Authorize the City Manager to execute any agreements necessary for donation acceptance.

2. **ACCEPT DONATION OF NEW POOL LANE LINES VALUED AT \$17,089 FROM THE MORGAN HILL AQUATIC FOUNDATION**

Recommendation:

Accept donation of lane lines from the the Morgan Hill Aquatic Foundation valued at \$17,089.

3. **ACCEPT THE POLICE DEPARTMENT BUILDING EXPANSION PROJECT IN THE AMOUNT OF \$245,771**

Recommendation:

1. Accept the Police Department Building Expansion Project by Jahn Plumbing, Inc. as complete;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County

4. **ADOPT ORDINANCE NO. 2362, NEW SERIES, AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING UPDATES TO ACCESSORY DWELLING UNIT PROVISIONS TO COMPLY WITH SENATE BILL 477 AND SENATE BILL 1211; IMPLEMENTING REPRODUCTIVE HEALTH COMMUNITY CLINICS BY-RIGHT TO COMPLY WITH ASSEMBLY BILL 2085; UPDATES TO PARKING PROVISIONS TO COMPLY WITH ASSEMBLY BILL 2097; AND IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES**

Recommendation:

Waive the reading, adopt Ordinance No. 2362, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

5. **APPROVE FINAL MAP FOR THE GATES - TRACT NO. 10627 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT**

Recommendation:

1. Approve the Final Map;
2. Approve a Subdivision Improvements Agreement with CITY VENTURES HOMEBUILDING LLC, a Delaware Limited Liability Company;
3. Authorize the City Manager to execute the Subdivision Improvements Agreement; and

MOTION:

Approving the recommended action.

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

6. **APPROVE PROFESSIONAL SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS FOR THE GLEN AYRE RESERVIOR PROJECT FOR A TOTAL AMOUNT NOT TO EXCEED \$417,019**

Recommendation:

1. Approve Service Agreement for Design Professionals with HydroScience Engineers, Inc. for a total not to exceed contract amount of \$417,019 to design the Glen Ayre Reservoir Project; and
2. Authorize the City Manager to execute and administer the Service Agreement for Design Professionals with HydroScience Engineers, Inc. for the Glen Ayre Reservoir Project.

7. **APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT FOR THE DAKOTA DUNNE RESIDENTIAL SUBDIVISION (APN 726-09-104, -105, AND -106)**

Recommendation:

1. Approve the First Amendment to the Subdivision Improvements Agreement for the Dakota Dunne Residential Subdivision;
2. Authorize the City Manager to execute the First Amendment to the Project's Subdivision Improvements Agreement with Michael F. Dunne, Jr. and Jonna M. Dunne; and
3. Authorize the recordation of the First Amendment to the Subdivision Improvements Agreement.

8. **APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT FOR THE SABINI COURT RESIDENTIAL SUBDIVISION (APN: 773-32-017, -018, -019, AND -020)**

Recommendation:

1. Approve the First Amendment to the Subdivision Improvements Agreement for the Sabini Court Subdivision;
2. Authorize the City Manager to execute the First Amendment to the Project's Subdivision Improvements Agreement with Strolata Properties, LLC; and
3. Authorize the recordation of the First Amendment to the Subdivision Improvements Agreement.

10. **APPROVE THE JANUARY 15, 2025 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve minutes.

11. **AWARD MORGAN HILL MAGICAL BRIDGE SHADE STRUCTURE PROJECT TO G&G BUILDERS INC. IN THE AMOUNT OF \$392,933**

Recommendation:

1. Approve the Morgan Hill Magical Bridge Shade Structure Project Plans and Specifications;
2. Award contract to G&G Builders Inc. in the amount of \$392,933;
3. Authorize the expenditure of construction contingency funds not to exceed \$100,000;
4. Authorize the City Manager to execute and administer the construction contract with G&G Builders Inc.

12. RECEIVE ANNUAL REPORT ON 2024 CITY ENGINEER ACCEPTANCES OF PUBLIC IMPROVEMENTS COMPLETED BY PRIVATE DEVELOPMENT PROJECTS

Recommendation:

Accept and file Annual Report on 2024 City Engineer acceptances of public improvements completed by private development projects.

ITEM PULLED FOR DISCUSSION

9. APPROVE CITY COUNCIL ASSIGNMENTS TO OUTSIDE AGENCIES FOR 2025

Recommendation:

1. Approve the City Council assignments to Outside Agencies; and
2. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

City Manager Christina Turner provided the report.

Public comment opened at 6:23 p.m. There were no requests to speak, so public comment was closed.

MOTION:

Approving the recommended actions.

RESULT:	Passed
MOVER:	Council Member Iwanaga
SECONDER:	Council Member Vega
AYES:	Mayor Turner, Council Member Iwanaga, Council Member Librers, Council Member Vega
NAYS:	Mayor Pro Tem Martinez Beltran

ABSTAIN:	None
ABSENT:	None

PUBLIC HEARINGS

13. **ADOPT RESOLUTION AMENDING THE TEXT OF THE MORGAN HILL 2035 GENERAL PLAN TO ELIMINATE THE FLOOR AREA RATIO FOR THE MIXED USE FLEX LAND USE DESIGNATION AND INTRODUCE ORDINANCE (ZA2024-0002) AMENDING CHAPTER 12.32 (RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES); AMENDING SECTIONS 17.20.040 (FORM AND CONTENTS) AND 17.24.030 (FORM AND CONTENTS) RELATING TO TENTATIVE MAPS WITHIN TITLE 17 (SUBDIVISIONS) IMPLEMENTING MINOR AMENDMENTS DUE TO INCONSISTENCIES WITH CHAPTER 12.32 PROPOSED AMENDMENTS; AND AMENDING TABLE 18.22-2 (DEVELOPMENT STANDARDS IN MIXED USE ZONING DISTRICTS) WITHIN SECTION 18.22.040 (DEVELOPMENT STANDARDS) TO REMOVE THE MAXIMUM FLOOR AREA RATIO (FAR) AND BUILDING COVERAGE WITHIN THE (MIXED USE FLEX) MU-F ZONING DISTRICT**

Recommendation:

1. Open/close the public hearing;
2. Adopt a Resolution approving an amendment to the text of the Morgan Hill 2035 General Plan to eliminate the Floor Area Ratio for the Mixed Use Flex land use designation;
3. Waive first and second reading of the Ordinance Amendment; and
4. Introduce Ordinance Amendment.

Principal Planner Adam Paszkowski and Development Services Director Jennifer Carman provided a presentation and report.

The meeting recessed at 6:44 p.m. The meeting reconvened at 6:56 p.m.

Public comment opened at 7:29 p.m.

Armando Benavides was called to speak.

There were no further requests to speak, so the public comment was closed.

MOTION:

Adopting the resolution.

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

	Iwanaga, Council Member Librers, Council Member Vega
NAYS:	None
ABSTAIN:	None
ABSENT:	None

MOTION:

Waiving the first and second reading of the ordinance.

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

MOTION:

Introducing the ordinance.

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

OTHER BUSINESS

14. 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:

Adopt a resolution protecting the rights and safety of immigrant communities.

City Manager Christina Turner provided the report.

Public comment opened at 7:54 p.m. The following people were called to speak:

Robyn Carrillo

Sarah Millar

Julee Klein

Mary Garrett

Kathy Chavez Napoli

Teresa Hernandez

Sally Casas

Robert Aquirre

Armando Benavides

Noshaba Afzal (Zoom)

Wendy Greenfield (Zoom)

Suman Ganapathy (Zoom)

There were no further requests to speak, so the public comment was closed.

MOTION:

Approving the recommended action.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Martinez Beltran requested a review of Council Policy 97-01.

Council Member Librers requested that cell phone use by Council Members not be allowed during City Council meetings.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 8:27 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD ON-CALL GENERAL CONTRACTOR SERVICES CONTRACTS

RECOMMENDATION(S)

1. Award two-year on-call public works contracts for general contractor services to Castlewood Construction Company, Inc., Pueblo Construction, Inc. and Tucker Construction, Inc. in a not-to-exceed amount of \$220,000 each; and
2. Authorize the City Manager to execute and administer the contracts.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider awarding contracts to Castlewood Construction Company, Inc., Tucker Construction, Inc., and Pueblo Construction, Inc. for on-call general contractor services in the not-to-exceed amount of \$220,000 each. Each contract will have a two-year term with authorization for the City Manager to execute three consecutive one-year extensions. If approved, the initial two-year terms will be from April 1, 2025 to March 31, 2027.

The City has long contracted with general contractors to provide construction and repair services for City facilities. The type of work referred to in this report is not large projects such as expansion of buildings, but rather smaller projects such as cabinet replacements, sheetrock repair, and minor remodeling. The bid and contracting process to select general contractors for individual projects can take up to two months and many hours of staff time. Contractors are required to register with the California Department of Industrial Relations and pay prevailing wages. Unfortunately, many small firms find the paperwork too burdensome and large firms find City maintenance projects too small for them.

Instead of continuing this inefficient process, in January 2020 the City issued a Request

for Proposals (RFP) to establish a pre-qualified pool of on-call general contractors who would be eligible to respond to work proposal requests and complete construction or repair work for the City. The City Council approved five on-call general contractor services contracts in the amount of \$200,000 each on April 15, 2020. Maintenance staff has been very satisfied with the streamlined process. Since these on-call general contractors are already under contract with the City, the amount of time needed to begin construction projects has been greatly reduced.

Since the current on-call general contractor contracts are ending on April 15, 2025, a new Request for Qualifications (RFQ) was issued on November 18, 2024. In soliciting proposals, the City advertised in the Morgan Hill Times on November 18, 2024. The RFQ was posted on the City website, Public Purchase online service, Builders Exchange of Santa Clara County, Bay Area Builders Exchange, Central Coast Builders Association, and San Francisco Builders Exchange. Staff also contacted all registered Contractor State License Board (CSLB) Class B licensed general contractors registered on the City's Informal Bidders' List. The non-mandatory virtual pre-proposal meeting was well-attended, with 20 contractors present.

Proposals were due on January 9, 2025, and seven (7) proposals were received. The evaluation committee, consisting of maintenance, utilities operations, and police staff, recommended that three of the seven general contractors be awarded contracts. The on-call contracts recommended in the current cycle are being increased to a contract amount of \$220,000 to match the maximum informal bid amount per the California Uniform Public Construction Cost Accounting Act (CUPCAA). On-call projects will be initiated using a Proposal Request Worksheet (Job Work Order) describing the scope of work for an individual project to the pre-qualified on-call general contractor pool. The City intends to request proposals from more than one contractor for each project. Actual contractor usage will vary and be based upon cost, ability, responsiveness, and need. Unlike single-project contract awards, the award of these on-call contracts doesn't guarantee a minimum dollar amount will be expended each year. The contract award only places them in the pool of eligible contractors.

The following firms submitted proposals:

1. Carlson Construction, Inc.
2. Castlewood Construction Company, Inc.
3. The Lopez Construction Family, LLC
4. Pueblo Construction, Inc.
5. SDM Construction, Sole Owner
6. Shellco General Contractor, Inc.
7. Tucker Construction, Inc.

The three top scoring firms were Castlewood Construction Company, Inc., Pueblo Construction, Inc., and Tucker Construction, Inc. Since Castlewood Construction Company and Tucker Construction are part of the existing on-call general contractor pool for the City, the evaluation committee determined they did not need to be interviewed since staff are already familiar with their work. Pueblo Construction, Inc. was interviewed on February 6, 2025.

Staff recommends the award of on-call general contractor services contracts to the following three general contractors in the not-to-exceed amount of \$220,000 each for a term of two years with options for three consecutive one-year extensions:

1. Castlewood Construction Company, Inc.
2. Pueblo Construction, Inc.
3. Tucker Construction, Inc.

COMMUNITY ENGAGEMENT:

As this is an administrative activity with no actual projects attached to it, no community engagement was conducted before this report was prepared. If approved, the community will be informed of the actual projects resulting from these contracts via the City's normal communication tools including on-site project signs, "The Scoop" weekly maintenance updates in the City website, and Nextdoor.

ALTERNATIVE ACTIONS:

The City Council could decline to approve these contracts and instead direct staff to complete separate bids and contracts for each project. This is not recommended as it will cause unnecessary delays for projects and increase staff resource costs associated with the additional work. An alternative action would be to approve a contract with only one or two firms. This would limit the City's options when repairs are needed, and may result in impacts to public services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 15, 2020, the City Council approved five contracts for on-call general contractors.

FISCAL AND RESOURCE IMPACT:

The on-call general contractor services costs will be paid proportionally by the appropriate building maintenance budgets (General Fund or Building Maintenance Fund) for the Aquatics Center, Centennial Recreation Center, Civic Center, Community and Cultural Center, Police Department, or Corporation Yard. Staff will judiciously request proposals for work with the majority of projects needing to secure or prevent damage to City facilities, or projects that are intended to result in a reduction of expenses or an increase in revenues.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

City of Morgan Hill RFQ: General Contractor On-Call Construction Services

Summary of Evaluation Committee Scoring

City Council Award - March 5, 2025

Possible Points	Carlson	Castlewood	Lopez	Pueblo	SDM	Shellco	Tucker	Selection Criteria
40	33.3	36.0	25.3	34.8	30.5	26.3	38.0	A. Organization's Experience and Qualifications
								The organization and its proposed project team has the necessary experience and qualifications to effectively provide general contractor on-call services to the City for construction projects under \$75,000. Qualifications of the assigned key personnel coincide with the scope of work outlined in the RFQ.
35	24.5	33.8	23.0	29.0	28.3	26.0	32.8	B. Project Examples and References
								Provided three (3) examples of construction projects completed within the past five (5) years highlighting experience in the performance and administration of general construction work for three like-sized customers, preferably municipalities' Provided client references for the three (3) construction projects listed above, demonstrating the company's ability to effectively complete projects on schedule and within budget.

Possible Points	Carlson	Castlewood	Lopez	Pueblo	SDM	Shellco	Tucker	Selection Criteria
25	19.8	23.8	19.5	20.3	20.3	13.5	22.5	C. Project Approach
								Clearly stated approach and ability to deliver projects utilizing efficient and effective bidding, quality control, scheduling and safety program on projects. Experience working with on-call contracts.
100	77.5	93.5	67.8	84.0	79.0	65.8	93.3	TOTAL POINTS AWARDED
Ranking	5	1	6	3	4	7	2	

CITY OF MORGAN HILL
ON-CALL CONTRACT FOR GENERAL CONTRACTOR SERVICES

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Castlewood Construction Company, Inc. a California Corporation ("Contractor") effective as of _____, 2025.

The parties agree as follows:

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

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

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

3. Time for Performance.

- a. **Time of Essence.** Time is of the essence in the performance of this Agreement. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Agreement consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.

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

4. Compensation and Payment.

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates set forth in Exhibit A, which is attached hereto and incorporated herein by reference, and each Work Order issued by the City. Individual work orders for projects will not exceed \$75,000. In no event shall Contractor's total compensation exceed two hundred twenty thousand dollars (\$220,000.00) without additional written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

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

Agreement. The City Manager is authorized to terminate this Agreement on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled personnel to perform all services under this Agreement. All work performed by Contractor, its employees, or its Subcontractors, under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

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

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

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

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

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

10. Labor Code Compliance.

10.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

10.2 Prevailing Wages. Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

10.3 DIR Registration. City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.

10.4 Wage Theft Prevention. All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.

11. Workers' Compensation Certification. Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

12. Notice. Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Keri Russell, Maintenance Manager	Castlewood Construction Co., Inc.
Address	17575 Peak Avenue	835 West San Martin Avenue
City/state/zip	Morgan Hill, California 95037	San Martin, CA 95046
Phone	408-310-4057	408-887-3294
Fax		
Email	Michelle.bigelow@morganhill.ca.gov	castlewoodinc@att.net
Copy to:	Keri.russell@morganhill.ca.gov	

13. General Provisions.

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

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

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

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

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Bigelow
Deputy City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

CONTRACTOR:

CASTLEWOOD CONSTRUCTION CO.
INC.

Signature

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

Signature

Name/Title [print]

Date: _____

343791 A & B
Contractor's License Number(s)

03/31/2025
Expiration Date(s)

Seal:

1000018054
Contractor's DIR Registration Number(s)
(if applicable)

06/30/2025
Expiration Date

GENERAL CONDITIONS

Article 1 Definitions

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

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

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

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

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

Contract means the signed agreement between City and Contractor and attachments thereto.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Contract; the payment and performance bonds, if applicable; the General Conditions; the Special Conditions; the approved, stamped Project Drawings and Specifications or the Scope of Work provided as Attachment A to the Contract; any Change Orders; and any other documents expressly made part of the Contract Documents.

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

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

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

Day means a calendar day unless otherwise specified.

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

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

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

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

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

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

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

Including, whether or not capitalized, means the term "including" means "including, but not limited to," unless the context requires otherwise,

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

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

Plans, whether or not capitalized, has the same meaning as Drawings.

Price Quote means a price quote submitted by Contractor to City for performing the Work under the Contract.

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 designee(s) when Project

Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

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

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications or the Scope of Work attached as Attachment A to the Contract, describing the Project requirements, and which are prepared for and incorporated into this Project by or on behalf of City, and do not include the Contract, General Conditions, or Special Conditions.

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

Technical Specifications means Specifications.

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

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

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

Article 2

Roles and Responsibilities

2.1 Design Professional. Design Professional is responsible for the overall design of the Project. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

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

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

Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

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

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

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

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials, or services for or on behalf of Contractor or its Subcontractors.

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

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

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is

part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

- (2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

(I) **Emergency Contact.** Before starting Work on the Project, Contractor must provide contact information to the Engineer, identifying 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.

2.3 Subcontractors.

(A) **General.** Contractor must perform at least 50 percent (50%) of the Work with its own forces, unless otherwise authorized by City. All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

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

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

2.4 Coordination of Work. City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

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

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

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

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

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

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

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

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

2.6 Shop Drawings. Whenever Shop Drawings are required by the Contract Documents or by the Engineer, Contractor must submit five (5) prints of each Shop Drawing to the Engineer. Shop Drawings may include detail design calculations, fabrication and installation drawings, lists, graphs, operation instructions, and the like.

(A) If three (3) prints of a Shop Drawing are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the Shop Drawing will not be required. If one (1) print of a Shop Drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor must revise the Shop Drawing and resubmit five (5) copies of the revised Shop Drawing to the Engineer. City may backcharge Contractor to cover additional costs of the Engineer's review beyond the second submission.

(B) Fabrication of an item may not start 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 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 will not be entitled to damages or any extension of time due to any delay resulting from making the required revisions to Shop Drawings. The Engineer's review of the Shop Drawings does not relieve Contractor of responsibility for any errors or omissions contained in the Shop Drawings nor will such review operate to waive or modify any provision in the Contract Documents.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

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

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

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

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

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

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

- (A) Change Orders;
- (C) Contract;
- (D) Notice to Proceed
- (E) Notice of Award
- (F) Permits from other agencies (if required);
- (G) General Conditions;
- (H) Special Conditions;
- (I) Payment and Performance Bonds (if required);
- (J) Specifications or Scope of Work;
- (K) Drawings;
- (L) Contractor's Price Quote and attachments, if applicable;
- (M) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

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

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

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

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

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

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

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

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

Article 4 Indemnity, Insurance and Bonds

- 4.1 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.
- 4.2 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein.** Any deductibles or self-insured retentions must be declared to and approved by City. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract

Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.**

(A) **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 must maintain CGL and the CGL policy 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) one million dollars (\$1,000,000.00) combined single limit each occurrence and either a general aggregate limit of two million dollars (\$2,000,000.00) or a general aggregate limit of one million dollars (\$1,000,000.00) 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) **Workers' Compensation Insurance and Employer's Liability:** Contractor must 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.

- (3) **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.

- (4) **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.

(5) **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.

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

(1) ALL Policies except Professional Liability:

“Waiver of Subrogation” - Each required policy, with the exception of Professional Liability, must include an endorsement 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.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.2, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **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.

(E) **Certificates.** Contractor shall furnish City with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to 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 provided herein.

Certificate Holder address:

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

- 4.3 Payment and Performance Bonds.** If the Contract Price is over Twenty-Five Thousand Dollars (\$25,000.00), Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents.

(A) **Surety.** Each required bond must be issued by a surety admitted in California. If an issuing surety cancels the bond, becomes insolvent, or at any time becomes unsatisfactory to City, within twenty (20) 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. Any changes in the Work or extensions of time made under the Contract does not release Contractor or Surety from their obligations.

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 email from City, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

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

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

(A) **As-Planned (Baseline) Schedule.** Within five (5) calendar days following Contractor's execution of the Contract (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

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

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

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

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

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

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as

authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

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

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

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

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

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

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

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

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

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

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

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

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

delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

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

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

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

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

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

Article 6

Contract Modification

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

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

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the

Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with 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.

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

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

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

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

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

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

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein shall be deemed waived. Contractor understands that submission of claims which have no basis in

fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.”

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

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

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

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

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs and bond costs, if applicable, computed at one- and one-half percent (1.5%) of total of the previous four (4) sums.

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

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

Article 7
General Construction Provisions

7.1 Permits and Taxes.

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

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

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

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

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

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

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

7.4 Protection of Work and Property.

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

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects

Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

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

(D) **Damage to Existing Facilities.** Any existing facilities that are broken or damaged by the installation of Work must be repaired or replaced with the same kind of material, the same finish, and in not less than the same dimensions as the original work. All such repairs or replacements must match the appearance of the existing facilities as nearly as possible.

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

7.6 Materials and Equipment.

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

(B) **Equipment.** Equipment must be operated by qualified, experienced operators, and in accordance with manufacturer recommendations and limitations. Any vehicles used to haul materials over existing streets or highways must be equipped with pneumatic tires.

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

(D) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices, or processes that are incorporated into the Work.

Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

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

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

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

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

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

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

7.8 Testing and Inspection.

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

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

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

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

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

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

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

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

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

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

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air

Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

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

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

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

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

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris., presenting a clean and neat appearance.

Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting, and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

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

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

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

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

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

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

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

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

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

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

7.14 Trenching and Excavations.

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

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

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to Contractor prior to submitting a Price Quote; or

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

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

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

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

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, the Engineer will set the stakes or marks necessary to establish the lines and grades required to execute the Work. Contractor must give at least two (2) working days' notice to the Engineer of the need for setting any lines and grades.

(A) Distances and measurements are given and will be made in a horizontal plane. Grades are given from the top of stakes or nail unless otherwise noted. Three (3) consecutive points shown on the same rate of slope must be used in common in order to detect any variation from a straight grade. Any variation from a straight grade, straight slope or line, must be reported to the Engineer. If such discrepancy is not reported to the Engineer, Contractor will be responsible for any error in the finished Work.

(B) Contractor must preserve all stakes and points set for lines, grades, or measurements of the Work in their proper places until authorized by the Engineer to remove them. All expense incurred by replacing stakes that have been removed without proper authority may be deducted from any payment due to Contractor.

7.18 Historic or Archeological Items.

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

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

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

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

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules, or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Water. Unless otherwise specified, City will provide water required for performance of the Work. Contractor is responsible for proper disposal of waste water in coordination with City personnel. Contractor must provide a backflow

preventer on all point of connections to City's water system. All backflow preventers must be checked and approved by City's Public Works Water Division. Contractor must provide a deposit (refundable) and make necessary arrangements to pick up a hydrant meter at the Morgan Hill Public Works Office. At the completion of the Project, if the hydrant meter is not returned promptly or if it is damaged, Contractor will forfeit its deposit.

- 7.21 Disposal of Materials Outside of Street Right-of-Way.** Unless otherwise specified in the Contract Documents, Contractor is solely responsible for disposing of materials outside the street right-of-way and for all associated costs. Before disposing materials outside the street right-of-way, Contractor must 1) obtain a written release from the property owner releasing City from any and all responsibility in connection with the disposal of material on that property; and 2) obtain permission from the Engineer to dispose of the material at the permitted location.
- 7.22 Right-of-Way.** Unless otherwise specified, City intends to provide any right-of-way needed for performance of the Work. Contractor is solely responsible for any additional area required outside of the designated the right-of-way, unless otherwise provided in the Contract Documents.
- 7.23 Use of Explosives.** If use of explosives is required for the Work, Contractor must ensure that the explosives are used with the utmost care to avoid endangering persons or property. All explosives must be used and stored in strict accordance with all applicable federal, state, and local laws and regulations.

Article 8 Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents. **Each application for payment must be accompanied**

by completed “Contract Balance Form,” a copy of which is provided at the end of Article 8.

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

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

- (A) Contractor’s unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;
- (B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
- (C) Contractor’s failure to pay its Subcontractors and suppliers when payment is due;
- (D) Failure to timely correct rejected, nonconforming, or defective Work;
- (E) Unexcused delay in performance of the Work;
- (F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor’s payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

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

8.5 Retention. City may retain five percent (5%) of the amount due on each progress payment as retention to ensure full and satisfactory performance of the Work.

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

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

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

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

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

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

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final

Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.9 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.

8.10 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

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

CONTRACTOR NAME: _____

DATE: _____

MAILING ADDRESS: _____

TELEPHONE NO.: _____

FAX NO.: _____

PROJECT NO.: _____

INVOICE NO.: _____

1. ORIGINAL CONTRACT AMOUNT: \$ _____

2. APPROVED CHANGE ORDERS TOTAL: \$ _____

3. REVISED CONTRACT AMOUNT: (1+2) \$ _____

4. PREVIOUS BALANCE PAID: \$ _____

5. REMAINING BALANCE: (3-4) \$ _____

6. CURRENT PROGRESS PAYMENT DUE: \$ _____
(before retention)

7. 5% RETENTION FROM WORK DONE: (-)\$ _____

8. CURRENT BALANCE DUE: (6-7) \$ _____

9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT: (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 Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Working Hours.

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

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

9.3 Labor Code Requirements. This Section applies if the Contract Price exceeds One Thousand Dollars (\$1,000.00). Each worker performing Work under this Contract that is covered under Labor Code Section 1720 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 Worksite.

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

(B) ***Apprentices.*** If the Contract Price exceeds Thirty Thousand Dollars (\$30,000.00), 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.

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

(D) ***Payroll Records.*** Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully

incorporated by this reference, including requirements for electronic submission of payroll records.

(E) **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.

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

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

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

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

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

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

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

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

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

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

Article 10 Safety Provisions

- 10.1 Safety Precautions and Programs.** Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.
- (A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.
- (B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.
- (C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- (D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.
- 10.2 Hazardous Materials.** Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.
- 10.3 Material Safety.** Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS shall be accessible and available to Contractor's employees, Subcontractors, and City.

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

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

Article 11

Completion and Warranty Provisions

11.1 Final Completion.

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

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

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

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

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not

intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

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

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

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

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

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

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

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

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

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

Article 12 Dispute Resolution

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

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

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

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

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. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

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

- (1) General introduction, specifically identifying the submission as a "Claim" submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - (c) A chronology of relevant events;
 - (d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
 - (e) Use of a separate page for each issue.
- (4) Summary of issues and damages.
- (5) The following certification, executed by Contractor's authorized representative:

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

(C) **Submission Deadlines.**

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

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

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

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

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45)-day period is extended by mutual agreement of City and Contractor. However, the City may first request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

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

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

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

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

City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

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

(B) ***Location for Meet and Confer.*** The meet and confer conference will be scheduled at a location at or near Morgan Hill City Hall.

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

(D) ***Submission to Mediation.*** If the Claim or any portion remains in dispute following the meet and confer conference, within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

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

(B) ***Government Code Claims.***

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

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

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under California Civil Code Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Damages.** Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material, or equipment due to delays; or any other indirect loss arising from the Contract.
- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13

Suspension and Termination

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

adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

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

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

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

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

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

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties

agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

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

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

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

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

Article 14 Miscellaneous Provisions

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

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

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

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and

may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

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

SPECIAL CONDITIONS

Not Applicable

CITY OF MORGAN HILL
ON-CALL CONTRACT FOR GENERAL CONTRACTOR SERVICES

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Pueblo Construction, Inc. a California Corporation ("Contractor") effective as of _____, 2025.

The parties agree as follows:

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

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

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

3. Time for Performance.

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

shall perform all services and related work within the time period(s) established in the Work Order/Contractor's Proposal. When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager through a Change Order.

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

4. Compensation and Payment.

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates set forth in Exhibit A, which is attached hereto and incorporated herein by reference, and each Work Order issued by the City. Individual work orders for projects will not exceed \$75,000. In no event shall Contractor's total compensation exceed two hundred twenty thousand dollars (\$220,000.00) without additional written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

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

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled personnel to perform all services under this Agreement. All work performed by Contractor, its employees, or its Subcontractors, under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

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

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

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

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

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

10. Labor Code Compliance.

10.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

10.2 Prevailing Wages. Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

10.3 DIR Registration. City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.

10.4 Wage Theft Prevention. All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.

11. Workers' Compensation Certification. Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

12. Notice. Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Keri Russell, Maint. Manager	Marcella Cuevas
Address	17575 Peak Avenue	232 Anacapa Street, Ste 2D
City/state/zip	Morgan Hill, California 95037	Santa Barbara, CA 93101
Phone	408-310-4057	805-564-1313
Fax		
Email	Michelle.bigelow@morganhill.ca.gov	marcella@puebloconstruction.net
Copy to:	Keri.russell@morganhill.ca.gov	shawn@puebloconstruction.net

13. General Provisions.

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

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

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

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

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Bigelow
Deputy City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

**CONTRACTOR:
PUEBLO CONSTRUCTION, INC.**

Signature

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

Signature

Name/Title [print]

Date: _____

538295
Contractor's License Number(s)

09/30/2025
Expiration Date(s)

Seal:

1000001130
Contractor's DIR Registration Number(s)
(if applicable)

06/30/2027
Expiration Date

GENERAL CONDITIONS

Article 1 Definitions

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

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

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

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

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

Contract means the signed agreement between City and Contractor and attachments thereto.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Contract; the payment and performance bonds, if applicable; the General Conditions; the Special Conditions; the approved, stamped Project Drawings and Specifications or the Scope of Work provided as Attachment A to the Contract; any Change Orders; and any other documents expressly made part of the Contract Documents.

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

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

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

Day means a calendar day unless otherwise specified.

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

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

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

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

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

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

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

Including, whether or not capitalized, means the term "including" means "including, but not limited to," unless the context requires otherwise,

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

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

Plans, whether or not capitalized, has the same meaning as Drawings.

Price Quote means a price quote submitted by Contractor to City for performing the Work under the Contract.

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 designee(s) when Project

Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

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

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications or the Scope of Work attached as Attachment A to the Contract, describing the Project requirements, and which are prepared for and incorporated into this Project by or on behalf of City, and do not include the Contract, General Conditions, or Special Conditions.

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

Technical Specifications means Specifications.

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

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

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

Article 2 Roles and Responsibilities

2.1 Design Professional. Design Professional is responsible for the overall design of the Project. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

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

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

Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

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

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

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

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials, or services for or on behalf of Contractor or its Subcontractors.

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

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

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is

part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

- (2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

(I) **Emergency Contact.** Before starting Work on the Project, Contractor must provide contact information to the Engineer, identifying 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.

2.3 Subcontractors.

(A) **General.** Contractor must perform at least 50 percent (50%) of the Work with its own forces, unless otherwise authorized by City. All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

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

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

2.4 **Coordination of Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

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

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

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

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

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

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

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

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

2.6 Shop Drawings. Whenever Shop Drawings are required by the Contract Documents or by the Engineer, Contractor must submit five (5) prints of each Shop Drawing to the Engineer. Shop Drawings may include detail design calculations, fabrication and installation drawings, lists, graphs, operation instructions, and the like.

(A) If three (3) prints of a Shop Drawing are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the Shop Drawing will not be required. If one (1) print of a Shop Drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor must revise the Shop Drawing and resubmit five (5) copies of the revised Shop Drawing to the Engineer. City may backcharge Contractor to cover additional costs of the Engineer's review beyond the second submission.

(B) Fabrication of an item may not start 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 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 will not be entitled to damages or any extension of time due to any delay resulting from making the required revisions to Shop Drawings. The Engineer's review of the Shop Drawings does not relieve Contractor of responsibility for any errors or omissions contained in the Shop Drawings nor will such review operate to waive or modify any provision in the Contract Documents.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

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

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

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

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

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

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

- (A) Change Orders;
- (C) Contract;
- (D) Notice to Proceed
- (E) Notice of Award
- (F) Permits from other agencies (if required);
- (G) General Conditions;
- (H) Special Conditions;
- (I) Payment and Performance Bonds (if required);
- (J) Specifications or Scope of Work;
- (K) Drawings;
- (L) Contractor's Price Quote and attachments, if applicable;
- (M) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

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

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

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

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

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

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

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

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

Article 4 Indemnity, Insurance and Bonds

- 4.1 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.
- 4.2 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein.** Any deductibles or self-insured retentions must be declared to and approved by City. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract

Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.**

(A) **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 must maintain CGL and the CGL policy 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) one million dollars (\$1,000,000.00) combined single limit each occurrence and either a general aggregate limit of two million dollars (\$2,000,000.00) or a general aggregate limit of one million dollars (\$1,000,000.00) 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) **Workers' Compensation Insurance and Employer's Liability:** Contractor must 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.

- (3) **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.

- (4) **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.

(5) **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.

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

(1) ALL Policies except Professional Liability:

“Waiver of Subrogation” - Each required policy, with the exception of Professional Liability, must include an endorsement 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.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.2, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **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.

(E) **Certificates.** Contractor shall furnish City with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to 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 provided herein.

Certificate Holder address:

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

- 4.3 Payment and Performance Bonds.** If the Contract Price is over Twenty-Five Thousand Dollars (\$25,000.00), Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents.

(A) **Surety.** Each required bond must be issued by a surety admitted in California. If an issuing surety cancels the bond, becomes insolvent, or at any time becomes unsatisfactory to City, within twenty (20) 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. Any changes in the Work or extensions of time made under the Contract does not release Contractor or Surety from their obligations.

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 email from City, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

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

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

(A) **As-Planned (Baseline) Schedule.** Within five (5) calendar days following Contractor's execution of the Contract (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

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

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

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

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

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

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as

authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

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

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

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

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

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

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

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

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

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

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

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

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

delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

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

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

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

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

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

Article 6

Contract Modification

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

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

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the

Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with 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.

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

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

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

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

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

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

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein shall be deemed waived. Contractor understands that submission of claims which have no basis in

fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.”

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

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

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

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

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs and bond costs, if applicable, computed at one- and one-half percent (1.5%) of total of the previous four (4) sums.

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

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

Article 7
General Construction Provisions

7.1 Permits and Taxes.

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

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

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

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

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

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

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

7.4 Protection of Work and Property.

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

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects

Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

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

(D) **Damage to Existing Facilities.** Any existing facilities that are broken or damaged by the installation of Work must be repaired or replaced with the same kind of material, the same finish, and in not less than the same dimensions as the original work. All such repairs or replacements must match the appearance of the existing facilities as nearly as possible.

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

7.6 Materials and Equipment.

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

(B) **Equipment.** Equipment must be operated by qualified, experienced operators, and in accordance with manufacturer recommendations and limitations. Any vehicles used to haul materials over existing streets or highways must be equipped with pneumatic tires.

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

(D) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices, or processes that are incorporated into the Work.

Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

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

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

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

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

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

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

7.8 Testing and Inspection.

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

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

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

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

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

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

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

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

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

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

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air

Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

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

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

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

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

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris., presenting a clean and neat appearance.

Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting, and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

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

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

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

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

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

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

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

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

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

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

7.14 Trenching and Excavations.

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

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

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to Contractor prior to submitting a Price Quote; or

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

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

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

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

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, the Engineer will set the stakes or marks necessary to establish the lines and grades required to execute the Work. Contractor must give at least two (2) working days' notice to the Engineer of the need for setting any lines and grades.

(A) Distances and measurements are given and will be made in a horizontal plane. Grades are given from the top of stakes or nail unless otherwise noted. Three (3) consecutive points shown on the same rate of slope must be used in common in order to detect any variation from a straight grade. Any variation from a straight grade, straight slope or line, must be reported to the Engineer. If such discrepancy is not reported to the Engineer, Contractor will be responsible for any error in the finished Work.

(B) Contractor must preserve all stakes and points set for lines, grades, or measurements of the Work in their proper places until authorized by the Engineer to remove them. All expense incurred by replacing stakes that have been removed without proper authority may be deducted from any payment due to Contractor.

7.18 Historic or Archeological Items.

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

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

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

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

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules, or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Water. Unless otherwise specified, City will provide water required for performance of the Work. Contractor is responsible for proper disposal of waste water in coordination with City personnel. Contractor must provide a backflow

preventer on all point of connections to City's water system. All backflow preventers must be checked and approved by City's Public Works Water Division. Contractor must provide a deposit (refundable) and make necessary arrangements to pick up a hydrant meter at the Morgan Hill Public Works Office. At the completion of the Project, if the hydrant meter is not returned promptly or if it is damaged, Contractor will forfeit its deposit.

- 7.21 Disposal of Materials Outside of Street Right-of-Way.** Unless otherwise specified in the Contract Documents, Contractor is solely responsible for disposing of materials outside the street right-of-way and for all associated costs. Before disposing materials outside the street right-of-way, Contractor must 1) obtain a written release from the property owner releasing City from any and all responsibility in connection with the disposal of material on that property; and 2) obtain permission from the Engineer to dispose of the material at the permitted location.
- 7.22 Right-of-Way.** Unless otherwise specified, City intends to provide any right-of-way needed for performance of the Work. Contractor is solely responsible for any additional area required outside of the designated the right-of-way, unless otherwise provided in the Contract Documents.
- 7.23 Use of Explosives.** If use of explosives is required for the Work, Contractor must ensure that the explosives are used with the utmost care to avoid endangering persons or property. All explosives must be used and stored in strict accordance with all applicable federal, state, and local laws and regulations.

Article 8 Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents. **Each application for payment must be accompanied**

by completed “Contract Balance Form,” a copy of which is provided at the end of Article 8.

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

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

- (A) Contractor’s unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;
- (B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
- (C) Contractor’s failure to pay its Subcontractors and suppliers when payment is due;
- (D) Failure to timely correct rejected, nonconforming, or defective Work;
- (E) Unexcused delay in performance of the Work;
- (F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor’s payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

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

8.5 Retention. City may retain five percent (5%) of the amount due on each progress payment as retention to ensure full and satisfactory performance of the Work.

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

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

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

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

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

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

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final

Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

- 8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

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

CONTRACTOR NAME: _____

DATE: _____

MAILING ADDRESS: _____

TELEPHONE NO.: _____

FAX NO.: _____

PROJECT NO.: _____

INVOICE NO.: _____

1. ORIGINAL CONTRACT AMOUNT: \$ _____

2. APPROVED CHANGE ORDERS TOTAL: \$ _____

3. REVISED CONTRACT AMOUNT: (1+2) \$ _____

4. PREVIOUS BALANCE PAID: \$ _____

5. REMAINING BALANCE: (3-4) \$ _____

6. CURRENT PROGRESS PAYMENT DUE: \$ _____
(before retention)

7. 5% RETENTION FROM WORK DONE: (-)\$ _____

8. CURRENT BALANCE DUE: (6-7) \$ _____

9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT: (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 Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Working Hours.

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

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

9.3 Labor Code Requirements. This Section applies if the Contract Price exceeds One Thousand Dollars (\$1,000.00). Each worker performing Work under this Contract that is covered under Labor Code Section 1720 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 Worksite.

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

(B) ***Apprentices.*** If the Contract Price exceeds Thirty Thousand Dollars (\$30,000.00), 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.

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

(D) ***Payroll Records.*** Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully

incorporated by this reference, including requirements for electronic submission of payroll records.

(E) **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.

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

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

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

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

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

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

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

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

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

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

Article 10 Safety Provisions

- 10.1 Safety Precautions and Programs.** Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.
- (A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.
- (B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.
- (C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- (D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.
- 10.2 Hazardous Materials.** Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.
- 10.3 Material Safety.** Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS shall be accessible and available to Contractor's employees, Subcontractors, and City.

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

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

Article 11

Completion and Warranty Provisions

11.1 Final Completion.

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

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

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

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

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not

intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

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

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

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

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

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

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

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

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

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

Article 12 Dispute Resolution

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

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

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

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

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. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

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

- (1) General introduction, specifically identifying the submission as a "Claim" submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - (c) A chronology of relevant events;
 - (d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
 - (e) Use of a separate page for each issue.
- (4) Summary of issues and damages.
- (5) The following certification, executed by Contractor's authorized representative:

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

(C) **Submission Deadlines.**

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

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

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

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

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45)-day period is extended by mutual agreement of City and Contractor. However, the City may first request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

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

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

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

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

City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

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

(B) ***Location for Meet and Confer.*** The meet and confer conference will be scheduled at a location at or near Morgan Hill City Hall.

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

(D) ***Submission to Mediation.*** If the Claim or any portion remains in dispute following the meet and confer conference, within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

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

(B) ***Government Code Claims.***

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

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

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under California Civil Code Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Damages.** Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material, or equipment due to delays; or any other indirect loss arising from the Contract.
- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13

Suspension and Termination

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

adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

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

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

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

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

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

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties

agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

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

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

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

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

Article 14 Miscellaneous Provisions

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

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

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

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and

may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

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

SPECIAL CONDITIONS

Not Applicable

CITY OF MORGAN HILL
ON-CALL CONTRACT FOR GENERAL CONTRACTOR SERVICES

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Tucker Construction, Inc. a California Corporation ("Contractor") effective as of _____, 2025.

The parties agree as follows:

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

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

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

3. Time for Performance.

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

shall perform all services and related work within the time period(s) established in the Work Order/Contractor's Proposal. When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager through a Change Order.

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

4. Compensation and Payment.

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates set forth in Exhibit A, which is attached hereto and incorporated herein by reference, and each Work Order issued by the City. Individual work orders for projects will not exceed \$75,000. In no event shall Contractor's total compensation exceed two hundred twenty thousand dollars (\$220,000.00) without additional written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

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

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled personnel to perform all services under this Agreement. All work performed by Contractor, its employees, or its Subcontractors, under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

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

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

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

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

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

10. Labor Code Compliance.

10.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

10.2 Prevailing Wages. Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

10.3 DIR Registration. City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.

10.4 Wage Theft Prevention. All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.

11. Workers' Compensation Certification. Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

12. Notice. Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

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

13. General Provisions.

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

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

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

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

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Bigelow
Deputy City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

**CONTRACTOR:
TUCKER CONSTRUCTION, INC.**

Signature

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

Signature

Name/Title [print]

Date: _____

454738
Contractor's License Number(s)

03/31/2026
Expiration Date(s)

Seal:

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

06/30/2026
Expiration Date

GENERAL CONDITIONS

Article 1 Definitions

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

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

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

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

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

Contract means the signed agreement between City and Contractor and attachments thereto.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Contract; the payment and performance bonds, if applicable; the General Conditions; the Special Conditions; the approved, stamped Project Drawings and Specifications or the Scope of Work provided as Attachment A to the Contract; any Change Orders; and any other documents expressly made part of the Contract Documents.

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

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

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

Day means a calendar day unless otherwise specified.

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

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

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

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

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

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

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

Including, whether or not capitalized, means the term "including" means "including, but not limited to," unless the context requires otherwise,

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

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

Plans, whether or not capitalized, has the same meaning as Drawings.

Price Quote means a price quote submitted by Contractor to City for performing the Work under the Contract.

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 designee(s) when Project

Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

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

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications or the Scope of Work attached as Attachment A to the Contract, describing the Project requirements, and which are prepared for and incorporated into this Project by or on behalf of City, and do not include the Contract, General Conditions, or Special Conditions.

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

Technical Specifications means Specifications.

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

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

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

Article 2

Roles and Responsibilities

2.1 Design Professional. Design Professional is responsible for the overall design of the Project. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

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

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

Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

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

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

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

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials, or services for or on behalf of Contractor or its Subcontractors.

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

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

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is

part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

- (2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

(I) **Emergency Contact.** Before starting Work on the Project, Contractor must provide contact information to the Engineer, identifying 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.

2.3 Subcontractors.

(A) **General.** Contractor must perform at least 50 percent (50%) of the Work with its own forces, unless otherwise authorized by City. All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

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

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

2.4 **Coordination of Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

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

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

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

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

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

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

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

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

2.6 Shop Drawings. Whenever Shop Drawings are required by the Contract Documents or by the Engineer, Contractor must submit five (5) prints of each Shop Drawing to the Engineer. Shop Drawings may include detail design calculations, fabrication and installation drawings, lists, graphs, operation instructions, and the like.

(A) If three (3) prints of a Shop Drawing are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the Shop Drawing will not be required. If one (1) print of a Shop Drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor must revise the Shop Drawing and resubmit five (5) copies of the revised Shop Drawing to the Engineer. City may backcharge Contractor to cover additional costs of the Engineer's review beyond the second submission.

(B) Fabrication of an item may not start 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 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 will not be entitled to damages or any extension of time due to any delay resulting from making the required revisions to Shop Drawings. The Engineer's review of the Shop Drawings does not relieve Contractor of responsibility for any errors or omissions contained in the Shop Drawings nor will such review operate to waive or modify any provision in the Contract Documents.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

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

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

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

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

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

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

- (A) Change Orders;
- (C) Contract;
- (D) Notice to Proceed
- (E) Notice of Award
- (F) Permits from other agencies (if required);
- (G) General Conditions;
- (H) Special Conditions;
- (I) Payment and Performance Bonds (if required);
- (J) Specifications or Scope of Work;
- (K) Drawings;
- (L) Contractor's Price Quote and attachments, if applicable;
- (M) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

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

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

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

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

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

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

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

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

Article 4 Indemnity, Insurance and Bonds

- 4.1 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.
- 4.2 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein.** Any deductibles or self-insured retentions must be declared to and approved by City. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract

Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.**

(A) **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 must maintain CGL and the CGL policy 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) one million dollars (\$1,000,000.00) combined single limit each occurrence and either a general aggregate limit of two million dollars (\$2,000,000.00) or a general aggregate limit of one million dollars (\$1,000,000.00) 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) **Workers' Compensation Insurance and Employer's Liability:** Contractor must 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.

- (3) **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.

- (4) **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.

(5) **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.

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

(1) ALL Policies except Professional Liability:

“Waiver of Subrogation” - Each required policy, with the exception of Professional Liability, must include an endorsement 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.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.2, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **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.

(E) **Certificates.** Contractor shall furnish City with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to 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 provided herein.

Certificate Holder address:

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

- 4.3 Payment and Performance Bonds.** If the Contract Price is over Twenty-Five Thousand Dollars (\$25,000.00), Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents.

(A) **Surety.** Each required bond must be issued by a surety admitted in California. If an issuing surety cancels the bond, becomes insolvent, or at any time becomes unsatisfactory to City, within twenty (20) 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. Any changes in the Work or extensions of time made under the Contract does not release Contractor or Surety from their obligations.

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 email from City, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

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

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

(A) **As-Planned (Baseline) Schedule.** Within five (5) calendar days following Contractor's execution of the Contract (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

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

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

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

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

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

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as

authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

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

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

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

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

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

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

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

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

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

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

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

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

delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

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

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

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

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

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

Article 6

Contract Modification

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

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

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the

Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with 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.

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

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

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

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

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

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

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein shall be deemed waived. Contractor understands that submission of claims which have no basis in

fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.”

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

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

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

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

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs and bond costs, if applicable, computed at one- and one-half percent (1.5%) of total of the previous four (4) sums.

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

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

Article 7
General Construction Provisions

7.1 Permits and Taxes.

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

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

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

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

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

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

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

7.4 Protection of Work and Property.

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

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects

Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

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

(D) **Damage to Existing Facilities.** Any existing facilities that are broken or damaged by the installation of Work must be repaired or replaced with the same kind of material, the same finish, and in not less than the same dimensions as the original work. All such repairs or replacements must match the appearance of the existing facilities as nearly as possible.

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

7.6 Materials and Equipment.

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

(B) **Equipment.** Equipment must be operated by qualified, experienced operators, and in accordance with manufacturer recommendations and limitations. Any vehicles used to haul materials over existing streets or highways must be equipped with pneumatic tires.

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

(D) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices, or processes that are incorporated into the Work.

Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

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

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

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

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

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

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

7.8 Testing and Inspection.

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

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

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

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

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

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

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

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

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

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

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air

Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

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

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

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

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

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris., presenting a clean and neat appearance.

Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting, and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

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

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

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

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

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

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

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

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

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

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

7.14 Trenching and Excavations.

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

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

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to Contractor prior to submitting a Price Quote; or

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

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

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

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

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, the Engineer will set the stakes or marks necessary to establish the lines and grades required to execute the Work. Contractor must give at least two (2) working days' notice to the Engineer of the need for setting any lines and grades.

(A) Distances and measurements are given and will be made in a horizontal plane. Grades are given from the top of stakes or nail unless otherwise noted. Three (3) consecutive points shown on the same rate of slope must be used in common in order to detect any variation from a straight grade. Any variation from a straight grade, straight slope or line, must be reported to the Engineer. If such discrepancy is not reported to the Engineer, Contractor will be responsible for any error in the finished Work.

(B) Contractor must preserve all stakes and points set for lines, grades, or measurements of the Work in their proper places until authorized by the Engineer to remove them. All expense incurred by replacing stakes that have been removed without proper authority may be deducted from any payment due to Contractor.

7.18 Historic or Archeological Items.

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

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

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

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

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules, or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Water. Unless otherwise specified, City will provide water required for performance of the Work. Contractor is responsible for proper disposal of waste water in coordination with City personnel. Contractor must provide a backflow

preventer on all point of connections to City's water system. All backflow preventers must be checked and approved by City's Public Works Water Division. Contractor must provide a deposit (refundable) and make necessary arrangements to pick up a hydrant meter at the Morgan Hill Public Works Office. At the completion of the Project, if the hydrant meter is not returned promptly or if it is damaged, Contractor will forfeit its deposit.

- 7.21 Disposal of Materials Outside of Street Right-of-Way.** Unless otherwise specified in the Contract Documents, Contractor is solely responsible for disposing of materials outside the street right-of-way and for all associated costs. Before disposing materials outside the street right-of-way, Contractor must 1) obtain a written release from the property owner releasing City from any and all responsibility in connection with the disposal of material on that property; and 2) obtain permission from the Engineer to dispose of the material at the permitted location.
- 7.22 Right-of-Way.** Unless otherwise specified, City intends to provide any right-of-way needed for performance of the Work. Contractor is solely responsible for any additional area required outside of the designated the right-of-way, unless otherwise provided in the Contract Documents.
- 7.23 Use of Explosives.** If use of explosives is required for the Work, Contractor must ensure that the explosives are used with the utmost care to avoid endangering persons or property. All explosives must be used and stored in strict accordance with all applicable federal, state, and local laws and regulations.

Article 8 Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents. **Each application for payment must be accompanied**

by completed “Contract Balance Form,” a copy of which is provided at the end of Article 8.

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

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

- (A) Contractor’s unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;
- (B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
- (C) Contractor’s failure to pay its Subcontractors and suppliers when payment is due;
- (D) Failure to timely correct rejected, nonconforming, or defective Work;
- (E) Unexcused delay in performance of the Work;
- (F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor’s payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

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

8.5 Retention. City may retain five percent (5%) of the amount due on each progress payment as retention to ensure full and satisfactory performance of the Work.

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

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

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

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

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

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

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final

Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.9 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.

8.10 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

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

CONTRACTOR NAME: _____

DATE: _____

MAILING ADDRESS: _____

TELEPHONE NO.: _____

FAX NO.: _____

PROJECT NO.: _____

INVOICE NO.: _____

1. ORIGINAL CONTRACT AMOUNT: \$ _____

2. APPROVED CHANGE ORDERS TOTAL: \$ _____

3. REVISED CONTRACT AMOUNT: (1+2) \$ _____

4. PREVIOUS BALANCE PAID: \$ _____

5. REMAINING BALANCE: (3-4) \$ _____

6. CURRENT PROGRESS PAYMENT DUE: \$ _____
(before retention)

7. 5% RETENTION FROM WORK DONE: (-)\$ _____

8. CURRENT BALANCE DUE: (6-7) \$ _____

9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT: (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 Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Working Hours.

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

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

9.3 Labor Code Requirements. This Section applies if the Contract Price exceeds One Thousand Dollars (\$1,000.00). Each worker performing Work under this Contract that is covered under Labor Code Section 1720 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 Worksite.

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

(B) ***Apprentices.*** If the Contract Price exceeds Thirty Thousand Dollars (\$30,000.00), 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.

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

(D) ***Payroll Records.*** Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully

incorporated by this reference, including requirements for electronic submission of payroll records.

(E) **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.

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

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

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

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

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

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

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

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

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

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

Article 10 Safety Provisions

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

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

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

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

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

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

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

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

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

Article 11

Completion and Warranty Provisions

11.1 Final Completion.

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

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

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

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

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not

intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

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

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

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

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

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

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

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

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

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

Article 12 Dispute Resolution

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

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

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

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

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. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

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

- (1) General introduction, specifically identifying the submission as a "Claim" submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - (c) A chronology of relevant events;
 - (d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
 - (e) Use of a separate page for each issue.
- (4) Summary of issues and damages.
- (5) The following certification, executed by Contractor's authorized representative:

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

(C) **Submission Deadlines.**

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

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

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

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

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45)-day period is extended by mutual agreement of City and Contractor. However, the City may first request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

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

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

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

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

City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

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

(B) ***Location for Meet and Confer.*** The meet and confer conference will be scheduled at a location at or near Morgan Hill City Hall.

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

(D) ***Submission to Mediation.*** If the Claim or any portion remains in dispute following the meet and confer conference, within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

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

(B) ***Government Code Claims.***

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

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

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under California Civil Code Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Damages.** Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material, or equipment due to delays; or any other indirect loss arising from the Contract.
- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13

Suspension and Termination

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

adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

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

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

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

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

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

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties

agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

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

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

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

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

Article 14 Miscellaneous Provisions

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

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

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

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and

may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

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

SPECIAL CONDITIONS

Not Applicable

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND JANUARY 2025 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Receive and file reports.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Fiscal Sustainability

Community Engagement

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the January 2025 financial and investment reports.

January 2025 Financial Report

The Revenue and Expense Summary through January 2025 is included on page 4 of the attached monthly financial and investment reports. Overall, General Fund revenues total \$27.1 million or about 48% of the budget. Expenditures, including encumbrances, amounted to \$36.5 million, of which approximately \$3.3 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$35.1 million. This represents an increase of \$1.4 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$1.7 million, mainly due to overall cost increases.

Budget Update

There has been no material change since the last budget update to the Council on February 7, 2025. Regarding water revenue, Morgan Hill residents consumed approximately 9% more water through January compared to the prior three-year average. As a result, no revenue stabilization water rate was implemented.

COMMUNITY ENGAGEMENT:

Inform

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

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project

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

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
January 31, 2025 - 58% of Year Complete



CITY OF MORGAN HILL

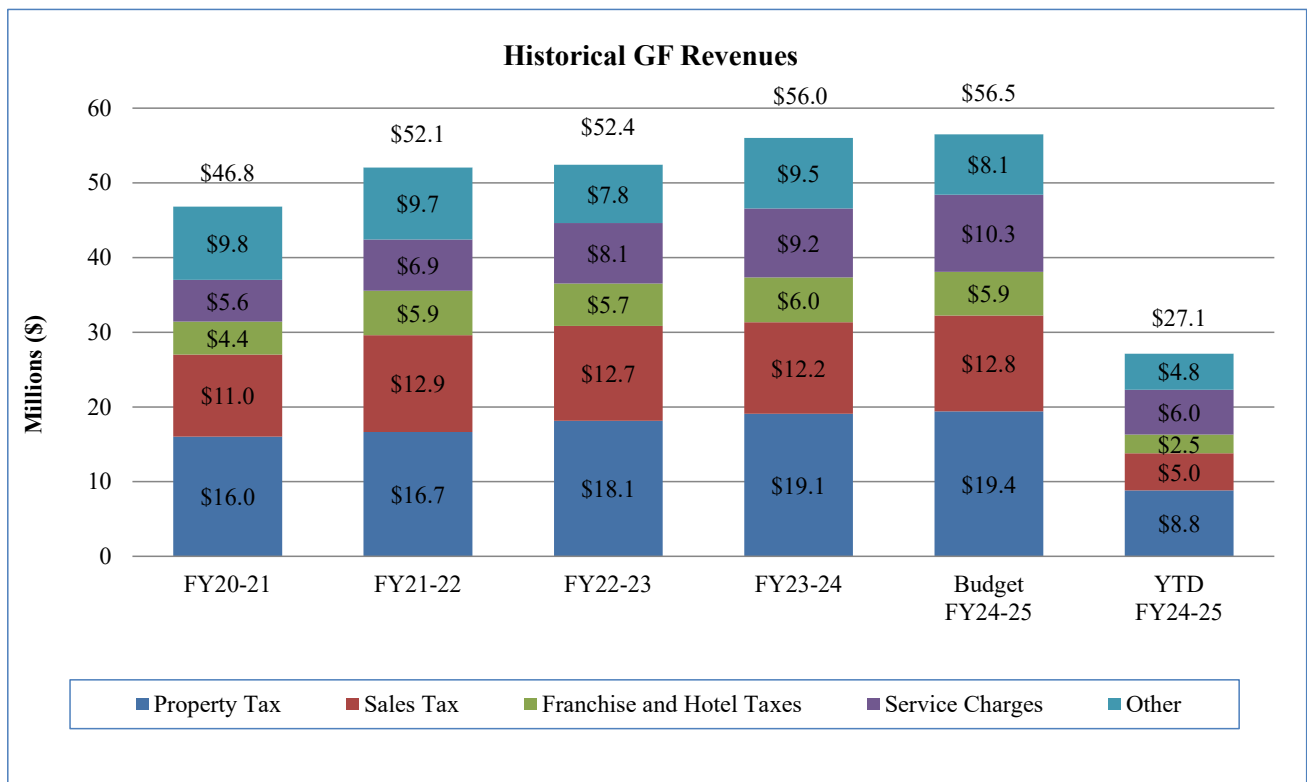
Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2024-25
FOR THE MONTH ENDED JANUARY 2025 – 58% OF YEAR COMPLETE

- **General Fund** – Revenues through January totaled \$27.1 million, or about 48% of the budget. Regarding the property tax revenue forecast, the County estimates the City will receive approximately \$20.0 million in property tax revenue for the current fiscal year, slightly exceeding the budget of \$19.4 million. However, adjusting for the excess ERAF set aside of 20% or \$0.5 million, the revised property tax revenue shows only a modest increase over the budget. As for sales tax, HdL, the City's sales tax consultant, further revised downward the City's current fiscal year sales tax revenue estimate (before tax rebates) to \$11.9 million. This represents a reduction of approximately \$1.0 million from the current year's budget, partially attributable to lower tax receipts from vehicle sales and one-time adjustments in the prior year's receipts.

The chart below shows historical General Fund revenues by major revenue category from FY20-21 through FY23-24 Actual, FY24-25 Budget, and YTD as of January 31 2025.



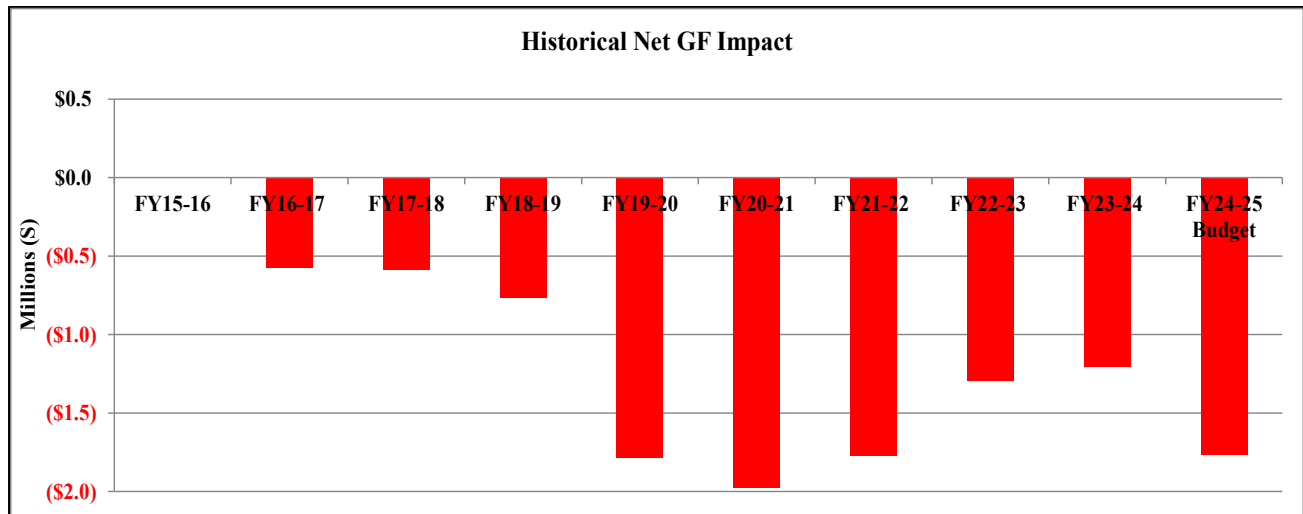
General Fund expenditures and encumbrances through January totaled \$36.5 million, of which approximately \$3.3 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$35.1 million. This represents an increase of \$1.4 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$1.7 million mainly due to overall cost increases.

- **Community Services** – The Community Services Department's recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.4 million as of January 31, 2025. 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 2024-25
FOR THE MONTH ENDED JANUARY 2025 – 58% OF YEAR COMPLETE

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



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

- **Development Services Fund** – Revenues through January totaled \$3.5 million compared to the prior year to date amount of approximately \$3.0 million. Expenditures, including encumbrances, totaled \$3.7 million.
- **Debt Service Funds** – Expenditures through January totaled \$0.6 million. The debt service for the first half of the year includes both interest and principal, while the second half will include interest only. Debt service payments were scheduled when the bonds were issued and are budgeted for the months specified 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 2024-25
FOR THE MONTH ENDED JANUARY 2025 – 58% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues through January 31, 2025 totaled \$8.6 million. Expenditures and outstanding encumbrances totaled \$9.6 million or 57% of the budget. The table below shows historical Wastewater Operations revenues and expenditures from FY20-21 through FY23-24 Actual, FY24-25 Budget, and YTD as of January 31, 2025.

(amount in millions)	FY20-21	FY21-22	FY22-23	FY23-24	Budget FY24-25	YTD FY24-25
Revenues	13.3	14.9	15.3	15.2	16.6	8.6
Expenditures	13.3	14.8	16.0	14.9	16.8	9.6
Operating Margin	-	0.1	(0.7)	0.3	(0.2)	(1.0)
Operating Margin without Encumbrances	-	0.1	(0.7)	0.3	(0.2)	(1.0)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues through January 31, 2025 totaled \$11.3 million. Water Operations expenditures, including outstanding encumbrances, totaled \$11.8 million. Morgan Hill residents consumed about 9% more water through January compared to the prior three-year average. As such, no revenue stabilization water rate was implemented. The table below shows Water Operations revenues and expenditures from FY20-21 through FY23-24 Actual, FY24-25 Budget, and YTD as of January 31, 2025.

(amount in millions)	FY20-21	FY21-22	FY22-23	FY23-24	Budget FY24-25	YTD FY24-25
Revenues	16.5	16.0	18.1	18.7	21.5	11.3
Expenditures	16.5	15.2	18.0	19.1	21.6	11.8
Operating Margin	-	0.8	0.1	(0.4)	(0.1)	(0.5)
Operating Margin without Encumbrances	-	0.8	0.1	(0.4)	(0.1)	-

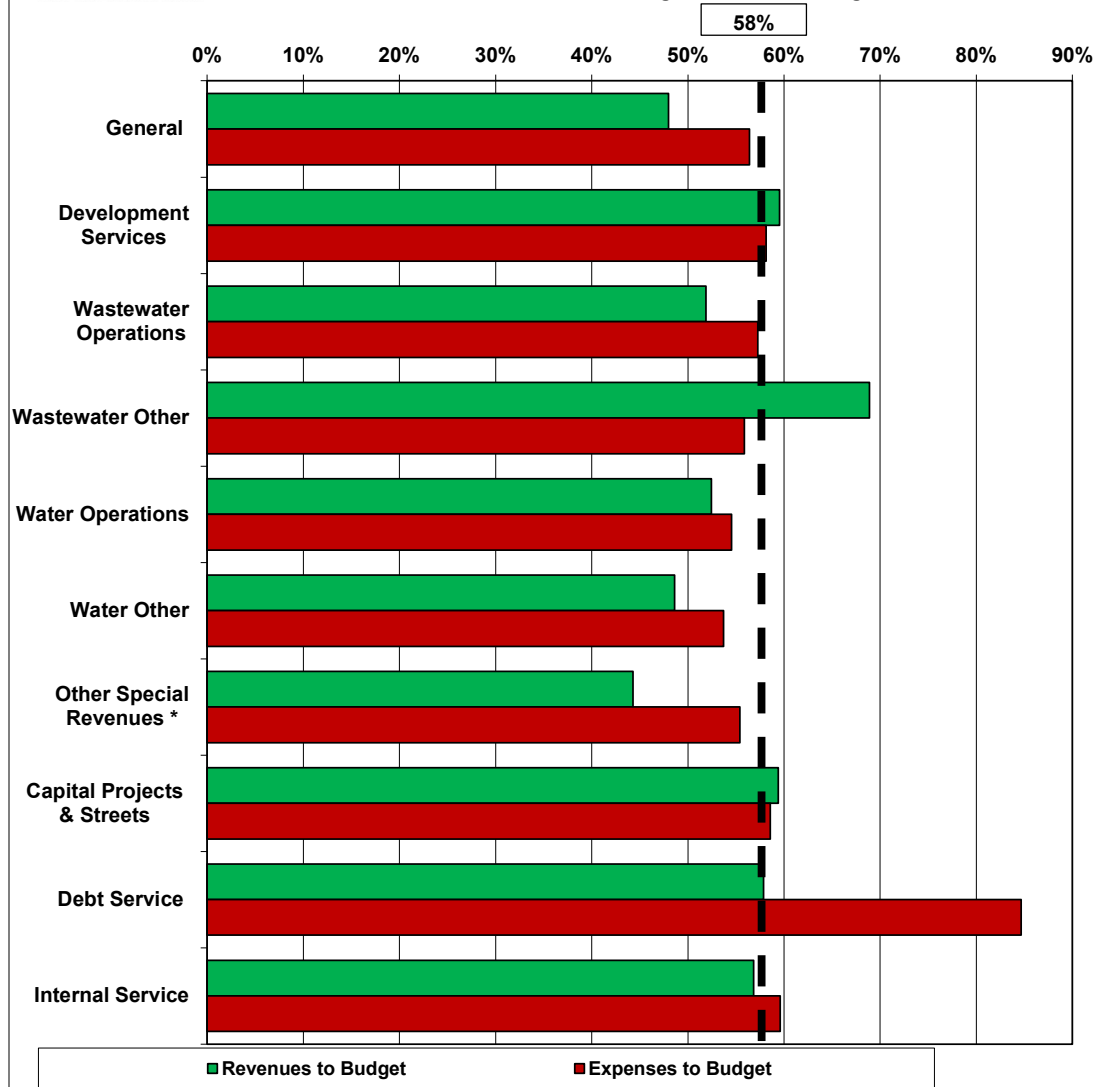
- **Investments** – One security was called, and two new securities were purchased. Total interest earnings received on investments were \$366,000 during the month.



Morgan Hill YTD Revenue & Expense Summary

January 31, 2025 - 58% of Year Complete

Percentage of Actual to Budget



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 27,124,939	48%	\$ 36,492,357	56%
Development Services	3,547,646	60%	3,720,581	58%
Wastewater Operations	8,630,209	52%	9,620,181	57%
Wastewater Other	12,455,729	69%	10,685,606	56%
Water Operations	11,300,050	52%	11,797,497	55%
Water Other	7,011,244	49%	13,077,730	54%
Other Special Revenues *	3,772,902	44%	6,467,788	55%
Capital Projects & Streets	19,388,213	59%	29,606,829	59%
Debt Service	400,020	58%	573,107	85%
Internal Service	8,242,929	57%	9,469,208	60%
TOTAL FOR ALL FUNDS	\$ 101,873,881	54%	\$ 131,510,884	57%

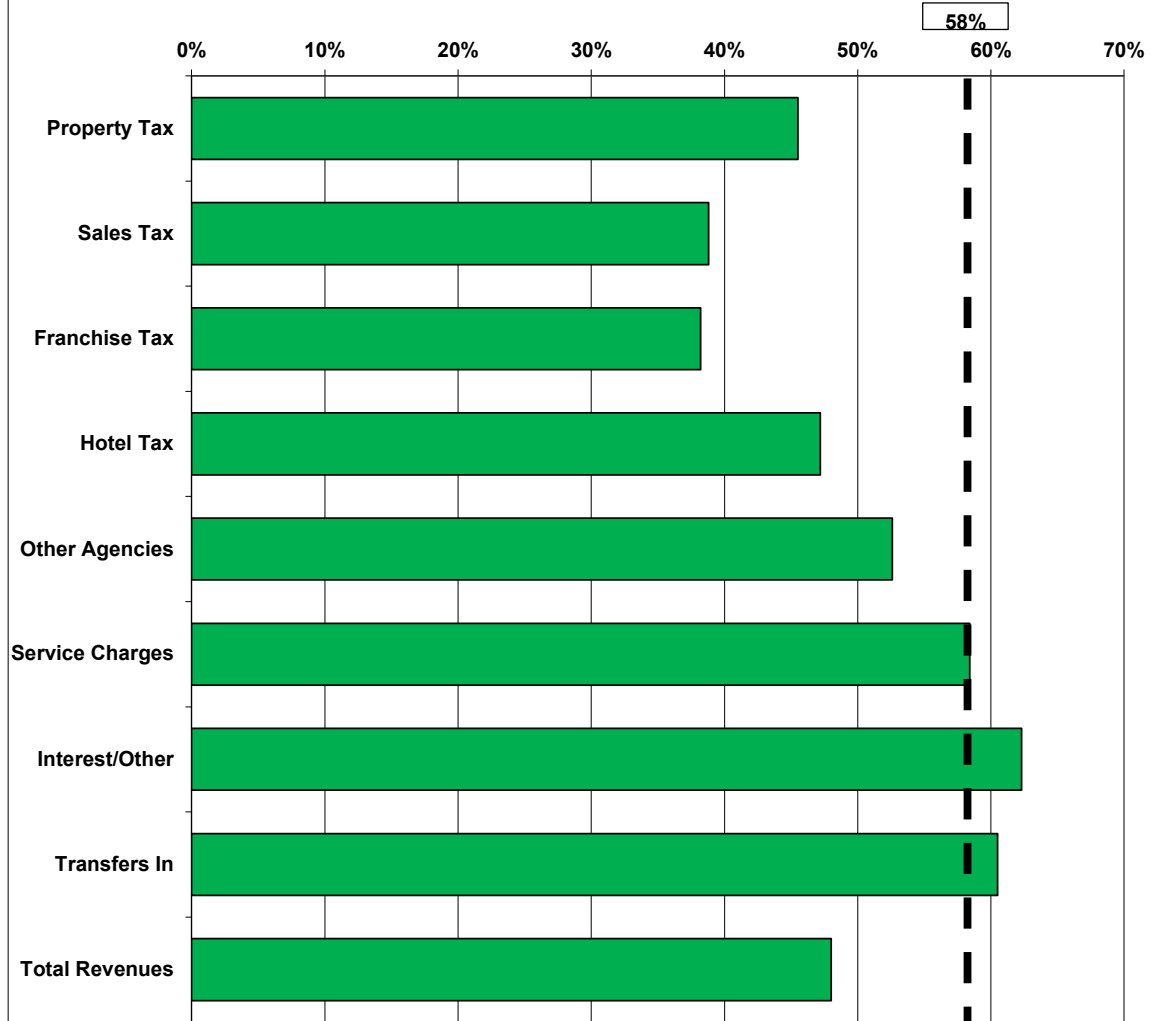
* Includes all Special Revenue Funds except Development Services Fund and Street Funds.



Morgan Hill YTD General Fund Revenues

January 31, 2025 - 58% of Year Complete

Percent of Actual to Budget



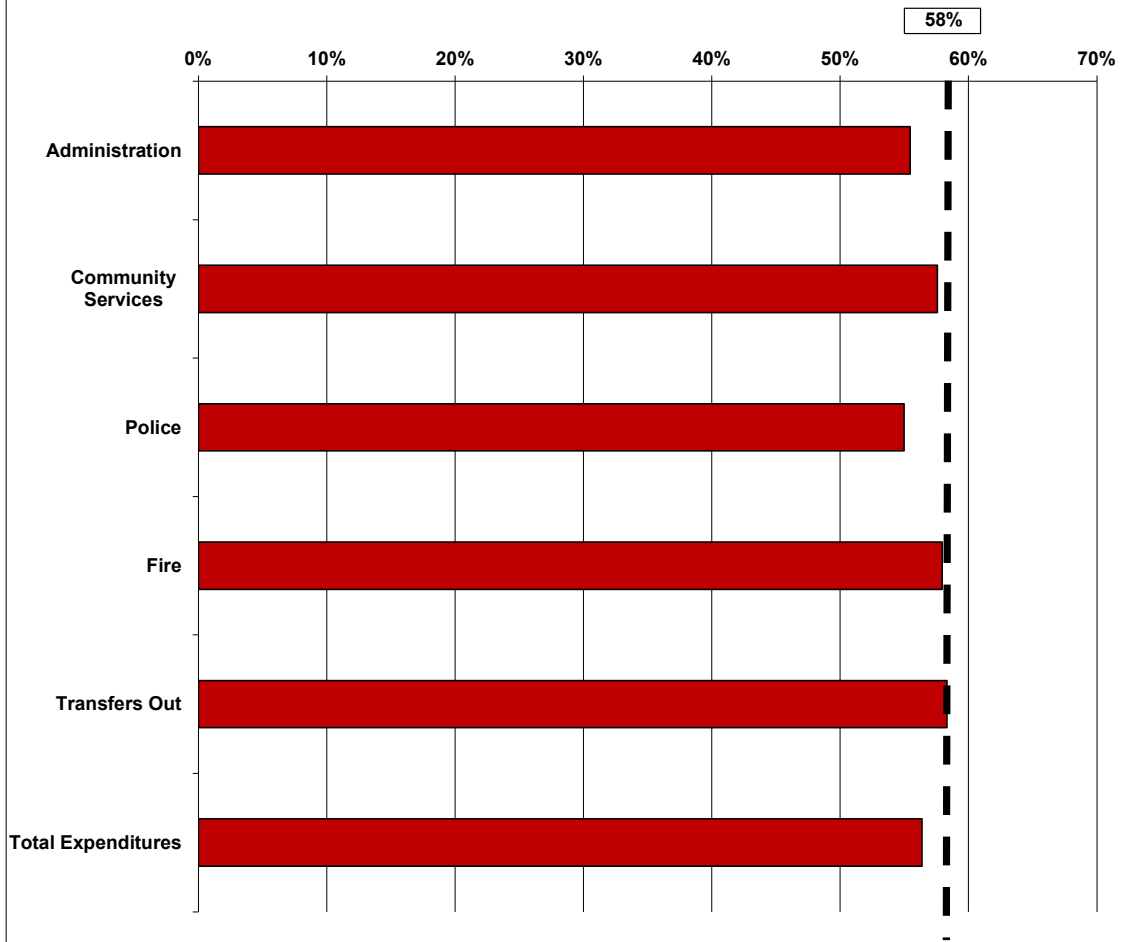
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 19,411,020	\$ 8,829,797	46%	\$ 8,834,134	0%
Sales Tax	12,816,469	4,967,753	39%	5,290,102	-6%
Franchise Tax	3,185,872	1,215,542	38%	1,300,182	-7%
Hotel Tax	2,678,000	1,262,996	47%	1,285,643	-2%
Other Agencies	1,601,204	841,740	53%	471,511	79%
Service Charges	10,323,751	6,033,499	58%	5,818,995	4%
Interest/Other	3,107,665	1,936,631	62%	1,383,069	40%
Transfers In	3,365,760	2,036,981	61%	1,874,324	9%
TOTAL REVENUES	\$ 56,489,742	\$ 27,124,939	48%	\$ 26,257,959	3%



Morgan Hill YTD General Fund Expenditures

January 31, 2025 - 58% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 7,351,159	\$ 4,076,282	55%	\$ 3,750,190	9%
Community Services	19,922,029	11,473,648	58%	10,811,405	6%
Police	25,598,203	14,074,907	55%	12,916,039	9%
Fire	10,381,160	6,016,886	58%	5,487,469	10%
Transfers Out	1,458,230	850,634	58%	2,160,531	-61%
TOTAL EXPENDITURES	\$ 64,710,781	\$ 36,492,357	56%	\$ 35,125,633	4%

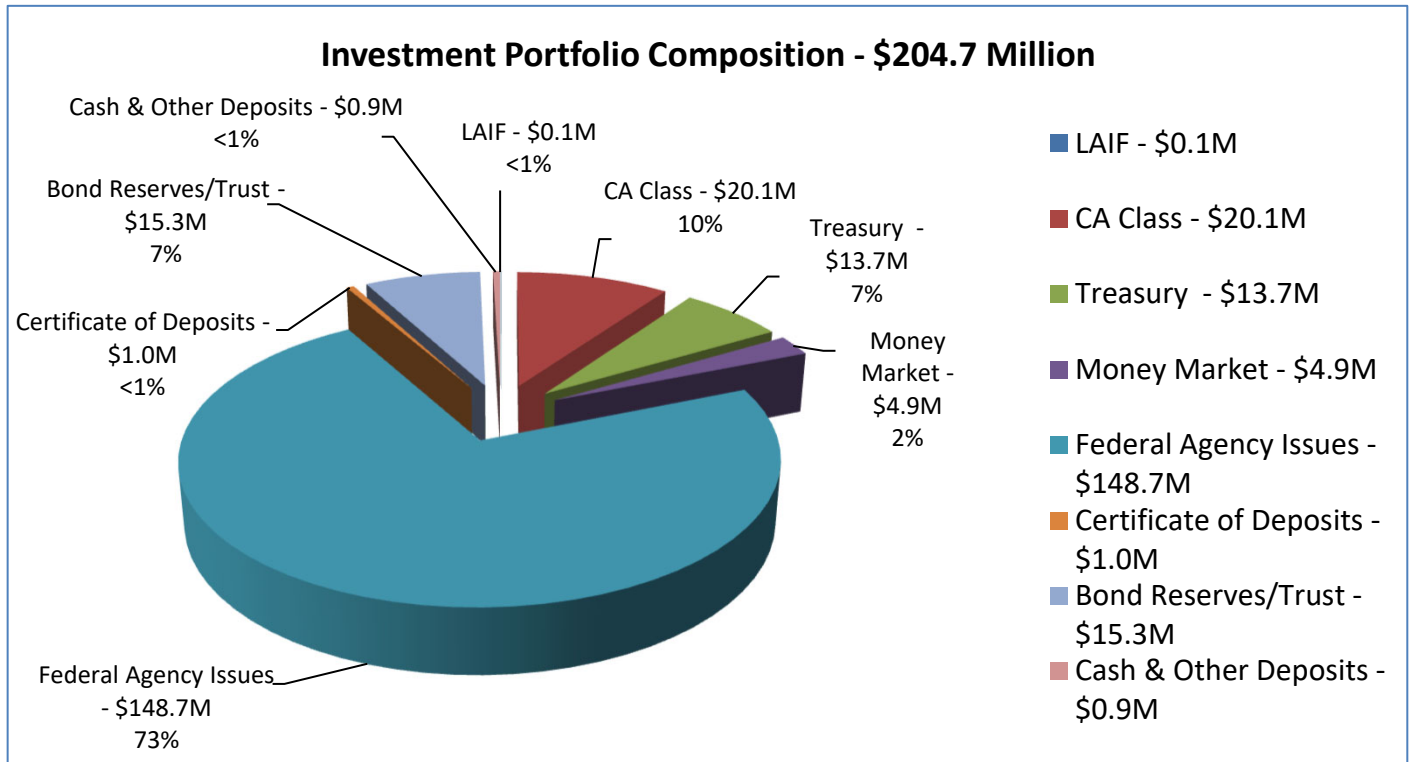


City of Morgan Hill
Recreation Report - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

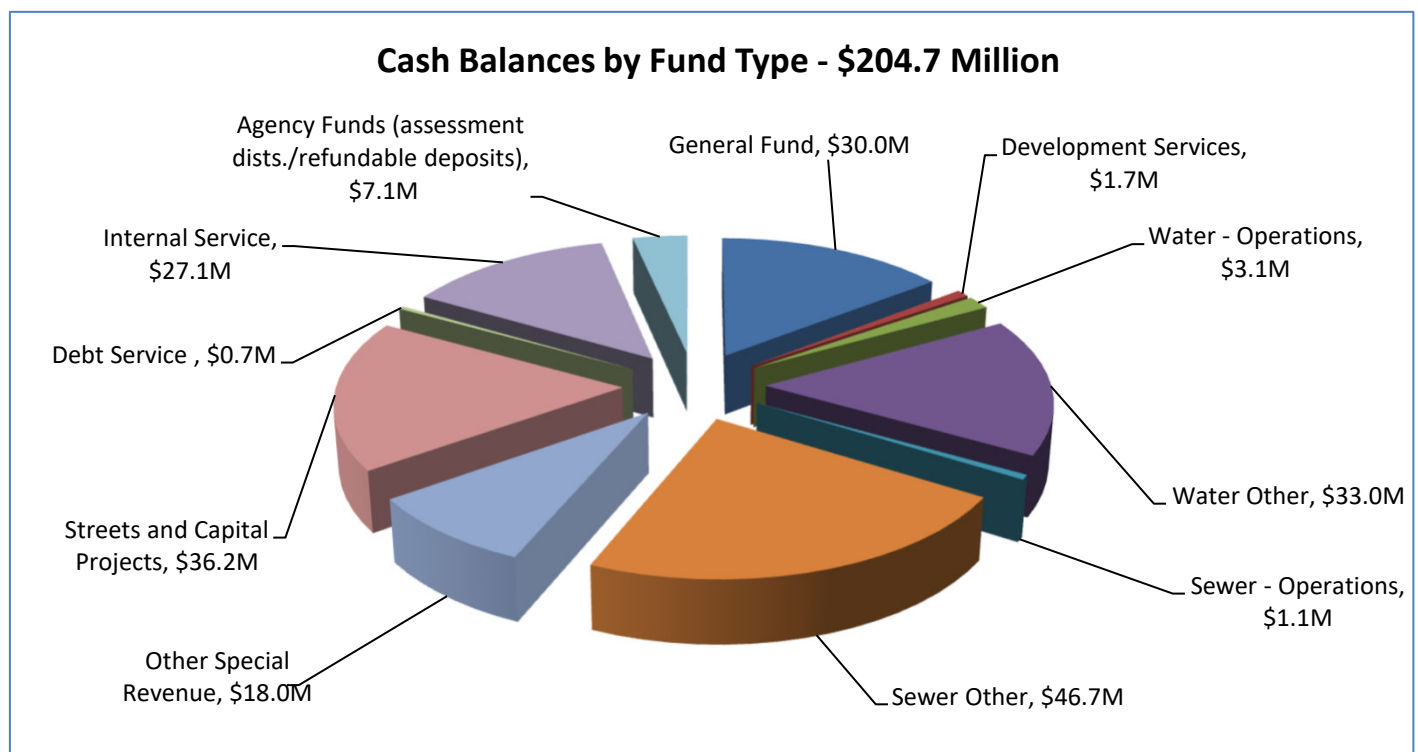
	<u>Budget</u>	<u>January 2025</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,222,399	\$ 500,584	\$ 3,596,529	
Facility Rentals	1,197,395	188,553	900,808	
Community Services	147,498	36,434	113,943	
Transfers in	100,000	6,250	58,333	
Total Revenues	<u>\$ 7,667,292</u>	<u>\$ 731,821</u>	<u>\$ 4,669,613</u>	61%
Less: Expenditures				
Membership & Program Services	\$ 8,040,818	\$ 530,640	\$ 4,252,035	
Facility Rentals	633,051	38,461	317,585	
Community Services	761,973	31,820	324,069	
Total Expenditures	<u>\$ 9,435,843</u>	<u>\$ 600,920</u>	<u>\$ 4,893,688</u>	52%
Net Impact without encumbrances	<u>\$ (1,768,551)</u>	<u>\$ 130,902</u>	<u>\$ (224,075)</u>	
Encumbrances	-	-	1,146,184	
Net Impact with encumbrances	<u>\$ (1,768,551)</u>	<u>\$ 130,902</u>	<u>\$(1,370,259)</u>	

City of Morgan Hill Monthly Investment Report - January 31, 2025

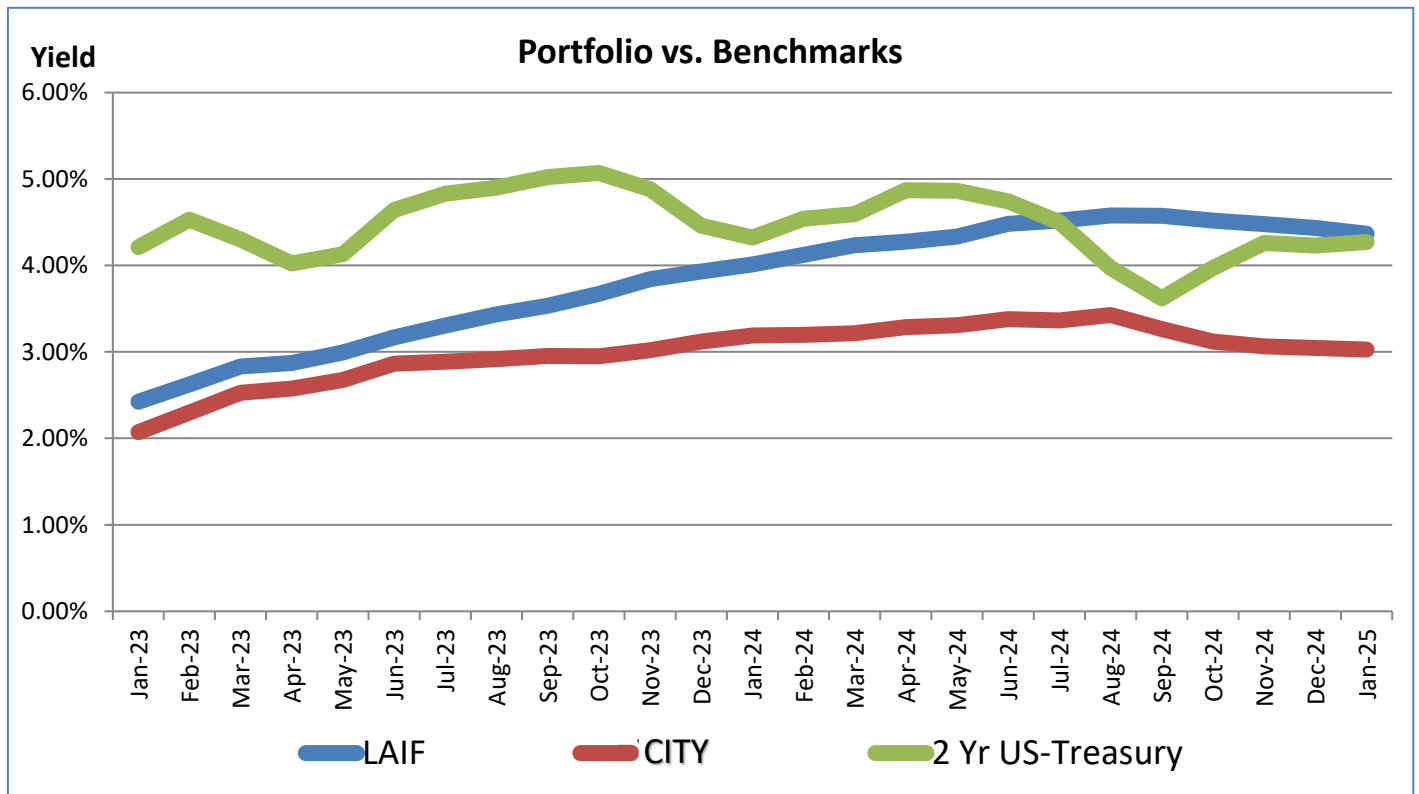
The following are the snapshots of City's investment portfolio as of January 31, 2025. The first chart shows the portfolio composition by investment type:



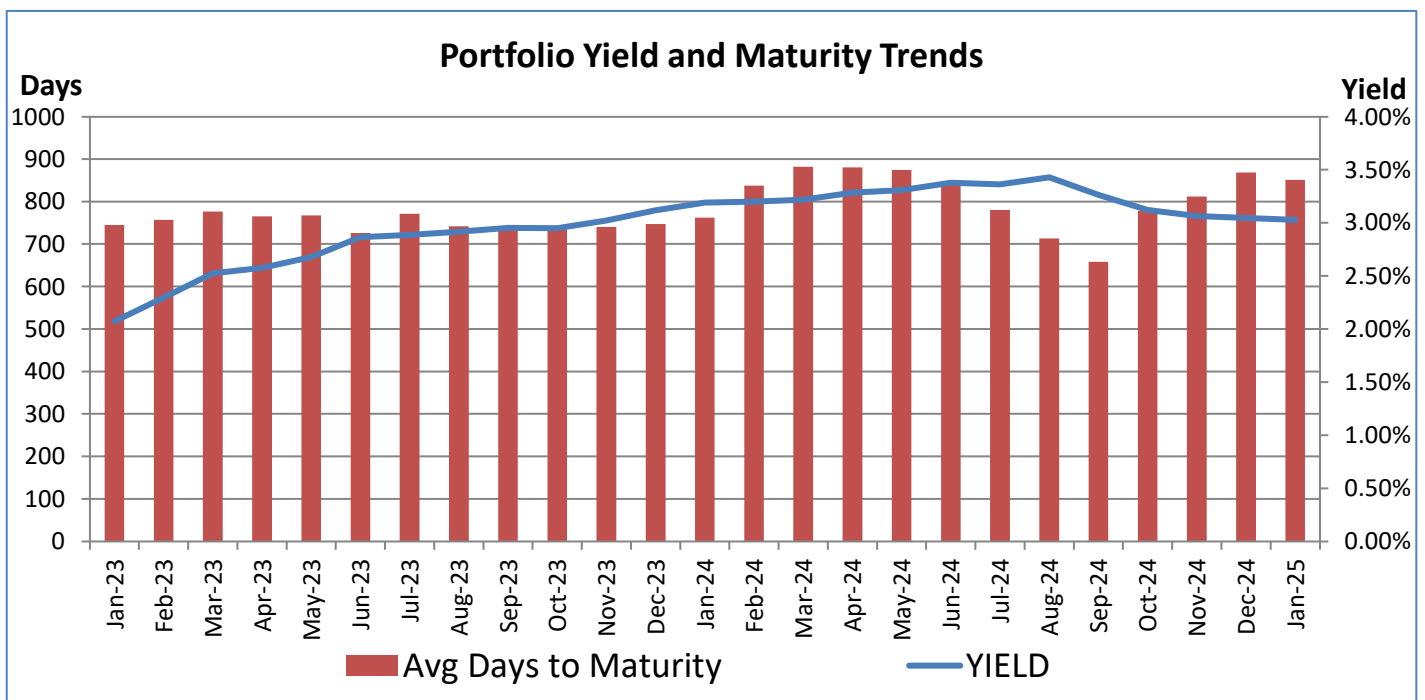
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





City of Morgan Hill
Investment Portfolio Detail
As of January 31, 2025

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			\$ 62,536	\$ 62,536	0.0%	\$ 62,512	4.37%		
California C L A S S			20,173,773	20,173,773	9.9%	20,173,773	4.42%		
WFB Money Market			4,614,020	4,614,020	2.3%	4,614,020	4.31%		
US Bank - Portfolio of Securities									
Dreyfus Treasury Agency MM	261908107		253,345	253,345	0.1%	253,345	4.26%		
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,995,879	1.0%	1,894,220	1.00%	9/30/2026	9/30/2026
Treasury Note	912828U24	6/13/2022	1,904,688	1,961,486	1.0%	1,924,620	3.16%	11/15/2026	11/15/2026
Treasury Note	91282CFL0	9/30/2024	2,031,719	2,029,582	1.0%	1,961,100	3.53%	9/30/2029	9/30/2029
Treasury Note	91282CLL3	10/1/2024	1,994,323	1,992,319	1.0%	1,958,120	3.53%	9/15/2027	9/15/2027
Treasury Note	91282CCV1	10/4/2024	1,822,536	1,835,398	0.9%	1,792,340	3.61%	8/31/2028	8/31/2028
Treasury Note	31282CFJ5	10/7/2024	1,949,794	1,947,076	1.0%	1,900,240	3.76%	8/31/2029	8/31/2029
Treasury Note	91282CFY2	12/19/2024	1,959,077	1,956,102	1.0%	1,959,380	4.39%	11/30/2029	11/30/2029
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.0%	1,976,800	0.73%	2/5/2025	5/27/2025
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.0%	1,948,800	0.60%	7/20/2025	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.0%	1,947,940	0.63%	7/27/2025	10/27/2025
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.0%	1,943,160	0.54%	2/5/2025	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.0%	1,943,980	0.65%	11/18/2025	11/18/2025
FHLMC Bond	3134GXEJ9	11/24/2020	2,000,000	2,000,000	1.0%	1,942,940	0.64%	2/24/2025	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.5%	971,270	0.60%	2/5/2025	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.5%	2,916,150	0.63%	11/25/2025	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.0%	1,943,020	0.65%	2/26/2025	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.0%	1,934,760	0.47%	2/5/2025	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.0%	1,931,840	0.63%	2/22/2025	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.0%	1,928,180	0.55%	2/28/2025	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.0%	1,931,200	0.65%	2/28/2025	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.0%	1,928,020	0.75%	2/24/2025	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.0%	1,926,500	0.66%	2/25/2025	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.0%	1,926,100	0.65%	2/26/2025	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.0%	1,927,740	0.85%	3/10/2025	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.0%	1,925,320	0.70%	3/16/2025	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.0%	1,925,460	0.80%	3/16/2025	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.0%	1,917,000	1.08%	2/5/2025	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.0%	1,911,100	1.00%	3/30/2025	6/30/2026
FHLB Bond	3130AMYP1	7/15/2021	3,000,000	3,000,000	1.5%	2,868,000	1.13%	7/15/2025	7/15/2026
FHLB Bond	3130AMYS5	7/15/2021	2,000,000	2,000,000	1.0%	1,969,640	0.85%	7/15/2025	7/15/2025
FHLB Bond	3130ANJC5	8/26/2021	2,000,000	2,000,000	1.0%	1,895,680	0.80%	8/26/2025	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.5%	2,853,750	1.00%	2/26/2025	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.0%	1,899,520	0.90%	8/26/2025	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,033,335	1.0%	1,928,880	0.82%	9/11/2026	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,994,463	1.0%	1,892,360	0.98%	9/10/2026	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.5%	2,850,570	1.13%	2/5/2025	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.0%	1,892,920	0.88%	9/30/2026	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.5%	2,846,820	1.05%	3/30/2025	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.5%	2,845,380	1.02%	3/30/2025	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.0%	1,892,720	1.00%	7/19/2025	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.0%	1,896,720	1.30%	11/18/2025	11/18/2026
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.0%	1,924,800	1.74%	1/19/2027	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.0%	1,976,600	1.51%	7/25/2025	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.0%	1,996,720	3.48%	3/10/2025	3/10/2027
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.0%	1,987,120	3.28%	12/15/2025	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.0%	1,994,040	4.30%	7/28/2025	7/28/2027
FHLMCTN Bond	3134H1QG1	1/26/2024	3,000,000	3,000,000	1.5%	3,009,900	4.66%	7/26/2025	1/26/2029
FHLMCTN Bond	3134H1UN1	2/26/2024	1,200,000	1,200,000	0.6%	1,199,040	5.50%	2/26/2025	2/26/2029
FHLMCTN Bond	3134H1UN1	2/26/2024	2,000,000	2,000,000	1.0%	1,998,400	5.50%	2/26/2025	2/26/2029
FHLB Bond	3130B2EG6	8/21/2024	2,000,000	2,000,000	1.0%	1,996,920	5.20%	2/21/2025	8/21/2029
FHLB Bond	3130B2M85	9/6/2024	2,000,000	2,000,000	1.0%	2,000,060	5.20%	2/6/2025	9/6/2029
FHLB Bond	3130B2KZ7	9/11/2024	2,000,000	2,000,000	1.0%	1,996,860	5.00%	3/11/2025	9/11/2029

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FHLMCMTN Bond	3134HAKY8	9/13/2024	2,985,210	2,986,344	1.5%	2,925,630	4.11%	12/13/2025	9/13/2029
FHLB Bond	3130B2MK8	9/19/2024	2,000,000	2,000,000	1.0%	1,998,360	5.00%	3/19/2025	9/19/2028
FHLMCMTN Bond	3134HALK7	9/19/2024	3,000,000	3,000,000	1.5%	2,994,930	5.00%	3/19/2025	9/19/2029
FHLB Bond	3130B2P58	9/26/2024	2,003,014	2,000,000	1.0%	1,958,980	3.87%	9/10/2026	9/10/2029
FHLB Bond	3130B2X59	9/27/2024	2,000,000	2,000,000	1.0%	1,967,080	4.00%	9/18/2025	9/18/2028
FHLMCMTN Bond	3134HANZ2	10/1/2024	3,000,000	3,000,000	1.5%	2,998,200	5.00%	2/1/2025	10/1/2029
FHLB Bond	3130B33T8	10/8/2024	2,500,000	2,500,000	1.2%	2,495,025	5.00%	7/2/2025	10/2/2029
FHLB Bond	3130B35N9	10/8/2024	2,000,000	2,000,000	1.0%	1,981,500	4.50%	10/1/2025	10/1/2029
FHLMCMTN Bond	3134HARE5	10/11/2024	2,000,000	2,000,000	1.0%	1,997,300	4.75%	4/11/2025	10/11/2029
FNMA Bond	3135GAW98	10/15/2024	2,000,000	2,000,000	1.0%	1,993,060	5.00%	4/1/2025	10/1/2029
FHLB Bond	3130B36N8	10/15/2024	1,944,000	1,994,353	1.0%	1,977,000	4.32%	4/15/2026	10/15/2029
FHLB Bond	3130B3ER0	10/24/2024	2,000,000	2,000,000	1.0%	1,998,560	5.00%	2/22/2025	10/22/2027
FHLMCMTN Bond	3134HAVE0	10/30/2024	2,000,000	2,000,000	1.0%	2,000,460	5.25%	7/30/2025	10/30/2029
FHLMCMTN Bond	3134HAVX8	11/5/2024	2,000,000	2,000,000	1.0%	2,000,120	5.25%	2/5/2025	11/5/2029
FHLMCMTN Bond	3134HAXT5	11/12/2024	2,000,000	2,000,000	1.0%	1,997,160	5.00%	5/7/2025	11/7/2029
FHLMCMTN Bond	3134HAZW6	11/15/2024	2,000,281	2,000,000	1.0%	1,997,320	5.43%	2/14/2025	11/14/2029
FHLMC Bond	3134HAD42	11/18/2024	2,000,000	2,000,000	1.0%	2,000,780	5.03%	2/18/2025	11/18/2029
FHLMCMTN Bond	3134HAC92	11/19/2024	3,000,000	3,000,000	1.5%	3,006,090	5.00%	5/19/2025	11/19/2029
FNMA Bond	3135GAYV7	11/26/2024	3,000,000	3,000,000	1.5%	2,999,400	5.25%	2/26/2025	11/26/2029
FFCB Bond	3133ERF48	12/4/2024	2,000,000	2,000,000	1.0%	2,000,460	4.77%	2/5/2025	12/4/2028
FHLMCMTN Bond	3134HAM91	12/13/2024	2,000,000	2,000,000	1.0%	1,997,840	4.70%	6/13/2025	12/13/2027
FNMA Bond	3136GA4B2	12/20/2024	2,000,000	2,000,000	1.0%	1,997,200	5.01%	6/20/2025	12/20/2029
FNMA Bond	3136GA6M6	1/24/2025	2,000,000	2,000,000	1.0%	1,997,560	5.00%	7/24/2025	7/24/2028
FHLB Bond	3130B4MZ1	1/30/2025	2,000,000	2,000,000	1.0%	1,996,340	5.25%	7/22/2025	1/22/2030
CD - Morgan Stanley Bank	61690DGT9	11/8/2023	250,000	250,000	0.1%	256,888	5.05%	11/8/2028	11/8/2028
CD - Morgan Stanley Private Bank	61768EE82	11/8/2023	250,000	250,000	0.1%	256,888	5.05%	11/8/2028	11/8/2028
CD - American Express	02589AF98	11/8/2023	250,000	250,000	0.1%	256,458	5.00%	11/8/2028	11/8/2028
CD - State Bank India	8562834U7	11/24/2023	250,000	250,000	0.1%	259,220	5.00%	11/24/2028	11/24/2028

Sub Total/Average

\$ 163,621,944	\$ 163,679,684	80.0%	\$ 160,209,873	2.82%
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Total City Managed/Average

\$ 188,472,273	\$ 188,530,013	92.1%	\$ 185,060,179	3.03%
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Bond Reserve Accounts - Held By Trustees

\$ 7,372,488	\$ 7,372,488	3.6%	\$ 7,372,488
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Cash/Deposits

\$ 906,567	\$ 906,567	0.4%	\$ 906,567
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PARS and CALPERS CERBT Trust

\$ 7,887,404	\$ 7,887,404	3.9%	\$ 9,605,303
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GRAND TOTAL/AVERAGE

\$ 204,638,732	\$ 204,696,472	100.0%	\$ 202,944,536
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CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JANUARY 31, 2025
FOR THE FISCAL YEAR OF 2024-25

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	4.37%	\$ 62,536	0.0%	\$ 62,512
California CLASS	All Funds Pooled	4.42%	20,173,773	9.9%	20,173,773
US Bank - Portfolio of Securities	All Funds Pooled	2.82%	163,679,684	80.0%	160,209,873
WFB MMA	All Funds Pooled	4.31%	4,614,020	2.3%	4,614,020
	SUBTOTAL		\$ 188,530,013	92.1%	\$ 185,060,179
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility	Debt Service	3.99%	249,367	0.1%	249,367
Blackrock Liq Fund	Debt Service	3.99%	317,377	0.2%	317,377
Zions Bank - MH Police Facility Lease Revenue Bonds	Debt Service	3.99%	317,377	0.2%	317,377
Blackrock Liq Fund	Debt Service	3.99%	317,377	0.2%	317,377
BNY - RDA Bonds	Agency Fund	3.97%	6,536,063	3.2%	6,536,063
Dreyfus Cash Mgmt 521	Agency Fund	3.97%	6,536,063	3.2%	6,536,063
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015	Agency Fund	3.99%	269,681	0.1%	269,681
Blackrock Liquidity Temp Fund-2015	Agency Fund	3.99%	269,681	0.1%	269,681
	SUBTOTAL		7,372,488	3.6%	7,372,488
Other Cash/Deposits					
General Checking	All Funds		860,717	0.4%	860,717
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	2.6%	6,440,472
PARS - PENSION Trust			2,650,000	1.3%	3,164,830 **
	SUBTOTAL		8,793,971	4.3%	10,511,869
Total Cash and Investments			\$ 204,696,472	100.0%	\$ 202,944,536

** As of 12/31/24

CASH ACTIVITY SUMMARY
FY 2024-25

Fund Type	07/01/2024 Balance	Change in Cash Balance	1/31/2025 Balance
General Fund	\$ 30,617,860	\$ (826,067)	\$ 29,791,794
Development Services	1,939,319	(217,153)	1,722,166
Water - Operations	2,386,837	749,446	3,136,283
Water Other	27,894,107	5,091,181	32,985,288
Sewer - Operations	1,178,576	(35,625)	1,142,951
Sewer Other	41,964,736	4,732,624	46,697,359
Other Special Revenue	17,038,062	997,694	18,035,756
Streets and Capital Projects	39,467,115	(3,226,282)	36,240,832
Debt Service	346,933	392,455	739,389
Internal Service	27,935,786	(823,892)	27,111,894
Agency Funds (assessment dists./refundable deposits)	7,240,095	(147,335)	7,092,760
Total	\$ 198,009,426	\$ 6,687,046	\$ 204,696,472

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:

Cindy Murphy, Treasurer

Reviewed by:

Dat Nguyen, Finance Director



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 16,210,880	16,210,880	\$ 7,545,860	47%	\$ 7,698,342	\$ (152,481)	-2%
Property Tax - RPTTF Residual Distribution	2,895,920	2,895,920	1,160,036	40%	1,020,900	139,136	14%
Property Tax - Supplemental Roll	304,220	304,220	123,901	41%	114,892	9,009	8%
Sales Tax	12,352,215	12,352,215	4,787,355	39%	5,106,960	(319,605)	-6%
Public Safety Sales Tax	464,254	464,254	180,398	39%	183,142	(2,744)	-1%
Transient Occupancy Taxes	2,678,000	2,678,000	1,262,996	47%	1,285,643	(22,647)	-2%
Franchise (Refuse ,Cable ,PG&E)	3,185,872	3,185,872	1,215,542	38%	1,300,182	(84,640)	-7%
Property Transfer Tax	600,000	600,000	300,230	50%	228,685	71,545	31%
TOTAL TAXES	38,691,361	38,691,361	16,576,318	43%	16,938,745	(362,428)	-2%
LICENSES/PERMITS							
Business License	200,000	200,000	192,818	96%	163,517	29,301	18%
Other Permits	80,750	80,750	53,631	66%	26,067	27,564	106%
TOTAL LICENSES/PERMITS	280,750	280,750	246,449	88%	189,584	56,865	30%
FINES AND PENALTIES							
Parking Enforcement	9,800	9,800	5,520	56%	6,001	(481)	-8%
Bails & Fines	55,000	55,000	15,475	28%	25,647	(10,172)	-40%
Administrative Citations	20,000	20,000	11,077	55%	17,430	(6,353)	-36%
TOTAL FINES AND PENALTIES	84,800	84,800	32,072	38%	49,079	(17,007)	-35%
OTHER AGENCIES							
Motor Vehicle in-Lieu	61,800	61,800	73,134	118%	-	73,134	n/a
Other Revenue - Other Agencies	1,332,381	1,601,204	841,740	53%	471,511	370,228	79%
TOTAL OTHER AGENCIES	1,394,181	1,663,004	914,874	55%	471,511	443,362	94%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,500	33,500	16,437	49%	19,864	(3,427)	-17%
Business License Application Review	82,400	82,400	32,031	39%	72,514	(40,482)	-56%
Membership Services & Rec Programs	6,222,399	6,222,399	3,596,529	58%	3,383,492	213,037	6%
Facility Rentals	1,197,395	1,197,395	900,808	75%	892,229	8,580	1%
Community Services	147,498	147,498	113,943	77%	45,090	68,853	153%
General Administration Overhead	1,756,111	1,756,111	981,698	56%	1,026,424	(44,726)	-4%
Other Charges Current Services	884,448	884,448	392,053	44%	379,384	12,670	3%
TOTAL CURRENT SERVICES	10,323,751	10,323,751	6,033,499	58%	5,818,995	214,504	4%
OTHER REVENUE							
Use of money/property	1,375,045	1,375,045	822,183	60%	765,766	56,417	7%
Other Revenues	705,270	705,270	462,563	66%	149,956	312,608	208%
TOTAL OTHER REVENUE	2,080,315	2,080,315	1,284,746	62%	915,721	369,025	40%
TRANSFERS IN							
One Time Transfer	165,000	165,000	96,250	58%	105,000	(8,750)	-8%
Public Safety Facilities Fund	50,000	50,000	29,167	58%	29,167	-	0%
Supplemental Law Enforcement Fund	100,000	100,000	100,000	100%	100,000	-	n/a
Countywide Solid Waste	540,328	540,328	315,191	58%	217,583	97,608	45%
Streets	851,932	851,932	528,915	62%	492,682	36,233	7%
Park Maintenance	650,000	650,000	379,167	58%	379,167	-	n/a
Sewer Operations	413,700	413,700	241,325	58%	229,833	11,492	5%
Water Operations	413,700	413,700	241,325	58%	229,833	11,492	5%
Open Space	81,100	81,100	47,308	58%	47,308	-	n/a
Park Development	100,000	100,000	58,333	58%	43,750	14,583	33%
TOTAL TRANSFERS IN	3,365,760	3,365,760	2,036,981	61%	1,874,324	162,657	9%
TOTAL GENERAL FUND	56,220,919	56,489,742	27,124,939	48%	26,257,959	866,979	3%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	851,932	851,932	455,325	53%	423,014	32,311	8%
Interest / Other Revenue/Other Charges	2,135	2,135	4,485	210%	4,862	(377)	-8%
202 STREET MAINTENANCE	854,067	854,067	459,810	54%	427,876	31,935	7%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	12,957	12,957	8,746	68%	6,514	2,233	34%
Police Grant/SLEF/JAG	100,000	100,000	127,997	128%	119,492	8,505	7%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	112,957	112,957	136,743	121%	126,006	10,737	9%
206 DEVELOPMENT SERVICES							
Building Fees	3,510,850	3,510,850	2,264,165	64%	1,767,768	496,397	28%
Planning Fees	954,276	954,276	660,895	69%	764,653	(103,758)	-14%
Engineering Fees	942,327	942,327	511,674	54%	312,926	198,748	64%
Other Revenue/Current Charges	550,599	550,599	110,912	20%	159,306	(48,394)	-30%
206 DEVELOPMENT SERVICES	5,958,052	5,958,052	3,547,646	60%	3,004,654	542,992	18%
207 LONG RANGE PLANNING	1,751,005	1,751,005	506,253	29%	495,022	11,230	2%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	1,161	1,161	1,384	119%	1,127	257	23%
215 and 216 HCD BLOCK GRANT	1,161	1,161	1,384	119%	1,127	257	23%
225 ASSET SEIZURE	2,807	2,807	2,110	75%	1,727	383	22%
229 LIGHTING AND LANDSCAPE	206,415	206,415	115,527	56%	2,933	112,594	3839%
230 COMMUNITY FACILITIES DISTRICT	28,828	28,828	17,888	62%	2,470	15,418	624%
232 ENVIRONMENTAL PROGRAMS	501,236	501,236	273,469	55%	333,852	(60,383)	-18%
234 MOBILE HOME PARK RENT STAB.	2,872	2,872	5,151	179%	4,818	333	7%
236 HOUSING MITIGATION	2,762,629	2,762,629	1,041,537	38%	2,035,146	(993,609)	-49%
240 EMPLOYEE ASSISTANCE	1,297	1,297	4,521	349%	4,924	(403)	-8%
246 COUNTYWIDE SOLID WASTE	2,279,503	2,279,503	1,285,234	56%	1,053,585	231,649	22%
247 ENVIRONMENT REMEDIATION	-	-	-	n/a	2,373	(2,373)	-100%
255 HOUSING SUCCESSOR AGENCY	463,881	463,881	382,841	83%	192,873	189,968	98%
260 PUBLIC ART	1,411	1,411	243	17%	-	243	n/a
TOTAL SPECIAL REVENUE FUNDS	14,928,122	14,928,122	7,780,359	52%	7,689,386	90,972	1%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,999,271	1,999,271	1,792,283	90%	302,866	1,489,417	492%
302 PARK MAINTENANCE	15,507	15,507	52,593	339%	48,928	3,665	7%
303 LOCAL DRAINAGE	1,424,799	1,424,799	404,221	28%	389,535	14,686	4%
304 LOCAL DRAINAGE/NON AB1600	251,296	251,296	152,430	61%	22,908	129,522	565%
306 AGRICULTURE & OPEN SPACE PRESERVATION	18,459	18,459	415,440	2251%	112,027	303,413	271%
308 STREET CIP	3,886,877	3,886,877	3,077,504	79%	1,421,169	1,656,335	117%
309 TRAFFIC IMPACT	4,753,292	4,753,292	1,873,209	39%	473,917	1,399,292	295%
315 PUBLIC SAFETY FACILITIES IMPACT	3,203,214	12,153,214	5,696,306	47%	297,584	5,398,722	1814%
346 PUBLIC FACILITIES NON-AB1600	189,832	189,832	169,098	89%	185,816	(16,718)	-9%
347 PUBLIC FACILITIES IMPACT	451,223	451,223	313,187	69%	103,420	209,768	203%
348 LIBRARY	1,414,286	1,414,286	1,282,301	91%	350,940	931,361	265%
350 UNDERGROUNDING	74,302	74,302	68,387	92%	245,046	(176,658)	-72%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	-	-	-	n/a	31,316	(31,316)	-100%
360 COMMUNITY/REC IMPACT FUND	2,501,528	2,501,528	2,377,903	95%	603,960	1,773,943	294%
375 QUIMBY FEE	2,650,042	2,650,042	1,253,539	47%	2,775,166	(1,521,626)	-55%
TOTAL CAPITAL PROJECTS FUNDS	22,833,927	31,783,927	18,928,403	60%	7,364,597	11,563,806	157%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	300,467	300,467	175,324	58%	172,531	2,794	2%
441 POLICE FACILITY BOND	390,939	390,939	224,696	57%	226,338	(1,642)	-1%
TOTAL DEBT SERVICE FUNDS	691,406	691,406	400,020	58%	398,869	1,151	0%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 WASTEWATER OPERATION							
Sewer Service Fees	16,100,000	16,100,000	8,414,617	52%	7,445,944	968,673	13%
Interest Income/Transfers	141,661	141,661	41,297	29%	34,247	7,051	21%
Other Revenue/Current Charges	397,200	397,200	174,294	44%	171,361	2,933	2%
640 WASTEWATER OPERATION	16,638,861	16,638,861	8,630,209	52%	7,651,552	978,657	13%
641 WASTEWATER EXPANSION							
Interest Income	275,047	275,047	451,358	164%	371,128	80,231	22%
Development Impact Fee	11,546,118	11,546,118	7,905,849	68%	2,271,343	5,634,505	248%
641 WASTEWATER EXPANSION	11,821,165	11,821,165	8,357,207	71%	2,642,471	5,714,736	216%
642 WASTEWATER RATE STABILIZATION	108,613	108,613	64,465	59%	162,747	(98,281)	-60%
643 WASTEWATER CAPITAL PROJECT	6,149,134	6,149,134	4,034,057	66%	3,261,825	772,232	24%
TOTAL SEWER FUNDS	34,717,773	34,717,773	21,085,937	61%	13,718,593	7,367,344	54%
650 WATER OPERATION							
Water Sales	19,620,000	19,620,000	10,294,860	52%	9,256,067	1,038,793	11%
Meter Install & Service	107,000	107,000	49,395	46%	75,752	(26,357)	-35%
Transfers-In / Interest Income	894,617	894,617	485,058	54%	397,231	87,827	22%
Other Revenue/Current Charges	926,109	926,109	470,737	51%	340,745	129,991	38%
650 WATER OPERATION	21,547,726	21,547,726	11,300,050	52%	10,069,795	1,230,255	12%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	92,467	92,467	102,324	111%	53,481	48,842	91%
Development Impact Fee	3,829,384	3,829,384	2,957,157	77%	577,582	2,379,575	412%
651 WATER EXPANSION	3,921,851	3,921,851	3,059,481	78%	631,063	2,428,417	385%
652 WATER RATE STABILIZATION	115,840	115,840	69,621	60%	56,700	12,921	23%
653 WATER CAPITAL PROJECT	10,380,062	10,380,062	3,882,142	37%	4,300,338	(418,196)	-10%
TOTAL WATER FUNDS	35,965,479	35,965,479	18,311,294	51%	15,057,897	3,253,396	22%
TOTAL ENTERPRISE FUNDS	70,683,252	70,683,252	39,397,231	56%	28,776,491	10,620,740	37%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,883,241	2,883,241	1,683,424	58%	1,461,843	221,581	15%
740 BUILDING MAINTENANCE	1,421,485	1,421,485	831,466	58%	978,595	(147,129)	-15%
741 BUILDING REPLACEMENT	1,041,905	1,041,905	615,716	59%	561,457	54,258	10%
745 CIP ADMINISTRATION	2,582,015	2,582,015	1,332,835	52%	902,935	429,900	48%
760 UNEMPLOYMENT INSURANCE	10,206	10,206	5,631	55%	4,844	787	16%
770 WORKERS COMPENSATION	1,157,705	1,157,705	594,162	51%	555,048	39,114	7%
790 EQUIPMENT REPLACEMENT	1,680,580	1,704,881	1,048,853	62%	831,677	217,177	26%
791 EMPLOYEE BENEFITS	1,183,215	1,183,215	668,025	56%	499,498	168,526	34%
795 GENERAL LIABILITY INSURANCE	2,519,216	2,519,216	1,462,817	58%	1,229,500	233,317	19%
TOTAL INTERNAL SERVICE FUNDS	14,479,568	14,503,869	8,242,929	57%	7,025,398	1,217,532	17%
TOTAL FOR ALL FUNDS	\$ 179,837,194	\$ 189,080,318	\$ 101,873,881	54%	\$ 77,512,700	\$ 24,361,181	31%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 73,453	\$ 520,395	\$ 290,073	\$ -	\$ 290,073	56%	\$ 213,251
	CITY ATTORNEY	76,230	1,134,397	563,609	116,462	680,071	60%	499,917
	CITY MANAGER	39,543	1,007,624	395,284	6	395,290	39%	399,929
	HUMAN RESOURCES	66,678	1,087,175	545,103	-	545,103	50%	496,071
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	39,232	609,913	322,612	-	322,612	53%	291,616
	Elections	262,109	354,364	271,041	-	271,041	76%	17,256
	COUNCIL SVCS & RECORDS MGMT	301,341	964,277	593,653	-	593,653	62%	308,872
	FINANCE	166,781	2,637,291	1,127,805	444,287	1,572,092	60%	1,104,379
	TOTAL ADMINISTRATION	724,025	7,351,159	3,515,528	560,755	4,076,282	55%	3,022,418
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	530,640	8,040,818	4,252,035	1,054,049	5,306,084	66%	4,006,544
	Recreation Facility Rentals	38,461	633,051	317,585	44,760	362,345	57%	337,187
	Innovative Transit	71,027	590,944	389,552	90,597	480,150	81%	337,227
	Community Services	31,820	761,973	324,069	47,375	371,444	49%	325,124
	Park Maintenance	99,727	1,472,380	641,828	35,034	676,862	46%	599,924
	Environmental Services	60,018	1,067,544	352,989	26,289	379,278	36%	202,793
	Countywide Solid Waste Program	35,774	540,327	274,775	-	274,775	51%	229,975
	Street Maintenance	335,514	3,511,464	1,808,349	104,989	1,913,338	54%	1,323,894
	Downtown Maintenance	36,226	378,065	159,683	22,952	182,635	48%	152,099
	PD Building Maintenance	61,905	664,355	368,558	64,892	433,450	65%	283,503
	Cable Television	7,485	91,234	52,859	-	52,859	58%	52,535
	COMMUNITY SERVICES	1,308,596	17,752,155	8,942,283	1,490,937	10,433,220	59%	7,850,807
	CODE COMPLIANCE	29,842	405,637	221,555	-	221,555	55%	141,101
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	59,953	555,166	252,288	-	252,288	45%	233,603
	ECONOMIC DEVELOPMENT PROGRAMS	69,978	1,209,072	488,003	78,583	566,586	47%	552,426
	TOTAL COMMUNITY SERVICES	1,468,369	19,922,029	9,904,128	1,569,520	11,473,648	58%	8,777,936
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	83,783	2,296,286	949,793	43,267	993,060	43%	915,999
	Field Operations	806,464	13,884,900	6,558,379	612,634	7,171,013	52%	6,371,328
	Support Services	327,455	2,556,380	1,559,933	448,785	2,008,718	79%	1,598,299
	Emergency Services/Haz Mat	16,337	275,047	137,996	-	137,996	50%	127,427
	Special Operations	313,068	4,244,340	2,508,035	-	2,508,035	59%	2,080,101
	Dispatch Services	148,245	2,341,249	1,256,086	-	1,256,086	54%	1,129,949
	POLICE	1,695,352	25,598,203	12,970,221	1,104,686	14,074,907	55%	12,223,102
	FIRE	823,336	10,381,160	5,984,635	32,251	6,016,886	58%	5,365,338
	TOTAL PUBLIC SAFETY	2,518,688	35,979,363	18,954,856	1,136,937	20,091,792	56%	17,588,440
IV. TRANSFERS								
	Other	121,519	1,458,230	850,634	-	850,634	58%	2,160,531
	TOTAL TRANSFERS	121,519	1,458,230	850,634	-	850,634	58%	2,160,531
	TOTAL GENERAL FUND	4,832,601	64,710,781	33,225,146	3,267,212	36,492,357	56%	31,549,325



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	529,369	857,383	532,095	-	532,095	62%	495,711
205	PUBLIC SAFETY/SUPP.LAW	100,113	101,354	100,790	-	100,790	99%	100,752
206	DEVELOPMENT SERVICES FUND							
	Planning	116,820	1,700,561	900,649	1,091	901,740	53%	941,043
	Building	185,674	3,055,890	1,601,821	165,165	1,766,986	58%	1,347,827
	Engineering	114,881	1,644,092	873,904	177,951	1,051,854	64%	983,380
206	DEVELOPMENT SERVICES FUND	417,376	6,400,543	3,376,374	344,206	3,720,581	58%	3,272,250
207	LONG RANGE PLANNING	60,819	3,125,686	512,077	975,547	1,487,624	48%	465,007
215/216	CDBG	7	87	51	-	51	58%	48
225	ASSET SEIZURE	68	821	479	-	479	58%	456
229	LIGHTING AND LANDSCAPE	32,264	212,191	128,070	16,482	144,552	68%	105,090
230	COMMUNITY FACILITIES DISTRICT	2,548	23,511	14,254	-	14,254	61%	21,224
232	ENVIRONMENTAL PROGRAMS	29,790	453,818	217,445	4,523	221,968	49%	248,639
234	MOBILE HOME PARK	79	952	555	-	555	58%	529
236	HOUSING MITIGATION	53,858	2,214,529	672,437	763,775	1,436,213	65%	569,893
240	EMPLOYEE ASSISTANCE	83	20,993	4,079	-	4,079	19%	2,552
246	COUNTYWIDE SOLID WASTE PROGRAM	172,295	2,648,132	863,807	1,333,962	2,197,769	83%	911,226
255	HOUSING SUCCESSOR AGENCY	34,179	1,319,931	660,162	190,625	850,787	64%	722,394
260	PUBLIC ART	4,725	16,306	8,667	-	8,667	53%	-
TOTAL SPECIAL REVENUE FUNDS		1,437,574	17,396,238	7,091,343	3,629,120	10,720,463	62%	6,915,772
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	38,843	3,460,007	579,831	106,767	686,597	20%	458,730
302	PARK MAINTENANCE	54,342	1,650,000	381,233	-	381,233	23%	815,579
303	LOCAL DRAINAGE	8,469	10,931,065	3,528,481	564,650	4,093,130	37%	2,813,681
304	LOCAL DRAIN. NON-AB1600	41,588	505,176	75,326	3,930	79,256	16%	171,250
306	AGRICULTURE & OPEN SPACE PRESERVATION	10,680	128,157	74,758	-	74,758	58%	56,933
308	STREET CIP	138,678	4,992,517	3,806,829	954,760	4,761,589	95%	4,305,256
309	TRAFFIC IMPACT	241,598	4,593,527	3,165,909	258,283	3,424,192	75%	589,107
315	PUBLIC SAFETY FACILITIES IMPACT	933,727	8,993,315	5,009,727	2,735,906	7,745,633	86%	1,614,727
346	PUBLIC FAC.NON AB1600	1,097	1,652,085	31,158	215,744	246,903	15%	56,743
347	PUBLIC FACILITIES IMPACT	2,458	1,444,333	359,904	1,010,368	1,370,272	95%	87,079
348	LIBRARY IMPACT	226,135	2,713,615	1,582,942	-	1,582,942	58%	129,704
350	UNDERGROUNDING	10,070	401,505	127,942	-	127,942	32%	685
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	-	-	-	-	-	n/a	22,871
360	COMM/REC CENTER IMPACT	27,930	1,430,662	320,938	439,845	760,783	53%	124,018
375	QUIMBY FEE	31,753	6,807,980	1,080,614	2,658,890	3,739,504	55%	17,872
TOTAL CAPITAL PROJECTS FUNDS		1,767,368	49,703,945	20,125,592	8,949,142	29,074,735	58%	11,264,235
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	1,054	291,714	243,224	-	243,224	83%	238,488
441	POLICE FACILITY BOND DEBT	1,355	385,093	329,882	-	329,882	86%	323,524
TOTAL DEBT SERVICE FUNDS		2,409	676,807	573,107	-	573,107	85%	562,012



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	WASTEWATER OPERATIONS	1,332,176	16,796,487	9,587,190	32,990	9,620,181	57%	8,457,509
641	WASTEWATER CAPITAL EXPANSION	1,789,422	7,897,156	4,320,597	801,845	5,122,442	65%	4,742,878
642	WASTEWATER RATE STABILIZATION	164	1,966	1,147	-	1,147	58%	1,092
643	WASTEWATER CAPITAL PROJECTS	37,225	11,224,791	1,754,338	3,807,679	5,562,017	50%	2,298,269
TOTAL SEWER FUND(S)		3,158,987	35,920,399	15,663,271	4,642,515	20,305,786	57%	15,499,747
WATER								
	Water Operations	1,373,343	19,715,654	10,352,886	466,245	10,819,131	55%	10,315,066
	Utility Billing	95,213	1,502,560	733,430	36,590	770,020	51%	557,757
	Water Conservation	13,862	416,169	189,058	19,288	208,346	50%	205,167
650	WATER OPERATIONS	1,482,417	21,634,383	11,275,374	522,124	11,797,497	55%	11,077,990
651	WATER CAPITAL EXPANSION	69,741	4,406,112	528,022	3,031,768	3,559,791	81%	475,594
652	WATER RATE STABILIZATION	123	1,473	859	-	859	58%	818
653	WATER-CAPITAL PROJECTS	45,012	19,944,363	1,069,880	8,447,200	9,517,080	48%	1,416,798
TOTAL WATER FUND(S)		1,597,293	45,986,331	12,874,135	12,001,092	24,875,228	54%	12,971,200
TOTAL ENTERPRISE FUNDS		4,756,280	81,906,730	28,537,407	16,643,607	45,181,014	55%	28,470,947
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	133,952	2,961,976	1,355,250	31,350	1,386,600	47%	1,589,002
740	BUILDING MAINTENANCE	124,044	1,506,259	718,439	77,715	796,154	53%	571,686
741	BUILDING REPLACEMENT	240,883	3,059,856	898,897	582,216	1,481,113	48%	39,456
745	CIP ADMINISTRATION	174,834	2,584,581	1,326,119	4,907	1,331,027	51%	1,024,848
760	UNEMPLOYMENT	-	15,000	3,922	-	3,922	26%	11,826
770	WORKERS COMPENSATION	137,051	946,245	807,192	-	807,192	85%	694,183
790	EQUIPMENT REPLACEMENT	-	1,400,191	788,038	198,956	986,995	70%	304,785
791	EMPLOYEE BENEFITS FUND	132,423	1,000,000	557,429	-	557,429	56%	426,961
795	GEN. LIABILITY INSURANCE	14,627	2,411,618	2,118,776	-	2,118,776	88%	2,391,855
TOTAL INTERNAL SERVICE FUNDS		957,813	15,885,726	8,574,063	895,144	9,469,208	60%	7,054,603
REPORT TOTAL		\$ 13,754,045	\$ 230,280,227	\$ 98,126,658	\$ 33,384,225	\$ 131,510,884	57%	\$ 85,816,894



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2024-25
For the Month Ended January 31, 2025
58% of Year Complete

Fund No.	Fund Description	Beginning Fund Balance 07-01-24	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	\$ 31,073,823	\$ 27,124,939	48%	\$ 33,225,146	51%	\$ (6,100,207)	\$ 3,267,212	\$ 21,706,404
TOTAL GENERAL FUND		\$ 31,073,823	\$ 27,124,939	48%	\$ 33,225,146	51%	\$ (6,100,207)	\$ 3,267,212	\$ 21,706,404
202	STREET MAINTENANCE	72,734	\$ 459,810	54%	\$ 532,095	52%	\$ (72,284)	\$ -	\$ 450
205	PUBLIC SAFETY/SUPPL. LAW	415,174	136,743	121%	100,790	53%	35,953	-	451,127
206	DEVELOPMENT SERVICES	(1,144,436)	3,547,646	60%	3,376,374	53%	171,272	344,206	(1,317,371)
207	LONG RANGE PLANNING	1,306,215	506,253	29%	512,077	16%	(5,824)	975,547	324,844
215 / 216	CDBG	32,500	1,384	119%	51	58%	1,333	-	33,833
225	ASSET SEIZURE	104,495	2,110	75%	479	58%	1,631	-	106,126
229	LIGHTING AND LANDSCAPE	216,005	115,527	56%	128,070	60%	(12,543)	16,482	186,980
230	COMMUNITY FACILITIES DISTRICT	162,519	17,888	62%	14,254	61%	3,635	-	166,154
232	ENVIRONMENTAL PROGRAMS	488,875	273,469	55%	217,445	48%	56,024	4,523	540,376
234	MOBILE HOME PK RENT STAB.	81,475	5,151	179%	555	58%	4,596	-	86,071
235	SENIOR HOUSING	245,426	-	n/a	-	n/a	-	-	245,426
236	HOUSING MITIGATION	7,932,027	1,041,537	38%	672,437	30%	369,100	763,775	7,537,351
240	EMPLOYEE ASSISTANCE	62,481	4,521	349%	4,079	19%	441	-	62,922
246	COUNTYWIDE SOLID WASTE	323,153	1,285,234	n/a	863,807	33%	421,427	1,333,962	(589,381)
255	HOUSING SUCCESSOR AGENCY	3,818,193	382,841	83%	660,162	50%	(277,321)	190,625	3,350,247
260	PUBLIC ART	48,471	243	17%	8,667	53%	(8,424)	-	40,047
TOTAL SPECIAL REVENUE FUNDS		\$ 14,165,307	\$ 7,780,359	52%	\$ 7,091,343	41%	\$ 689,015	\$ 3,629,120	\$ 11,225,202
301	PARK DEV. IMPACT FUND	\$ 2,008,148	\$ 1,792,283	90%	\$ 579,831	17%	\$ 1,212,452	\$ 106,767	\$ 3,113,833
302	PARK MAINTENANCE	2,489,205	52,593	339%	381,233	23%	(328,640)	-	2,160,565
303	LOCAL DRAINAGE	9,621,788	404,221	28%	3,528,481	32%	(3,124,259)	564,650	5,932,879
304	LOCAL DRAINAGE/NON-AB1600	1,233,420	152,430	61%	75,326	15%	77,104	3,930	1,306,594
306	AG. AND OPEN SPACE PRESERVATION	672,578	415,440	2251%	74,758	58%	340,681	-	1,013,259
308	STREET CIP	4,287,249	3,077,504	79%	3,806,829	76%	(729,325)	954,760	2,603,164
309	TRAFFIC IMPACT FUND	3,808,198	1,873,209	39%	3,165,909	69%	(1,292,701)	258,283	2,257,215
315	PUBLIC SAFETY FACILITIES IMPACT	(1,553,435)	5,696,306	47%	5,009,727	56%	686,579	2,735,906	(3,602,762)
346	PUBLIC FACILITIES NON-AB1600	2,184,388	169,098	89%	31,158	2%	137,940	215,744	2,106,584
347	PUBLIC FACILITIES IMPACT FUND	1,328,671	313,187	69%	359,904	25%	(46,717)	1,010,368	271,586
348	LIBRARY IMPACT FUND	2,254,117	1,282,301	91%	1,582,942	58%	(300,641)	-	1,953,476
350	UNDERGROUNDING	1,768,551	68,387	92%	127,942	32%	(59,554)	-	1,708,997
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	-	-	n/a	-	n/a	-	-	-
360	COMM/REC CTR IMPACT FUND	2,297,534	2,377,903	95%	320,938	22%	2,056,966	439,845	3,914,655
375	QUIMBY FEE	3,984,952	1,253,539	47%	1,080,614	16%	172,926	2,658,890	1,498,988
TOTAL CAPITAL PROJECT FUNDS		\$ 36,385,364	\$ 18,928,403	60%	\$ 20,125,592	40%	\$ (1,197,189)	\$ 8,949,142	\$ 26,239,032
420	CIVIC CENTER DEBT	\$ 183,038	\$ 175,324	58%	\$ 243,224	83%	\$ (67,900)	\$ 249,367	\$ (134,229)
441	POLICE FACILITY BOND DEBT	163,896	224,696	57%	329,882	86%	(105,186)	317,377	(258,667)
TOTAL DEBT SERVICE FUNDS		\$ 346,934	\$ 400,020	58%	\$ 573,107	85%	\$ (173,086)	\$ 566,743	\$ (392,896)
640	WASTEWATER OPERATIONS	\$ 3,983,038	\$ 8,630,209	52%	\$ 9,587,190	57%	\$ (956,982)	32,990	2,993,066
641	WASTEWATER IMPACT FUND*	18,629,828	8,357,207	71%	4,320,597	55%	4,036,610	801,845	21,864,593
642	WASTEWATER RATE STABILIZATION	3,121,932	64,465	59%	1,147	58%	63,318	-	3,185,250
643	WASTEWATER CAPITAL PROJECTS	17,703,049	4,034,057	66%	1,754,338	16%	2,279,719	3,807,679	16,175,089
650	WATER OPERATIONS	4,083,455	11,300,050	52%	11,275,374	52%	24,676	522,124	3,586,008
651	WATER IMPACT FUND*	3,852,318	3,059,481	78%	528,022	12%	2,531,458	3,031,768	3,352,008
652	WATER RATE STABILIZATION	3,337,806	69,621	60%	859	58%	68,762	-	3,406,568
653	WATER -CAPITAL PROJECT	18,694,610	3,882,142	37%	1,069,880	5%	2,812,262	8,447,200	13,059,672
TOTAL ENTERPRISE FUNDS		\$ 73,406,036	\$ 39,397,231	56%	\$ 28,537,407	35%	\$ 10,859,824	\$ 16,643,607	\$ 67,622,253
730	INFORMATION SERVICES	\$ 656,565	\$ 1,683,424	58%	\$ 1,355,250	46%	\$ 328,174	\$ 31,350	\$ 953,389
740	BUILDING MAINTENANCE	94,619	831,466	58%	718,439	48%	113,027	77,715	129,931
741	BUILDING REPLACEMENT	5,083,004	615,716	59%	898,897	29%	(283,181)	582,216	4,217,607
745	CIP ENGINEERING	8,329	1,332,835	52%	1,326,119	51%	6,716	4,907	10,138
760	UNEMPLOYMENT	284,229	5,631	55%	3,922	26%	1,709	-	285,938
770	WORKERS COMPENSATION	2,381,319	594,162	51%	807,192	85%	(213,030)	30,000	2,138,289
790	EQUIPMENT REPLACEMENT	8,727,549	1,048,853	62%	788,038	56%	260,815	198,956	8,789,408
791	EMPLOYEE BENEFITS FUNDS	26,248	668,025	56%	557,429	56%	110,595	-	136,843
795	GEN. LIABILITY INSURANCE	984,307	1,462,817	58%	2,118,776	88%	(655,959)	-	328,348
TOTAL INTERNAL SERVICE FUNDS		\$ 18,246,169	\$ 8,242,929	57%	\$ 8,574,063	54%	\$ (331,134)	\$ 925,144	\$ 16,989,891

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2024-25 For the Month Ended January 31, 2025 58% of Year Complete								
Beginning Fund Balance 07-01-24	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	\$ 31,073,823	\$ 27,124,939	48%	\$ 33,225,146	51%	\$ (6,100,207)	\$ 3,267,212	\$ 21,706,404
SPECIAL REVENUE GROUP	14,165,307	7,780,359	52%	7,091,343	41%	689,015	3,629,120	11,225,202
DEBT SERVICE GROUP	346,934	400,020	58%	573,107	85%	(173,086)	566,743	(392,896)
CAPITAL PROJECTS GROUP	36,385,364	18,928,403	60%	20,125,592	40%	(1,197,189)	8,949,142	26,239,032
ENTERPRISE GROUP	73,406,036	39,397,231	56%	28,537,407	35%	10,859,824	16,643,607	67,622,253
INTERNAL SERVICE GROUP	18,246,169	8,242,929	57%	8,574,063	54%	(331,134)	925,144	16,989,891
TOTAL ALL GROUPS	\$ 173,623,633	\$ 101,873,881	54%	\$ 98,126,658	43%	\$ 3,747,223	\$ 33,980,969	\$ 143,389,886

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

CONSIDER ADOPTION OF A RESOLUTION AUTHORIZING THE DISPLAY OF THE DONATE LIFE FLAG

RECOMMENDATION(S)

Adopt or do not adopt a resolution authorizing the display of the Donate Life Flag for the month of April.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

REPORT NARRATIVE:

The City has received a request from the Donor Network West to display the Donate Life Flag for the month of April in support of Donate Life Month. Donate Life Month is an observance focusing national attention on the need for and importance of organ, eye and tissue donation. The request is included as Attachment 1.

On September 27, 2017, the Council adopted a City Council policy on Flag Raising (CP17-02). Per the City Council's Flag Raising Policy, "the City's flag poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States and the State of California. The flag poles located at City Hall, the CCC, and the CRC may also be used to display the flags of the City of Morgan Hill, Sister Cities, and any Commemorative Flags as may be authorized by the City Council as an expression of the City's official sentiments."

Under the policy, a commemorative flag "means a flag that identifies with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag.

Commemorative Flags shall be displayed at City facilities only upon City Council direction, consistent with the City's vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion."

Commemorative flags may only be hung at City Hall, the CCC, and/or the CRC. Per the policy, commemorative flags may be hung no longer than 30 days. Authorization of commemorative flags must be approved by City Council resolution.

City staff believe displaying the proposed flag may meet the criteria of a "cause consistent with the Council's vision, mission and ongoing strategic priorities," but the Council should make this decision. It should be noted that flag display by the City has been limited in the past, with only a handful of flag display approvals being approved since the implementation of the policy in 2017.

COMMUNITY ENGAGEMENT:

Inform

This request has come directly to the Council from the Donor Network West organization. Should this request be approved the City would share information on the flag display with the Community.

ALTERNATIVE ACTIONS:

The Council may choose to just support a proclamation for Donate Life Month as an alternative to displaying the flag. The Council may also choose to approve to fly the flag for a shorter period of time than a month (example: for one week to start the month).

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 27, 2017 the Council adopted a City Council policy on Flag Raising (CP-17-02).

FISCAL AND RESOURCE IMPACT:

There is no significant fiscal impact related to the flag display.

CEQA (California Environmental Quality Act):

Not a Project.

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

Chris Ghione

From: Chris Ghione
Sent: Thursday, February 6, 2025 10:27 AM
To: Chris Ghione
Subject: FW: Donate Life Month, Flag Raise Inquiry

From: Hoa Ha <hha@dnwest.org>
Sent: Tuesday, February 4, 2025 8:59 AM
To: Chris Ghione <Chris.Ghione@morganhill.ca.gov>
Cc: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Re: Donate Life Month, Flag Raise Inquiry

Here is a more formal request if you need it, Chris. Thank you so much for all of your help!

Dear City of Morgan Hill Council members,

My name is Hoa and I am the Community Engagement Specialist at Donor Network West. In observance of National Donate Life Month this April, Donor Network West respectfully requests the City of Morgan Hill's participation in a flag raising ceremony at City Hall to honor organ, eye, and tissue donors and raise awareness about the critical need for donation. We would be honored to partner with the city on this important initiative and would appreciate the opportunity to discuss the details further.

If possible, it would be great if we could do a Flag Raising event on April 10th (as that is National Donate Life Flag Raising Day).

Sincerely,

Hoa



Hoa Ha Community Engagement Specialist I

O: 925.480.3100 **M:** 510.919.9818

175 N. Jackson Ave. Ste. 210, San Jose, CA 95116



RESOLUTION NO. 25-XXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL IN SUPPORT OF THE DONATE LIFE
CAUSE**

WHEREAS, more than 100,000 Americans and 20,000 Californians are currently on the national transplant waiting list; and

WHEREAS, by becoming an organ, eye and tissue donor, one individual can save and heal the lives of more than seventy-five people. During National Donate Life Month, we honor the compassion and generosity of registered donors, donor families, and living donors; and

WHEREAS, the commitment of medical professionals, researchers, national partners, and all those who work tirelessly to save and heal lives through donation and transplantation is deserving of recognition; and

WHEREAS, Californians can register to be donors regardless of their age or medical history; and

WHEREAS, the City of Morgan Hill recognizes that the Donate Life cause of saving and healing lives through organ, eye and tissue donation is of such immediate and worthwhile importance; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill supports the Donate Life cause by displaying the Donate Life Flag at City Hall for the Month of April 2025.

PASSED AND ADOPTED by the City Council of Morgan Hill on this 5th day of March 2025 by the following vote:

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

APPROVED:

ATTEST:

MARK TUNER, Mayor

MICHELLE BIGELOW, City Clerk

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 25-XXX, adopted by the City Council at its meeting held on March 5, 2025.

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

DATE: _____

Michelle Bigelow, City Clerk

CITY OF MORGAN HILL

COUNCIL POLICIES AND PROCEDURES

CP-17-02

SUBJECT: FLAG RAISING

EFFECTIVE DATE SEPTEMBER 27, 2017

ORIGINATING DEPARTMENT: CITY ATTORNEY'S OFFICE

BACKGROUND

The City of Morgan Hill displays the flags of the State of California and of the United States of America on poles located at facilities throughout Morgan Hill. City flag poles are not a public forum, but from time to time the City Council will authorize the display of ceremonial flags consistent with the City's ongoing and strategic priorities.

PURPOSE

Establish guidelines for the City Council to approve the display of flags other than those of the City of Morgan Hill, the State of California or the United States of America.

POLICY

It is the policy of the City of Morgan Hill that the City's flag poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States and the State of California. The flag poles located at City Hall, the Community and Cultural Center and Centennial Recreation Center may also be used to display the flags of the City of Morgan Hill, Sister Cities, and any Commemorative Flags as may be authorized by the City Council as an expression of the City's official sentiments.

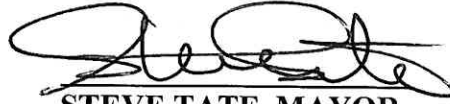
A Commemorative Flag under this policy means a flag that identifies with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag. Commemorative Flags shall be displayed at City facilities only upon City Council direction, consistent with the City's vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion.

PROCEDURE

In addition to the flags of the State of California and the United States of America, the City Council may, by resolution, direct City staff to display any Commemorative Flag on the flag poles of City Hall, the Community and Cultural Center and/or the Centennial Recreation Center as an expression of the City's official sentiments, for those dates and times and on those terms and conditions as set forth in the resolution. Commemorative Flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

This Policy shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, MAYOR

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Donald Larkin, City Attorney

APPROVED BY: City Manager

ADOPT RESOLUTION FURTHER REAFFIRMING THE CITY'S COMMITMENT TO A DIVERSE, SUPPORTIVE, INCLUSIVE COMMUNITY AND PROTECTING THE CONSTITUTIONAL RIGHTS OF ITS RESIDENTS

RECOMMENDATION(S)

Adopt resolution further reaffirming the City's commitment to a diverse, supportive, inclusive community and protecting its residents' constitutional rights.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety and Quality of Life

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

At the City Council Goal Setting Workshop on February 7, 2025, Mayor Pro Tem Martinez Beltran proposed that the City Council consider adopting another resolution affirming the City's commitment to protecting the rights and safety of immigrant communities as a "Future Council Initiated Agenda Item." On [February 19, 2025](#), the City Council voted (item #14) to proceed with considering the adoption of this resolution as a future agenda item.

The City of Morgan Hill has a history of affirming these values through past statements and resolutions, including:

1. Statement of Support and Assurance - [December 14, 2016](#) (Attachment 1)
2. Resolution #17-033: Protecting Residents' Constitutional Rights - [May 3, 2017](#) (Attachment 2)
3. Resolution #18-059: Support for Keeping Families Together - [July 25, 2018](#) (Attachment 3)
4. Morgan Hill's Message to the Community and [Statement on Immigration Enforcement](#) - January 24, 2025 (Attachment 4)

These commitments align with the City's long-standing principles, which are reaffirmed annually through Sustainable Morgan Hill (Attachment 5). These principles envision "a safe, inclusive, socially responsible, environmentally conscious, and economically sound community."

Recent national events have heightened uncertainty regarding federal immigration policies and enforcement, reinforcing the desire for the City to reaffirm its commitment to local public safety and community well-being. While the Morgan Hill Police Department does not participate in the enforcement of federal immigration laws, it remains dedicated to protecting the safety, security, and rights of all Morgan Hill residents. The United States Constitution, California law, and best practices among law enforcement agencies under the direction of the Police Chief guide police policies and tactics. Nothing in the proposed resolution precludes the Morgan Hill Police Department and its officers from enforcing state and local criminal laws and protecting all community members from criminals who would hurt or harm others, regardless of immigration status.

As discussed above, the City Council has several existing policies that express the City's official position that it is committed to protecting the rights of all Morgan Hill residents and that all residents are valued regardless of immigration status. These policies are consistent with the City's mandate under state and federal law and reflect the best practices of local government.

Staff is concerned that creating a new policy document will confuse the applicability of the existing resolutions, and create the impression that the Police Department's immigration enforcement policy is subject to change based on changes by the City Council. As such, we recommend adopting a resolution (Attachment 6) that incorporates the prior actions and reaffirms the City's existing commitments to protecting the rights of all residents regardless of religion, country of birth, immigration status, disability, gender, sexual orientation, or gender identity.

COMMUNITY ENGAGEMENT:

The City's commitment to a diverse, supportive, and inclusive community is strongest when all community members, partners, and stakeholders actively engage and uphold these shared values.

ALTERNATIVE ACTIONS:

The City Council may choose to amend the resolution's language or decide not to adopt it.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- February 7, 2025 City Council Goal Setting - Council Member Martinez Beltran requested the resolution be considered as a future Council initiated agenda item.
- February 19, 2025 City Council Meeting - Council approved staff returning with a draft resolution for formal discussion.

FISCAL AND RESOURCE IMPACT:

No fiscal impact.

CEQA (California Environmental Quality Act):

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

To Morgan Hill Residents,

Sam Licardo, Mayor of San Jose, recently sent out a newsletter with an article addressing the impact that recent national events are having on his city and giving reassurance that the city will stand up for all its residents. On behalf of the Morgan Hill City Council and our staff, we are providing many of the same reassurances to our residents.

Like San Jose, a large percentage of our residents are foreign-born and many fear that changes in immigration rules or enforcement could separate their families. There are also concerns about proposed federal "registries" of community members of the Muslim faith. And the recent nationwide spike in "hate crimes" is causing even more fear. Here in Morgan Hill, we cannot control the events in Washington, D.C., but we can do much to care for each other here at home. We want to assure you that:

"Hate Crimes" will not be tolerated in Morgan Hill

Our Police Department is committed to enforcing laws against commitment of hate crimes without regard to the immigration status of the victim or reporting party. Please report all incidents to the Police Department at 408-779-2101.

Our Police will not be used for federal immigration enforcement

Changes to immigration laws and enforcement are the responsibility of federal policy makers. Local police should not be involved in federal immigration enforcement and our Police Officers will continue to focus their time on high priority crimes. In accordance with best practices of local law enforcement professionals nationally, we will stay out of immigration enforcement. Our priority is to maintain the trusting relationship Morgan Hill Police Officers have with our community.

Anyone who witnesses or is a victim of any crime can contact the Police Department without fear of inquiry regarding their immigration status.

Your Constitutional rights will be protected

We cannot know if assertions made during national campaigning -- like Muslim "registries" -- will come to fruition. We will monitor any proposed legislation or executive actions from Washington and work closely with our national, state and local representatives, other cities, and if necessary, the courts, to protect the Constitutional rights of our residents.

Discrimination based on race, national origin, ethnicity, religion, age, gender, sexual orientation, color or disability is prohibited under federal and/or state law. We will protect the rights of all our residents, regardless of background or sexual orientation.

Morgan Hill residents are highly ethical; we have a set of ethical values that are fundamental to the character of our community. Foremost among the ethical values is respect. Because we respect those we interact with, we treat them honestly, fairly and responsibly. In this time of uncertainty and fear, we encourage all our residents to maintain a high level of respect in all their interactions.

Thank you for making Morgan Hill a well respected and inclusive community.

RESOLUTION NO. 17-033

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REAFFIRMING THE CITY'S COMMITMENT TO A DIVERSE, SUPPORTIVE, INCLUSIVE COMMUNITY AND TO PROTECTING THE CONSTITUTIONAL RIGHTS OF ITS RESIDENTS

WHEREAS, On December 14, 2016 the Morgan Hill City Council affirmed a Statement of Support and Assurance to the community assuring that hate crimes will not be tolerated in Morgan Hill, our Police will not be used for federal immigration enforcement, and our Constitutional rights will be protected; and

WHEREAS, The Morgan Hill City Council adopted "Sustainable Morgan Hill" as the Council's and organization's guiding principle; and

WHEREAS, The vision of Sustainable Morgan Hill is to be "a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all"; and

WHEREAS, The Morgan Hill City Council adopted Inclusiveness as a 2017 Strategic Priority committing the City to embrace all community members as partners to advance our vision of being a socially responsible community; and

WHEREAS, The City of Morgan Hill values a community characterized by diversity, multiculturalism, and unity and acknowledges that the dignity, health, rights and privacy of all our residents must be respected; and

WHEREAS, each person is naturally and legally entitled to live a life without harassment, discrimination, persecution or assault, whether perpetrated by individuals, groups, businesses, or governments; and

WHEREAS, there exists significant and growing concern among our residents based upon recent national and regional incidents of hate crimes, intolerance of religious beliefs, discrimination, sexual harassment and assault, and the fear of a trend toward more of these crimes in the future; and

WHEREAS, there also exists considerable concern in our city about the potential risks for discrimination, harassment, persecution, assault, and deportation; and

WHEREAS, the city and its residents continually reject bigotry and affirm their commitment to a diverse, supportive, inclusive community; and

WHEREAS, all members of the city are valued regardless of religion, immigration status, ethnicity, disability, gender, sexual orientation, or gender identity.

NOW, THEREFORE, BE IT RESOLVED that the City Council reaffirms its commitment to a diverse, supportive and inclusive community and resolves as follows:

The City of Morgan Hill rejects bigotry in all its forms, including, but not limited to, Islamophobia, anti-Semitism, racism, nativism, misogyny, and homophobia; and

The City of Morgan Hill does not tolerate discrimination based on race, national origin, ethnicity, religion, age, gender, sexual orientation, color, or disability; and

The City of Morgan Hill does not tolerate Hate crimes, harassment, or assault; and

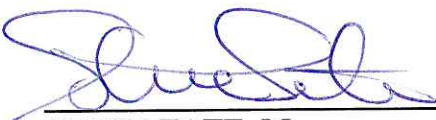
The City of Morgan Hill will oppose any attempts to undermine the safety, security, and rights of members of our community and will work proactively to ensure the rights and privileges of everyone in the city, regardless of religion, country of birth, immigration status, disability, gender, sexual orientation, or gender identity; and

The City of Morgan Hill will promote safety, a sense of security, and equal protection of constitutional and human rights, leading by example through equitable treatment of all by City officials and departments.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of May, 2017.

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



STEVE TATE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 17-033, adopted by the City Council at a regular meeting held on May 3, 2017.

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

DATE:

May 9, 2017


IRMA TORREZ, City Clerk

RESOLUTION NO. 18-059

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL IN SUPPORT OF PROTECT
CHILDREN AND KEEP FAMILIES TOGETHER**

WHEREAS, the City of Morgan Hill prides itself on being inclusive and will do anything in its power to keep families together; and

WHEREAS, the Federal Government implemented a zero-tolerance immigration policy that resulted in separation of undocumented children from their parents; and

WHEREAS, the systematic practice of separating parents and children is antithetical to the values on which our great nation was founded, violates longstanding precedent protecting rights to family integrity, burdens the federal criminal justice and immigration systems, and increases the cost to the government.

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

1. The City of Morgan Hill registers its strong opposition to separating children from their families at the border.
2. The City of Morgan Hill encourages the Trump Administration to address these challenges by means that are humane, fair, effective – and uphold the law and our values as a country.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 25th day of July 2018.

AYES:	COUNCIL MEMBERS:	Steve Tate, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Larry Carr
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



STEVE TATE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

CERTIFICATION

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 18-059, adopted by the City Council at a regular meeting held on July 25, 2018.

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

DATE: 8/8/18

Irma Torrez
IRMA TORREZ, City Clerk

January 24, 2025

Morgan Hill Community,

Amid ongoing national discussions about immigration, we want to reaffirm our commitment to supporting all community members, regardless of immigration status. The City of Morgan Hill and the Morgan Hill Police Department are steadfast in their dedication to protecting the safety, well-being, and dignity of everyone who calls our city home.

The primary mission of the Morgan Hill Police Department is to protect and serve our community by addressing local public safety concerns. We are not involved in enforcing federal immigration laws, as this is outside the scope of our duties and could detract from our focus on local crime prevention, traffic enforcement, and community engagement.

It is against federal law for local law enforcement to investigate or detain individuals based on their immigration status. In addition, SB 54, the California Values Act, also limits the involvement of local law enforcement agencies in federal immigration enforcement. The law emphasizes building trust within our diverse communities and ensures that all residents, regardless of immigration status, feel safe reporting crimes or seeking assistance from local law enforcement.

Our city is built on the values of diversity, inclusion, and compassion. We are committed to fostering a community where everyone can flourish in safety and peace. We take great pride in serving our community and are committed to maintaining the safety and well-being of our residents.

Please also see below for the California Police Chiefs Association Statement on Immigration Enforcement.

https://mcusercontent.com/.../CA_Police_Chiefs...

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

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL FURTHER REAFFIRMING THE CITY'S COMMITMENT TO A DIVERSE, SUPPORTIVE, INCLUSIVE COMMUNITY, AND TO PROTECTING THE CONSTITUTIONAL RIGHTS OF ITS RESIDENTS

WHEREAS, on December 14, 2016, the Morgan Hill City Council issued a Statement of Support and Assurance to the community, assuring that hate crimes will not be tolerated in Morgan Hill, our Police will not be used for federal immigration enforcement, and our residents' constitutional rights will be protected; and

WHEREAS, on May 3, 2017, the Morgan Hill City Council adopted a Resolution reaffirming the City's commitment to a diverse, supportive, inclusive community, and to protecting the constitutional rights of its residents; and

WHEREAS, on January 24, 2025, the Morgan Hill Police Department issued a message to the community reaffirming its commitment to support all community members, regardless of immigration status, and reaffirmed that all residents, regardless of immigration status, should feel safe reporting crimes or seeking assistance from local law enforcement; and

WHEREAS, on February 7, 2025, the Morgan Hill City Council reaffirmed its Vision Statement: To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community; and

WHEREAS, a large percentage of Morgan Hill Residents are foreign-born and many continue to fear that changes to immigration rules or enforcement could result in discrimination, deportation, or separation of their families; and

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

1. Consistent with existing policy, the Morgan Hill City Council further reaffirms that all members of the city are valued regardless of religion, immigration status, ethnicity, disability, gender, sexual orientation, or gender identity; and
2. The City of Morgan Hill, including its elected and appointed officials, will continue to work proactively to protect and defend the rights and privileges of everyone in the city, regardless of religion, immigration status, ethnicity, disability, gender, sexual orientation, or gender identity.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its regular meeting held on this ____ day of _____, 2025 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.XXXX , adopted by the City Council at its regular meeting held on , 2025.

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

DATE: _____

Michelle Bigelow, CITY CLERK

CITY COUNCIL STAFF REPORT

MEETING DATE: March 5, 2025

PREPARED BY:

Hilary Holeman, Administrative Analyst

APPROVED BY: City Manager

PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEM REGARDING USE OF CELL PHONES DURING COUNCIL MEETINGS

RECOMMENDATION(S)

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

Prohibiting the use of cell phones by Council Members during Council meetings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Community Engagement

REPORT NARRATIVE:

Section 4.2 of City Council Policy 97-01 "Rules for the Conduct of City Council Meetings, Placement of Items on the Agenda, and Matters to be Reconsidered" (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.

At the February 19, 2025, City Council meeting, Councilmember Librers proposed that the City Council consider adopting a policy prohibiting cell phone use by Councilmembers during City Council meetings for the reasons that it is distracting to others and that a Councilmember may be receiving information relative to the subject matter at hand that other Councilmembers and members of the public are not receiving (Attachment 2).

Staff seeks Council direction on whether to agendize a formal discussion to potentially amend City Council Policy 97-01, Section 8 - Decorum (Attachment 1) to include language addressing cell phone use.

Preparing a complete City Council Staff Report on this topic would require

approximately four hours of staff time.

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:

Council Member Librers asked staff to bring back this topic for Council consideration on February 19, 2025.

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

From: Marilyn Librers <marilyn.librers@morganhill.ca.gov>
Date: February 25, 2025 at 3:53:53 PM PST
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Phone use during meetings

Hi Christina,

I suggesting we put to vote the use of cell phone use during meetings and retreats, etc.

I understand we all have family that might need immediate attention in a crisis. In this case, either the city manager, or the city clerk could take these calls on their phones. They then could notify the emergency to the correct person.

I also understand that at times city manager, city, attorney, and mayor need to communicate. It would be acceptable for these three to have use of their cell phones.

I do find it extremely distracting when other council members are continually texting during the meetings. I also believe that there is input from the audience going on during the meeting and direction of questions to be ask by council members from the public. I feel this is an inappropriate way to communicate with only one councilmember and not share with the public.

Thank you,
Marilyn

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