



**Special/Regular City Council
Meeting Agenda**

Rich Constantine - Mayor
Gino Borgioli - Mayor Pro Tem
John McKay - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, April 6, 2022 6:00 PM

Virtual Meeting
Link to join the meeting can be found below

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice. City Council meetings will be live-streamed on Channel 17, on the City's website, and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes (YOU MUST BE RUNNING THE MOST CURRENT VERSION OF ZOOM TO BE UNMUTED)
- Join the virtual meeting by calling the number above, dial *9 to raise your hand, and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov

* Please note that comments made on Facebook are not considered public comment.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

6:00 p.m. Closed Session

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

Conference with Legal Counsel – Anticipated Litigation
Significant exposure to litigation (Govt Code § 54956.9(b)): (One Case)
Alleged violation of the California Voting Rights Act and the FAIR MAPS Act.

REGULAR MEETING

7:00 p.m.

RECOGNITIONS

Proclaiming March 20, 2022 as Nowrūz - Persian New Year's Day

PROCLAMATIONS

Proclaiming the week of April 10-16, 2022 as National Telecommunicator's Week
Proclaiming April 28, 2022 as a Day of Remembrance of the Victims of the Holocaust
Proclaiming the Month of April 2022 as Sexual Assault Awareness Month

CITY COUNCIL REPORTS

Council Member Borgioli

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. CALL FOR A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022

Recommendation:

1. Adopt resolution calling for a General Municipal Election to be held on Tuesday, November 8, 2022 to elect a Mayor, one Council Member from District B, and one Council Member from District D; and
2. Adopt resolution requesting the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters Office - and the Consolidation of the Election.

2. ACCEPT CENTENNIAL RECREATION CENTER EXPANSION PROJECT

Recommendation:

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

3. **ADOPT ORDINANCE NO. 2330, NEW SERIES AMENDING TITLE 18, DIVISION I, ZONING CODE SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS**

Recommendation:

Waive the reading, adopt Ordinance No. 2330, 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.

4. **APPROVE PARCEL MAP FOR DAKOTA DUNNE SUBDIVISION (APN: 726-09-024) AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT**

Recommendation:

1. Approve the Parcel Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Michael F. Dunne, Jr. and Jonna Dunne; and
3. Authorize the recordation of the Parcel Map and Subdivision Improvements Agreement.

5. **APPROVE AGREEMENT WITH MARK THOMAS AND COMPANY FOR CONSTRUCTION SUPPORT SERVICES ASSOCIATED WITH VALLEY WATER'S FLOOD CONTROL PROJECT**

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Mark Thomas and Company for a not to exceed amount of \$246,000 for construction support services for City improvements associated with Valley Water's flood control project.

6. **APPROVE AGREEMENT WITH SANTA CLARA COUNTY FOR WEED ABATEMENT PROGRAM ADMINISTRATION**

Recommendation:

Authorize the City Manager to execute the agreement with Santa Clara County for weed abatement program services.

7. **APPROVE INNOVATIVE TRANSIT AGREEMENTS**

Recommendation:

1. Authorize the City Manager to execute and administer a grant agreement for innovative transit funding with the Valley Transportation Authority; and
2. Authorize the City Manager to execute and administer a consultant services agreement with Rideco, Inc. for the provision of transit services within the City of Morgan Hill; and
3. Adopt a budget resolution appropriating \$60,000 for Fiscal Year 2021-22 to fund the initiation of the program.

8. APPROVAL OF SECOND AMENDMENT TO AGREEMENT WITH WEST COAST DOOR AND GATE

Recommendation:

1. Approve the Second Amendment to the On-Call Maintenance Service Agreement with West Coast Door and Gate for one additional year of service for \$40,000 for a total contract amount of \$100,000;
2. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
3. Authorize the City Manager to execute and administer the amendment with West Coast Door and Gate.

9. APPROVE FIRST AMENDMENT TO AGREEMENT WITH TESCO CONTROLS, INC. FOR SCADA HARDWARE PURCHASE

Recommendation:

Authorize the City Manager to execute a first amendment to the agreement with Tesco Controls, Inc. for SCADA hardware for a total contract amount of \$217,190.

10. APPROVE THE MARCH 16, 2022 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the March 16, 2022 City Council Meeting Minutes.

11. AWARD 2022 PARKING LOT SEAL COAT PROJECT

Recommendation:

1. Award contract to Silicon Valley Paving, Inc. in the amount of \$78,148;
2. Authorize the expenditure of contingency funds not to exceed \$7,814; and
3. Authorize City Manager to execute and administer that certain construction contract with Silicon Valley Paving, Inc.

PUBLIC HEARINGS

12. RECONSIDER ACTION TO ADOPT CITY COUNCIL DISTRICT MAP 103 - FROM MARCH 2, 2022 CITY COUNCIL ACTION

Recommendation:

1. Review and discuss whether an alternative map should be adopted in light of a demand to cure a violation of the FAIR MAPS Act; and
2. Determine whether to: a) affirm the adoption of Map 103, or 2) approve an amended resolution identifying an alternative City Council District map.

Estimated Time: 45 Minutes

13. INTRODUCE ORDINANCE APPROVING MILITARY EQUIPMENT POLICIES AS REQUIRED BY AB 481

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance approving Morgan Hill Police Department Policies 708--Armored Rescue Vehicle (ARV MedEvac) and 709--Military Equipment.

Estimated Time: 20 minutes

14. INTRODUCE ORDINANCE UPDATING WATER WASTE ORDINANCE, ADOPT WATER SHORTAGE RESOLUTION, AND ACCEPT REPORT ON WATER OFFSET PROGRAM

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance updating the City's water waste provisions to reflect the actions and stages identified in the City's Urban Water Management Plan (UWMP);
3. Adopt resolution declaring a Level 4 Water Supply Shortage; and
4. Accept report on the development of a "water offset" program for new development.

Estimated Time: 30 Minutes

15. CONDUCT TAX AND EQUITY FISCAL RESPONSIBILITY ACT (TEFRA) HEARING APPROVING ISSUANCE OF BONDS FOR VILLAGE AT MADRONE AFFORDABLE HOUSING APARTMENTS AT 18960 MONTEREY STREET WITHIN THE CITY OF MORGAN HILL

Recommendation:

1. Open/close public hearing consistent with the requirements of the Federal Tax and Equity Fiscal Responsibility Act ("TEFRA") and Section 147 (f) of the Internal Revenue Code of 1986, as amended (the "Code"); and
2. Adopt resolution approving the issuance of bonds by the California Municipal Finance Authority (CMFA), for the acquisition, construction, improvement and equipping of a multifamily rental housing project located at 18960 Monterey Street, Morgan Hill, California (the "Project").

Estimated Time: 15 Minutes

OTHER BUSINESS

16. ACCEPT INITIATIVE PETITION IMPACT REPORT AND ADOPT RESOLUTION PLACING THE CITIZENS' INITIATIVE AMENDING THE GENERAL PLAN TO REQUIRE VOTER APPROVAL OF ANY FUTURE MONTEREY ROAD LANE REDUCTION ON THE NOVEMBER 2022 BALLOT

Recommendation:

1. Accept the Initiative Petition Impact Report; and
2. Adopt Resolution placing Initiative Petition Titled: The Citizens' Initiative Amending The General Plan To Require Voter Approval of Any Future Monterey Road Lane Reduction on the November 2022 ballot.

Estimated Time: 45 Minutes

17. RECEIVE WATER RATE STUDY REPORT, ADOPT RESOLUTION DECLARING INTENT TO IMPLEMENT NEW WATER RATES, COMMENCING PROPOSITION 218 NOTICES, AND SETTING JUNE 1, 2022 AS DATE FOR A PUBLIC HEARING

Recommendation:

1. Receive Water Rate Study report;
2. Adopt resolution declaring intent to adjust water rates and authorizing the commencement of Proposition 218 noticing; and
3. Set June 1, 2022 as the date for Public Hearing and new water rates adoption.

Estimated Time: 30 Minutes

18. ADOPT THE COMMUNICATIONS, OUTREACH, AND ENGAGEMENT PLAN AND APPROVE THE RECOMMENDED STAFFING CHANGES

Recommendation:

1. Adopt the Communications, Outreach, and Engagement Plan; and

2. Approve the classifications for City Clerk/Public Information Officer (PIO); Communications and Engagement Coordinator; and updated Multimedia Coordinator.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email cityclerk@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.

SUSTAINABLE MORGAN HILL



Vision

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



Choose Morgan Hill

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



City Council Ongoing Priorities

- Enhancing Public Safety
- Protecting the Environment and Preserving Open Space and Agricultural Land
- Maintaining and Enhancing Infrastructure
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community History
- Enhancing Diversity and Inclusiveness
- Advancing Regional Initiatives



2022-2023 Strategic Priorities

- Fiscal Sustainability
- Affordable Housing and Homelessness
- Community Outreach, Engagement, and Messaging
- Economic Development
- Transportation



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.

April 6, 2022
10



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Michelle Bigelow, Deputy City Clerk

APPROVED BY: City Manager

CALL FOR A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022

RECOMMENDATION(S)

1. Adopt resolution calling for a General Municipal Election to be held on Tuesday, November 8, 2022 to elect a Mayor, one Council Member from District B, and one Council Member from District D; and
2. Adopt resolution requesting the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters Office - and the Consolidation of the Election.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Preserving our Community History

Enhancing Diversity and Inclusiveness

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

Economic Development

Affordable Housing and Homelessness

Transportation

REPORT NARRATIVE:

Pursuant to Election Code § 10002, the attached Resolution "A" calls for a General

Municipal Election to be held on Tuesday, November 8, 2022 to elect a Mayor for a two-year term; one Council Member from District B for a four-year term; and one Council Member from District D for a four-year term.

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

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

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

Resolution “B” (attached) requests the services of the Santa Clara County Board of Supervisors and the Registrar of Voters’ Office; and the consolidation of the election. These are standard procedures for General Municipal Elections and the consolidation with other jurisdictions helps to keep election costs to a minimum.

Section 5 of Resolution “B”, Candidates’ Statements, establishes a 200-word limitation for the Candidates’ Statements. Per City Council Resolution No. 16-005, Section 6 of Resolution B provides that candidates pay half the estimated costs to submit a “Candidate Statement.” The Santa Clara County Registrar of Voters Office has provided Candidate Statements estimates as follows: Mayor: \$2,750; District B seat: \$2,450; and District D seat: \$2,470 per candidate.

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

COMMUNITY ENGAGEMENT:

Involve

As a General Law City, Morgan Hill is governed by Government and Election Codes for the purpose of electing municipal officers (e.g., mayor, council members, and city treasurer).

Adoption of the two attached resolutions that call for a General Municipal Election to be held in Morgan Hill on November 8, 2022, and the consolidation of the election allows registered voters in the City of Morgan Hill to be involved in the democratic process of electing their municipal officers.

ALTERNATIVE ACTIONS:

Section 7 of Resolution “A” discusses the action the Council will take to resolve a tie vote: conducting a special runoff election to resolve the tie vote. If this is the election procedure the Council wishes to use to resolve a tie vote, no modification to Resolution “A” is necessary. However, should the Council wish to resolve a tie vote by “lot”; Section 7 of Resolution “A” will need to be amended to read as follows:

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

August 12, 2022, is the last day a municipality can submit a Measure Resolution to the County of Santa Clara/Registrar of Voters Office to be included on the November 6, 2022 ballot. This deadline requires that the City Council take action in adopting a resolution(s) on a ballot measure(s) prior to August 12, 2022. Should the City Council wish to place a measure(s) on the November 6, 2022 ballot, a staff report and accompanying resolution(s) will return to the City Council for action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Municipal elections are conducted every two years for the purpose of electing officers as required by law.

FISCAL AND RESOURCE IMPACT:

The estimated election expenses of \$200,000 will be included in the FY 2022-23 budget. This includes the cost for election services for a Mayor and two District Council seats, three candidate statements for the Mayor seat and five candidate statements for each Council seat, election certificates, and translation costs.

CEQA (California Environmental Quality Act):

Not a project.

The calling of a municipal election is not a project, as defined in Section 15378 of the State CEQA guidelines.

RESOLUTION “A”

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, CALLING, AND GIVING NOTICE FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to general law cities in the State of California a General Municipal Election shall be held on Tuesday, November 8, 2022, for the election of Municipal Officers.

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

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Morgan Hill, California, on Tuesday, November 8, 2022, a General Municipal Election for the purpose of electing a Mayor for the full term of two-years a Member of the City Council from District “B”, and a Member of the City Council from District “D”, for the full term of four-years.

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

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

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

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

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

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

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of April 2022 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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.22-XXX, adopted by the City Council at the meeting held on April 6, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION “B”

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022 WITH THE GUBERNATORIAL STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Morgan Hill called a General Municipal Election to be held on Tuesday, November 8, 2022, for the purpose of the election of a Mayor, a Member of the City Council from District “B”, and a Member of the City Council from District “D” and;

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

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

SECTION 1. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a General Municipal Election with the statewide Gubernatorial General Election on Tuesday, November 8, 2022, for the purpose of the election of a Mayor, a Member of the City Council from District B, and a Member of the City Council from District D.

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

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

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

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

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

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

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 6th day of April 2022.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, 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. 22-XXX, adopted by the City Council at a regular meeting held on April 6, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION NO. 16-005

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ADOPTING REGULATIONS FOR
CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO
CANDIDATE STATEMENTS SUBMITTED TO THE VOTERS
FOR GENERAL MUNICIPAL ELECTIONS**

WHEREAS, Section 13307 of the California Elections Code provides that the governing body of a local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including the costs thereof.

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

Section 1. Recitals. The City Council does hereby find, determine and resolve that the foregoing recital is true and correct.

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

a. That the City Clerk shall advise all candidates for nonpartisan elected office of the County of Santa Clara's Registrar of Voters' ("Registrar") guidelines regarding candidate statements of qualifications as described in the Registrar's Gubernatorial General Election Candidate Guide, as amended each election cycle.

b. That the City Clerk shall provide each candidate with the estimated cost of printing, handling, translating, and mailing of the candidate statement (the "Costs") as such are determined by the Registrar. Based on the estimate of the Costs provided by the Registrar, the City will require candidates to pay half of the estimate of the Costs at the time the candidate statement is filed with the City elections official. As the estimate of the Costs is subject to change based on the actual costs determined after the election, the City will, on a pro rata basis, bill the candidate for the additional actual expense or refund any excess paid depending on the final actual Costs. In the event of underpayment, the candidate will be required to pay the balance of the Costs incurred within 30 days of the election. In the event of overpayment, the City will prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

1. Candidates that claim to be indigent shall submit an application for a waiver of the Costs, consisting of a Waiver of Candidate Statement Deposit Form, Statement of Financial Worth Form, and a copy of their most recent federal income tax report, to the City Clerk to determine eligibility. The City Clerk shall make a determination of finding regarding the candidate's indigence. The extremely low category of the guidelines established by the federal Housing and Urban Development Department for Santa Clara County is to be used to determine eligibility. If a candidate is determined to be indigent, the City shall bear the full Costs. If it is determined that a candidate is not indigent, the candidate shall, within three days of the notification, excluding Saturdays, Sundays, and state/City holidays, withdraw the candidate statement or pay the requisite fee. If the candidate fails to respond with the time prescribed, the City shall not be obligated to print and mail the candidate statement.

2. The estimate of the Costs includes any translation required by the Federal Voting Rights Act of 1965 and any other applicable federal or state laws. The candidate will be required to pay for the

cost of translating the candidate statement into any foreign language that is not required pursuant to the Federal Voting Rights Act of 1965 and any other applicable federal or state laws, but is requested as an option by the candidate.

c. That the City Clerk is directed to provide each candidate a copy of this Resolution with the Candidate Information and Nomination Packet at the time nomination papers are taken out.

Section 3. The provisions of any existing Resolution as heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed. This Resolution shall take effect immediately upon adoption and shall apply at the next ensuing municipal election and at each municipal election after that time.

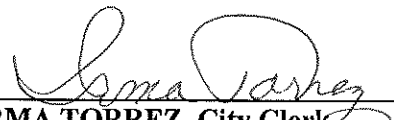
PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 20th day of January, 2016 by the following vote:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Marilyn Librers Gordon Siebert, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None



STEVE TATE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE: 2/2/2016

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. 16-005, adopted by the City Council at the meeting held on January 20, 2016.

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

DATE: 2/2/2016



IRMA TORREZ, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Yat Cho, Senior Project Manager

APPROVED BY: City Manager

ACCEPT CENTENNIAL RECREATION CENTER EXPANSION PROJECT

RECOMMENDATION(S)

1. Accept as complete the Centennial Recreation Center Expansion 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.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

In working with Weston Miles Architects (WMA), the Centennial Recreation Center Expansion project plans and specifications were completed in May 2019 for a 3,640 square foot expansion to the existing Centennial Recreation Center. This new expansion includes a fitness space, a storage area, and a new parking area with 25 additional spaces (Attachment 1 - Vicinity Map). The bid opening was held on August 13, 2019 and CRW Industries, Inc. was the lowest responsible bidder for the project.

The project was awarded on September 18, 2019 and work began as scheduled in October 2019. In the early part of 2020, the COVID-19 pandemic began and this affected all construction projects in Morgan Hill. During the pandemic, staff worked with CRW Industries, Inc. and WMA to complete the project in a safe and effective manner.

The contractor worked with smaller crews and coordinated with subcontractors to minimize working in an enclosed space. Additionally, there were material and labor challenges to the industry and the work was slowed. Due to the pandemic, the project experienced setbacks and delays but was ultimately opened for public use last Spring with all finishing details completed in February 2022.

While there were design and construction changes (both adds and deducts) made to the project, the City, WMA, and CRW Industries, Inc. were able to cost effectively complete the project with one change order for a deduct of \$2,072.10 (Attachment 2 - Project Closeout). The final construction contract with CRW Industries, Inc. is \$2,441,065.90. Staff recommends accepting this project as it is complete in accordance with the plans and specifications and directing the City Clerk to file the Notice of Completion (Attachment 3 - Notice of Completion)

COMMUNITY ENGAGEMENT:

Inform and Consult

During the pre-design phase of the project, staff conducted a needs assessment to determine the expansion areas of health, wellness, and recreation. Staff collected feedback on the proposed expansion from facility users and staff using four data points: review of customer comment cards, results of the annual customer satisfaction survey conducted by SEER Analytics, a separate online survey for member use and expansion, and staff and member focus group. WMA, City Staff, and YMCA staff met regularly for a design review prior to completion of design.

Prior to and during construction, staff provided weekly updates through City social media accounts and on 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:

December 6, 2017 – Approved an agreement with Weston Miles Architects, Inc. for design and construction support services for the Centennial Recreation Center Expansion Project.

April 17, 2018 – The Parks and Recreation Commission reviewed the conceptual plan for the Centennial Recreation Center Expansion Project and recommended approval by the City Council.

May 2, 2018 – City Council approved the conceptual design for Centennial Recreation Center Expansion Project.

October 17, 2018 – City Council approved an updated conceptual design for the Centennial Recreation Center Expansion Project.

September 18, 2019 - City Council awarded the Centennial Center Expansion Project to CRW Industries, Inc.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Centennial Recreation Center Expansion Project is \$2,441,065.90. The project was awarded to CRW Industries, Inc. in the amount of \$2,443,138 with an authorized contingency of \$244,314 (Total of \$2,687,452). The project is funded in the adopted Capital Improvement Program budget, under Project #138016, Centennial Recreation Center Expansion Project, utilizing Recreation Center Impact Funds (360). The balance of \$246,386.10 will be returned to Fund 360.

CEQA (California Environmental Quality Act):

Categorical Exemption.

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of CEQA Guidelines (Existing Facilities, Section E2), as this project will be an addition to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if:

1. The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
2. The area in which the project is located is not environmentally sensitive.



CITY OF MORGAN HILL

Engineering and Utilities Department
CIP Engineering Division

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SITE MAP
CENTENNIAL RECREATION
CENTER EXPANSION PROJECT



0 87.5 175 350 525 700
Feet

CIP Contract Acceptance Funding Closeout Statement

Project:	Centennial Recreation Center Expansion Project		
Project No:	138016		
Date of Project Award:	18-Sep-19	Project Award Amount:	
Funding Source:	F360	Contingency Authorized:	
Date of Project Acceptance:	6-Apr-22	Total Authorized:	
		Actual Base Contract Spent:	

Change Orders			
	Description	Date	Council Approval Req'd? (Y/N)
C.O. #1:	Miscellaneous Adds and Deducts	16-Mar-22	N
			Total C.O.:

Additional Appropriations		
Source	Amount	Date
None		

	Total Construction Amount (Base Contract plus CO's):
Construction Fund Balance:	\$246,386.10

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 271 Edmundson Avenue, Morgan Hill, CA 95037.
4. The nature of Owner's interest in the Project is:
XX Fee ownership ___ Lessee ___ Other:
5. Construction work on the Project performed on Owner's behalf is generally described as follows: Pavement Rehabilitation within City of Morgan Hill
6. The name of the original Contractor for the Project is: CRW Industries, Inc.
7. The Project was completed on: February 18, 2022
8. The Project is located at: 271 Edmundson 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.

Date and Place

Signature

Scott Creer, City Engineer

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Kim Mancera, Municipal Services Assistant

APPROVED BY: City Manager

ADOPT ORDINANCE NO. 2330, NEW SERIES AMENDING TITLE 18, DIVISION I, ZONING CODE SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2330, 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.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On March 16, 2022, the City Council introduced Ordinance No. 2330 New Series, by the following roll call vote: AYES: Borgioli, Constantine, Martinez Beltran, McKay Spring; NOES: None ABSTAIN: None; ABSENT: None.

COMMUNITY ENGAGEMENT:

Community engagement on this topic has taken place since July 2020 with the ULI and SVEDA seminars on industrial lands utilization & policy. The Planning Commission held meetings on this topic on September 22, 2020, and March 9, 2021. Information has been shared through the City's Citywide 411 Newsletter, the Choose Morgan Hill Economic Development eNewsletter, and emails have been sent to stakeholders including industrial property owners, businesses, and commercial real estate brokers.

A 10-day public hearing notice was published in the Friday, February 18, 2022 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and social media. On February 8, 2022, the Planning Commission held a public hearing regarding the proposed ordinance amendments in which a 10-day public hearing notice was published in the Friday, January 28, 2022 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.

ORDINANCE NO. 2330, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING TITLE 18, DIVISION I,
ZONING CODE SECTION 18.26.020 (LAND USE
REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL
ZONING DISTRICTS) TO MODIFY THE LAND USES
PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS.**

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

Section 1. Section 18.26.020 (Land Use Regulations) of Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

18.26.020 Land use regulations.

- A. Permitted Land Uses. Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

Table 18.26-1 Permitted Land Uses in the Industrial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	—	—	—	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	—	
Community Assembly	C	—	—	—	—	
Instructional Services	A	—	—	—	—	

Medical Offices and Clinics						
≤ 5,000 sq. ft.	P	P	P	P	—	
5,001 sq. ft. to 20,000 sq. ft.	A	A	A	A	—	
>20,000 sq. ft.	C	C	C	C	—	
Parks and Recreational Facilities	C	—	—	C	—	
Public Safety Facilities	C	—	—	C	—	
Commercial Uses						
Adult Businesses	—	—	P	P	—	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	—	—	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	—	—	—	—	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	—	—	—	—	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	—	—	
> 15,000 sq. ft.	C	C	C	—	—	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	— [5]	— [5]	— [5]	— [5]	
Restaurants, Sit-Down	C [4]	— [5]	— [5]	— [5]	— [5]	

Tasting Rooms	P [6]	—	—	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	—	—	—	—	
Mini-Storage	—	—	—	C	—	18.92.100
Personal Service	C [4]	— [5]	— [5]	— [5]	— [5]	
Plant Nurseries	C	—	—	P	P	
Professional Offices	P	P	P	P	—	
Retail						
Building Materials	C	—	—	P	P	
Convenience Markets	C [4]	— [5]	— [5]	— [5]	— [5]	
General Retail	C [4]	— [5]	— [5]	— [5]	— [5]	
Home Improvement Centers	C	—	—	C	—	
Large Commodity Retail	C	—	—	—	—	
Vehicle-Related Uses						
Salvage and Wrecking	—	—	—	—	C	
Towing and Impound	—	—	—	C	P	
Vehicle Repair and Maintenance, Major	—	—	—	C	P	
Vehicle Repair and Maintenance, Minor	—	—	—	P	P [1]	
Vehicle Storage, Outdoor	—	—	—	C	C	18.52.080.C

Wholesaling	P	—	—	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.26.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P [2,8]	P [2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	—	—	—	—	C	
Research and Development	P	P	P	P	P	
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	—	—	C	C	
Heavy Distribution	—	—	—	—	—	
Parcel Sorting Facilities	—	—	—	—	—	
Parcel Hub Small < 75,000 sq. ft.	—	—	—	—	—	
Parcel Hub Large > 75,000 sq. ft.	—	—	—	—	—	

Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	—	—	C	C	
Recycling Processing Facility	—	—	—	—	C	
Utilities, Major	—	—	—	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						
Crop Cultivation	—		—			
Other Uses						
Accessory Uses	See Chapter 18.44					
Temporary Uses	See Section 18.92.150					

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

Section 3. **Effective Date; Posting.** This Ordinance shall take effect on May 6, 2022. 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 REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 16th DAY OF MARCH 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF APRIL 2022, 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:

RICH CONSTANTINE, 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. 2330, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of April 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

APPROVE PARCEL MAP FOR DAKOTA DUNNE SUBDIVISION (APN: 726-09-024) AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

RECOMMENDATION(S)

1. Approve the Parcel Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Michael F. Dunne, Jr. and Jonna Dunne; and
3. Authorize the recordation of the Parcel Map and Subdivision Improvements Agreement.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Economic Development

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Dakota Dunne is a 4-lot subdivision with 3 new single-family detached homes and one existing house that will be retained. The project site, identified by Assessor's Parcel Number (APN) 726-09-024, is located on the north side of Dakota Drive, between Lotus Way and Corsica Way (see attached Site Map).

The Developers, Michael F. Dunne, Jr. and Jonna Dunne, have completed all the conditions of the project's Tentative Parcel Map which was administratively approved by the Development Services Director on June 1, 2021. The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Parcel Map.

The Developers have furnished the City with the necessary documents to complete the

processing of the Parcel Map and has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Parcel Map. The Parcel Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council approve the Parcel Map and authorize the City Manager to sign a Subdivision Improvements Agreement pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT:

Inform

On June 1, 2021, the Development Services Department considered the Tentative Map application at the close of a duly noticed 10-day public comment period. Residents within a 300-foot radius were invited to review and provide comments on the project.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the Developers have met the requirements of the Tentative Parcel Map conditions to file for a Parcel Map.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There were no prior City Council and Commission actions on the project.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

Categorically exempt pursuant to Section 15332 (Infill Development).



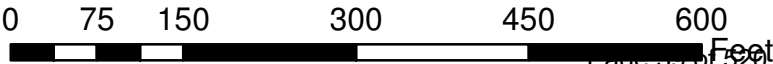
County of Santa Clara, Sanborn



**Engineering and Utilities Department
Land Development Engineering Division**

Document Path: G:\R-14\PROJ\Agustin\GIS\Dunne Dakota.mxd

**SITE MAP
DAKOTA DUNNE
APN 726-09-024**



Owner's Statement

We hereby state that we are the owners of, or have some right, title, or interest in and to the real property included within the subdivision shown upon the herein map; that we are the only persons whose consents are necessary to pass a clear title to said real property; that we hereby consent to the preparation and filing of said map and subdivision as shown within the distinctive boundary line.

The real property described below is dedicated in fee for public purposes: all streets and portions of streets not heretofore existing and designated as Dakota Drive and Juliann Way, as shown upon this map. Said dedications and offers of dedication are for any and all public uses under, upon, and over said streets and portions thereof.

The real property described below is dedicated as an easement for public purposes: easements for any and all public service facilities including, but not limited to sidewalks, poles, wires and conduits for electrical, telephone, television, gas, storm, sanitary and water services, and all appurtenances thereto under, upon, or over the land delineated and designated as Public Service Easement (P.S.E.) on the within map.

We hereby reserve for the exclusive use of the owners of Parcel 4, Parcel 2 & Parcel 3, private storm drainage easements in, under, upon and across those strips of land delineated and designated as Private Storm Drainage Easement (P.S.D.E.) on the within map. The owners, their licensees and tenants of said Parcels shall be responsible for the maintenance of said easement area.

All of the herein described streets and easements shall be kept free of buildings, except lawful unsupported roof overhangs, and obstructions that do not impair the use of or are inconsistent with the purposes of the streets and easements.

The herein described offers of dedication to the City of Morgan Hill are to be accepted only when the City Council of the City of Morgan Hill or its successor agency adopts and records in the office of the recorder of Santa Clara County a resolution accepting said streets and easements. until said resolution(s) are recorded, all streets and easements encompassed within such offers of dedication shall be maintained by the developer during any required warranty period and thereafter by the owner(s) of the lots or parcels in the subdivision. The City of Morgan Hill shall not be responsible for maintenance and shall incur no liability with respect to such offered streets and easements or any improvement thereon. all dedicated rights-of-way and easements not accepted for maintenance by the city or other public agency shall be maintained by the owner(s) of the lots or parcels in the subdivision.

As Owner(s):

Michael F. Dunne, Jr. and Jonna Dunne as Trustees of the Michael F. Dunne, Jr. and Jonna M. Dunne Living Trust U/A 6/6/2012

By: Michael F. Dunne, Jr.
Michael F. Dunne, Jr., Trustee

By: Jonna Dunne
Jonna Dunne, Trustee

As Trustee:

Old Republic Title Company

By: Tom Judd
Its: Vice President

Abandonment of Public Easement

Per Section 66445(j) of the Subdivision Map Act, the following Public Easement shall constitute abandonment, as certified in the City Clerk's Statement:

A 'Temporary Turnaround Easement' previously dedicated to the City of Morgan Hill per Tract No. 8619, Book 666 of maps, at Pages 39-40, as delineated on Sheet 3 of this map.

County Recorder's Statement

Filed this _____ day of _____, 20____

at _____ m. in Book _____ of Maps, at Pages _____ at the request of M.H. Engineering Co.

File no. _____

Fee \$ _____

Regina Alcomendras, County Recorder of Santa Clara County

By: _____
Deputy

PARCEL MAP

Being All of that portion of Land described as 'Remainder', as shown on that certain map of Tract No. 8619, filed for record on June 28, 1995 in Book 666 of Maps, at Pages 39 and 40, and as modified by Certificate of Correction recorded on February 7, 2001, Instrument Number 15553284, Santa Clara County, Recorder's Office.

Lying within the
City of Morgan Hill, County of Santa Clara, State of California

February 2022

NOTES

1. The distinctive boundary line indicates the boundaries of the land being subdivided by this Parcel Map.
2. The area within the distinctive boundary is 54,418 square feet.
3. All distances and dimensions are in feet and decimals thereof.

Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State Of California
County Of Santa Clara

On Feb 28, 2022, before me, Ida Maciel, Notary Public
personally appeared Tom Judd
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: Ida Maciel, Notary Public In

And For Said County And State

(Seal)

Principal County Of Business: Santa Clara

Commission Expires: July 12, 2022

Commission # Of Notary: 2249450

Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State Of California
County Of Santa Clara

On Feb 25, 2022, before me, R. Barry Robles, Notary Public
personally appeared Michael F. Dunne and Jonna Dunne
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

R. Barry Robles
Name: R. Barry Robles, Notary Public In

And For Said County And State

(Seal)

Principal County Of Business: Santa Clara

Commission Expires: April 27, 2022

Commission # Of Notary: 2237249

Engineer's Statement

This map was prepared by me or under my direction and is based upon a Field Survey in conformance with the requirements of the Subdivision Map Act and local ordinance, at the request of Michael Dunne, on January 17, 2020. That all the monuments are of the character and occupy the positions indicated, or will be set in such positions on or before March 30, 2023 and that such monuments are, or will be sufficient to enable the survey to be retraced. I hereby state that this Parcel Map substantially conforms to the approved or conditionally approved Tentative Map, if any.

William J. McClintock
William J. McClintock
R.C.E. NO. 24893

3/1/2022
DATE

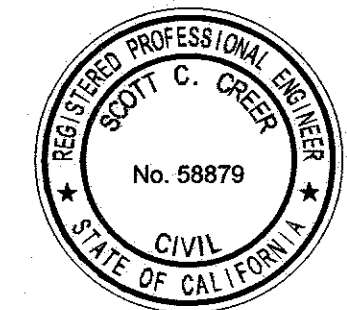


City Engineer's Statement

I hereby state that I have examined this Parcel Map. The Subdivision as shown is substantially the same as it appeared on the Tentative Map, if required, and any approved alterations thereof. All provisions of the Subdivision Map Act, as amended, and of any local ordinances applicable at the time of approval of the Tentative Map, if required, have been complied with.

Scott C. Creer
Scott C. Creer - City Engineer
City of Morgan Hill, California
R.C.E. NO. 58879

3/4/22
DATE



City Surveyor's Statement

I hereby state that I have examined this Parcel Map and that I am satisfied that said map is technically correct.

John K. King
John K. King - Acting City Surveyor
Hanna & Brunetti
P.L.S. NO. 6809

3-9-22

DATE



City Clerk's Statement

I hereby state that the City Council of the City of Morgan Hill at its regular meeting held on _____, 20____, duly approved the Parcel Map shown hereon, authorized its recordation, and accepts on behalf of the public, subject to their improvement in accordance with city standards, the streets and easements offered for dedication for public use in conformity with the terms of the offer of dedication. I also hereby certify that said City Council authorizes the abandonment of that 'Temporary Turnaround Easement' previously dedicated to the City of Morgan Hill per Tract No. 8619, Book 666 of Maps, at Pages 39-40, in conformity with Section 66445(j) of the Subdivision Map Act.

Michelle Bigelow
City Clerk of the City of Morgan Hill

DATE

Development Services Director's Statement

I hereby state that the Tentative Map for the Parcel Map shown hereon was conditionally approved on June 01, 2021, by the Development Service Director of the City of Morgan Hill, California, by Approval Certificate Number 21-006, application number SD 2021-0001.

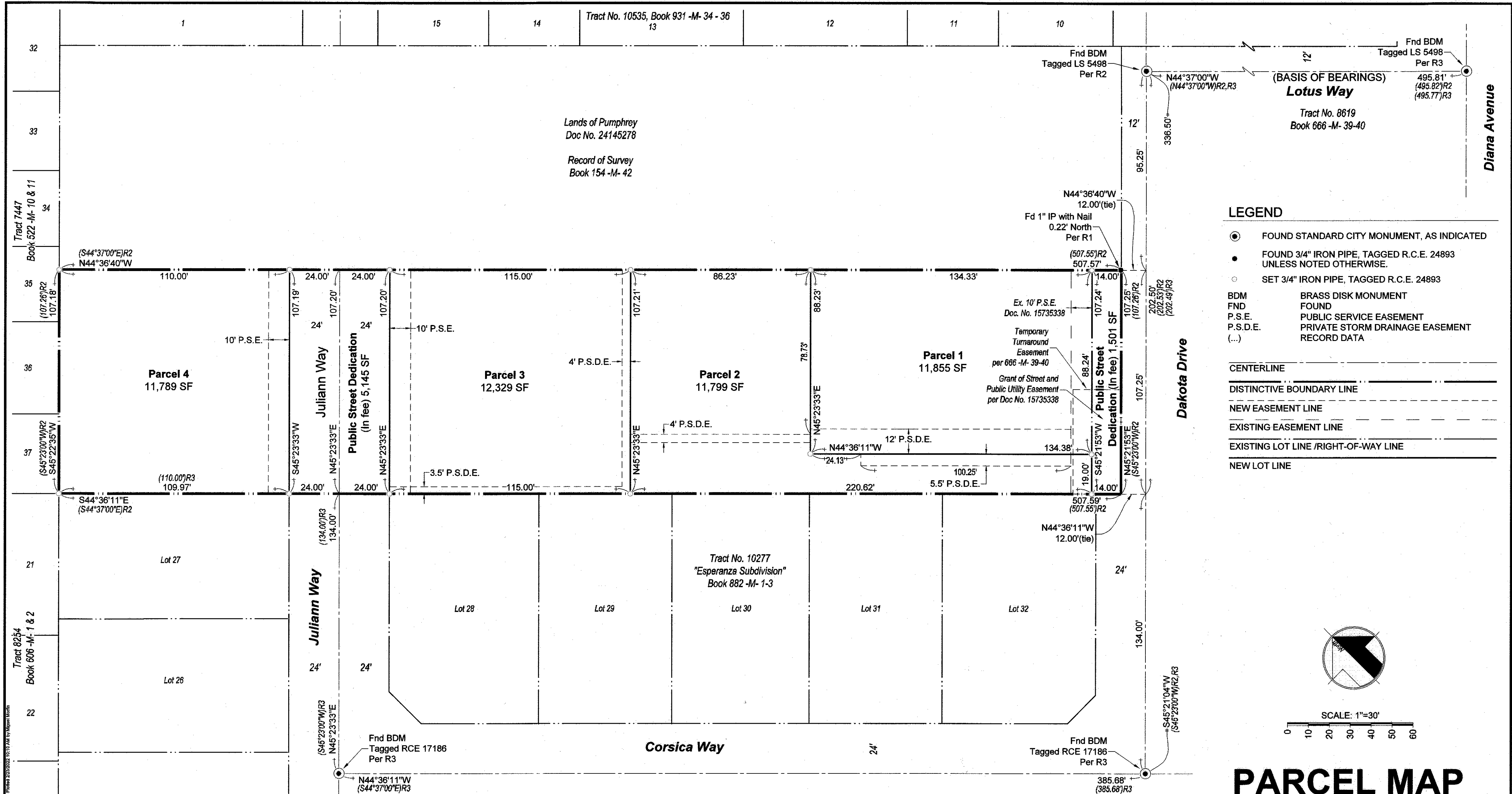
Jennifer Carman
Jennifer Carman
Development Service Director
City of Morgan Hill, California

3/4/22
DATE

MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037
(408) 779-7381

MH Job No: 218072.1

Sheet 1 of 3



BASIS OF BEARINGS

Bearings shown upon the herein map are based upon the centerline of Lotus Way, as found monumented and recorded as North 44°37'00" West, as shown upon that certain map, Tract No. 8619, filed for record on June 28, 1995 in Book 666 of Maps, pages 39-40.

REFERENCED RECORD DATA

- R1 Record of Survey
Book 154 of Maps, Page 42
- R2 Tract No. 8619
Book 666 of Maps, Pages 39 & 40
- R3 Tract No. 10277 "Esperanza Subdivision"
Book 882 of Maps, Pages 1 - 3
- R4 Tract No. 8254 "Woodcrest Estates"
Book 606 of Maps, Pages 1 & 2

EASEMENT OF RECORD

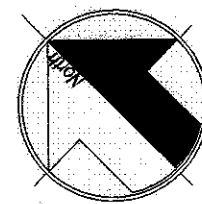
Easement	Recorded
*Ingress and Egress and Public Utilities	Book 5788 O.R., Page 301

*Easement has been abandoned per Tract No. 8619 and it is not a part of this property.

LEGEND

- FOUND STANDARD CITY MONUMENT, AS INDICATED
- FOUND 3/4" IRON PIPE, TAGGED R.C.E. 24893 UNLESS NOTED OTHERWISE.
- SET 3/4" IRON PIPE, TAGGED R.C.E. 24893
- BDM BRASS DISK MONUMENT
- FND FOUND
- P.S.E. PUBLIC SERVICE EASEMENT
- P.S.D.E. PRIVATE STORM DRAINAGE EASEMENT
- (...) RECORD DATA

- CENTERLINE
- DISTINCTIVE BOUNDARY LINE
- NEW EASEMENT LINE
- EXISTING EASEMENT LINE
- EXISTING LOT LINE /RIGHT-OF-WAY LINE
- NEW LOT LINE



SCALE: 1"=30'

PARCEL MAP

Being All of that portion of Land described as 'Remainder', as shown on that certain map of Tract No. 8619, filed for record on June 28, 1995 in Book 666 of Maps, at Pages 39 and 40, and as modified by Certificate of Correction recorded on February 7, 2001, Instrument Number 15553284, Santa Clara County, Recorder's Office.

Lying within the
City of Morgan Hill, County of Santa Clara, State of California

February 2022

MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037
(408) 779-7381

MH Job No: 218072.1

Sheet 3 of 3

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

MICHAEL F. DUNNE, JR. AND JONNA DUNNE

DAKOTA DUNNE – APN 726-09-024

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and MICHAEL F. DUNNE, JR. AND JONNA DUNNE, a individual ("Subdivider"), is entered into this ____ day of _____, 20___. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for APN 726-09-024, the subdivision known as DAKOTA DUNNE ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "Improvement Plans for DAKOTA DUNNE ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This Agreement is executed pursuant to California Government Code Section 66410 et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

NOW, THEREFORE, and in consideration of the approval of the Final Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

Section 1. Incorporation by Reference

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

Section 2. Construction of Improvements

(a) Subdivider shall construct to the approval of City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans for DAKOTA DUNNE".

(b) Subdivider shall acquire and dedicate, or pay the cost of acquisition by City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of City.

Section 3. Modification of Plans

Subdivider agrees that, if during the construction of the Improvements, it is determined by City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by City. Said changes, if any, shall be confined to the premises owned by Subdivider.

Section 4. Security

(a) Pursuant to California Government Code Section 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of **JUNE 2021** are attached hereto as Exhibit "A".

The Performance Bond shall be in a form substantially the same as Exhibit "B".

(b) Pursuant to California Government Code Section 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be in a form substantially the same as Exhibit "C".

(c) Subdivider shall, upon completion of the Improvements, furnish a surety bond in an amount equal to fifty percent (50%) of the construction cost of the Improvements to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof by the City Council ("Warranty Period") against any defective work or labor performed, or defective materials furnished by Subdivider in connection with this Agreement ("Warranty Bond"). The Warranty Bond shall be in a form substantially the same as Exhibit "D".

(d) Pursuant to Government Code Section 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work; provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(e) The surety on each bond and the form thereof shall be satisfactory to City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by the City's risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside the City's jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

Section 5. Inspections

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify City in writing of the fixed start date of construction so that City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between Subdivider and City that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City.

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of City, including any changes required by City which in City's opinion are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City Council.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it

understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within one year after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to City, plus fifteen percent (15%); and City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

Section 8. Acquisition and Dedication of Easements or Rights-of-Way

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this

Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless the City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of the City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code Section 66499.37.

City shall promptly notify Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Section 9 will survive termination of this Agreement.

Section 10. Insurance

Concurrent with the execution of this Agreement, Subdivider 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 Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. 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 the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project"

or "per location" basis, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CGL coverage is being provided by Subdivider's General Contractor pursuant to Section 10, General Contractor may elect to insure the CGL exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which the City is included as an additional insured.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include blanket contractual and completed operations.

c. CGL policy will apply as though separate policies have been issued to each insured ("separation of insureds").

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

(3) **Automobile Liability:** Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then Subdivider 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 Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

(b) Required Endorsements. Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below. Further, if coverages are being provided by Subdivider's General Contractor pursuant to Section 10, endorsements may not be restricted to work performed "under a written contract" (i.e. "blanket endorsements")

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy 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) ALL Policies except Workers Compensation:

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.

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) Subcontractors. Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10 as appropriate based on each subcontractor's scope of work, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

(e) Certificates. Subdivider 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 the Subdivider's agreement with the 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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$153,764.00** due under City Resolution No. **5592**, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$ 35,802.00** payable at the time of recording of the Final Map, and

(2) **\$117,962.00** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for City's approval of the Final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City of Morgan Hill Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside the City's jurisdiction.

Section 12. On-Site Supervision

Subdivider shall designate an on-site supervisor, satisfactory to City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of Subdivider when communicating with City personnel.

Section 13. Waiver

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

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

a. Address of Subdivider is as follows:

Click or tap here to enter text.

b. Address of City is as follows:

With a copy to:

City Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Section 15. Noncompliance

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action City deems necessary.

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore to complete the Improvements.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to City damages. The right of City to draw upon or utilize the security is additional and not in lieu of any other remedy available to City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) are in addition to and not in lieu of other remedies available to City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

Section 19. Effective Date

This Agreement shall be effective as of the date and year first above written.

Section 20. Amendment of Agreement

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby.

Section 21. Execution

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

Section 22. Non-Liability of Officials and Employees of the City.

No official or employee of City shall be personally liable for any default or liability under this Agreement.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

Section 24. Limitations Upon Subcontracting and Assignment.

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

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Section 25. Miscellaneous

- (a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
- (b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.
- (c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
- (d) Time of Essence. Time is of the essence in the performance of this Agreement.
- (e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.
- (f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

CITY OF MORGAN HILL

By: _____

Christina J. Turner, City Manager

Date: _____

ATTEST:

By: _____

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Donald A. Larkin, City Attorney

Date: _____

"SUBDIVIDER"

**MICHAEL F. DUNNE, JR. AND
JONNA DUNNE**

By: Michael F. Dunne

Michael F. Dunne - Trustee

Print Name and Title

(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: 2/25/2022

By: Jonna Dunne

Jonna Dunne - Trustee

Print Name and Title

(If Corporation, must be Secretary, Assistant Secretary, CFO, or Assistant Treasurer)

Date: 2/25/2022

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**

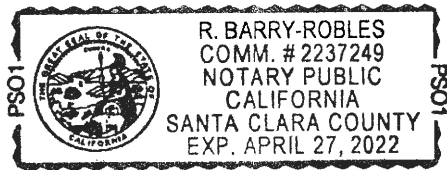
County of **Santa Clara**

On Feb 25 2022 before me, R. Barry Robles a Notary Public in and for said County and State, personally appeared Michael Dunne and Joanne Dunne proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

R. Barry Robles
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**

County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF JUNE 2021

MH 218072

6/18/2021

Engineers Cost Estimate
For Dunne Dakota

<u>Schedule I - In-Tract Public Improvements</u>							
1	Demo (e) dwy. approach and instal new driveway at Dakota Dr.	1	LS	\$	4,500.00	\$	4,500.00
2	Street finish grading	5,100	SF	\$	0.50	\$	2,550.00
3	AC pavement	3,425	SF	\$	6.00	\$	20,550.00
4	Sidewalk Incl. driveway approaches	1,062	SF	\$	6.00	\$	6,372.00
5	City std. curb and gutter	214	LF	\$	30.00	\$	6,420.00
6	City std. storm manhole	1	EA	\$	4,000.00	\$	4,000.00
7	18" RCP storm drain w/trench restoration	81	LF	\$	75.00	\$	6,075.00
8	City std. curb inlets	2	EA	\$	3,500.00	\$	7,000.00
9	12" RCP storm drain	36	LF	\$	50.00	\$	1,800.00
10	8" DIP water	73	LF	\$	50.00	\$	3,650.00
11	City std. fire hydrants	1	EA	\$	4,000.00	\$	4,000.00
12	City std. 1" water services	3	EA	\$	2,000.00	\$	6,000.00
13	8" PVC sanitary sewer	106	LF	\$	50.00	\$	5,300.00
14	City std. sanitary manhole	1	EA	\$	4,000.00	\$	4,000.00
15	City std. sanitary services	3	EA	\$	2,000.00	\$	6,000.00
16	Existing street light relocation	1	EA	\$	1,500.00	\$	1,500.00
17	City std. street light	1	EA	\$	3,000.00	\$	3,000.00
6	8" PVC	372	LF	\$	28.00	\$	10,416.00
7	10" RCP	32	LF	\$	45.00	\$	1,440.00
8	12" PVC	248	LF	\$	42.00	\$	10,416.00
9	12"x12" D.I.	8	EA	\$	1,800.00	\$	14,400.00
10	18"x18" D.I.	3	EA	\$	2,200.00	\$	6,600.00
11	City std. curb inlet	1	EA	\$	3,200.00	\$	3,200.00
12	Contech Barracuda Model S4 stormwater treatment unit	1	LS	\$	8,000.00	\$	8,000.00
13	Underground 48" perforated pipe for stormwater storage	5,151	CF	\$	5.00	\$	25,755.00

10% CONTINGENCY = \$17,294.40 = \$17,294.00

TOTAL COST= \$190,238.00

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

David Gittleson, Associate Engineer

APPROVED BY: City Manager

APPROVE AGREEMENT WITH MARK THOMAS AND COMPANY FOR CONSTRUCTION SUPPORT SERVICES ASSOCIATED WITH VALLEY WATER'S FLOOD CONTROL PROJECT

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a consultant agreement with Mark Thomas and Company for a not to exceed amount of \$246,000 for construction support services for City improvements associated with Valley Water's flood control project.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Supporting Our Youth, Seniors and Entire Community

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Morgan Hill 2035 General Plan

Storm Drain Master Plan

Water System Master Plan

REPORT NARRATIVE:

The City has supported Valley Water in efforts to complete the Upper Llagas Creek Flood Protection Project (commonly referred to PL566) for decades. Completion of this project will provide flood control protection along West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. Phase 1 of the Upper Llagas Creek Flood Protection Project south of Watsonville Road is nearing completion. Phase

2A of the project is currently under construction and Phase 2B is under design. Phase 2A will construct a tunnel through Nob Hill and a box culvert down Del Monte Avenue and Ciolino Avenue beginning at the Del Monte Avenue and West Dunne Avenue intersection. The project will also complete the last 600 feet of the Hale Extension Project, which includes the installation of a traffic signal at the Hale Avenue and West Main Avenue intersection.

Once Phase 2B of the Upper Llagas Creek Flood Protection Project has been completed, the project will be fully functional and provide the City with the needed flood control protection. At this point, Valley Water intends to fund the entirety of the primary elements of the project. However, the City has identified necessary additional project elements outside the scope of Valley Water's Project, particularly as it relates to improvements near Hale Avenue between Main and Wright Avenue. In this area, the Flood Control Project will create significant changes to associated roadway, utilities, and storm drain infrastructure. City staff believe it's prudent to fund the necessary improvements to ensure construction only occurs one time in this location. City-funded improvements will include improvements to the roadway and sidewalks, storm drain system, and overhead utilities associated with the flood control project. Additionally, the project will support storm drain improvements south of Ciolino Avenue to support proper connections, adjacent improvements, and to meet trash capture standards.

On June 26, 2019, the City Council Approved an Agreement with Woodard and Curran, Inc. for the design of City improvements associated with Valley Water's Flood Control Phase 2B Project in the amount of \$457,271. Mark Thomas and Company is the primary sub-consultant who designed the roadway improvements for the City. City staff is proposing a separate agreement with Mark Thomas and Company to provide construction support services in order to address design revisions and unforeseen conflicts as they arise in the field. A project of this size and complexity will require construction support in order to deliver the project on schedule and control costs. Included in the proposal are support services from T&C Transportation, Schaaf & Wheeler, and PMG.

Therefore, City staff recommends the attached separate contract for Mark Thomas and Company for a not to exceed amount of \$246,000 to provide construction support services.

COMMUNITY ENGAGEMENT:

Significant engagement has occurred over the last decade as it relates to the Hale Avenue Extension and the Llagas Creek Flood Protection Projects. Projects of this size require long term decisions be made for the future of Morgan Hill. The City's General Plan Updates and the Environmental Impact Report for this project both included significant engagement that set the framework for developing a funding strategy and the planning documents. The City's Hale Avenue Project webpage provides significant project background on the history of the project and its intended purpose and provides regular updates on the project. Valley Water also has a website for their Llagas Creek Flood Protection Project.

The City is currently working with Valley Water on a communication plan for the Hale Avenue section of the project and intends to have that completed by this Fall. Work on

the Hale Avenue section of the project is still multiple years away. Once the schedule has been more clearly defined, the City and Valley Water will begin extensive community outreach.

ALTERNATIVE ACTIONS:

The City Council could elect not to provide construction support services associated with the Flood Control Project. This is not recommended as it would be difficult to construct a large project without engineering support from the lead civil design firm and supporting sub-consultants.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has taken numerous actions over the last several decades in support of the Upper Llagas Creek Flood Protection Project.

On June 26, 2019, the City Council approved an agreement with Woodard and Curran, Inc. for design of City improvements associated with Valley Water's Flood Control Project. Under this contract, Mark Thomas and Company provided civil design services as a subconsultant.

FISCAL AND RESOURCE IMPACT:

Adequate funds are available for this work and being carried forward from the adopted FY 2018-19 through 2023-24 Capital Improvement Program's Llagas Flood Control Project (No. 417099), funded through the Storm Drain Impact Fund (303).

CEQA (California Environmental Quality Act):

Environmental Impact Report.

Valley Water, as the lead agency, certified an Environmental Impact Report in May 2014 for the Upper Llagas Creek Flood Control Project (State Clearinghouse No. 2012102032).

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS

Mark Thomas & Company, Inc.

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until August 1, 2023 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service**. The services to be performed by CONSULTANT shall be to provide design support services, design trash capture structure, and prepare utility easements as further described in **Exhibit A**.

4. **Compensation**. CONSULTANT shall be compensated as follows:

4.1. **Amount**. \$246,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Forty Six Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.

4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT

shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision, or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision, or order within five (5) days of satisfying the final judgment, decision, or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Mark Thomas & Company, Inc.
Mike Cooper P.E.
2290 North First Street, Suite 304
San Jose, CA 95131

Address of CITY is as follows:

Development Services Center	with a copy to:
David Gittleson P.E.	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence, or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the

INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Mark Thomas & Company, Inc.

City Attorney

By: _____

Donald A. Larkin
Print Name

Sasha Dansky, Vice President

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

Date: _____

Date: **February 11, 2022**

By: _____

James D. Howells CFO/COO

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

Date: **3/24/2022**

**EXHIBIT A
SCOPE OF SERVICES**

- 1. Revise improvement plans previously prepared under contract with Woodard and Current, Phase 2A Phase 2B.**
 - a. Revise title block and plan format to Valley Water plan set format.**
 - b. Revise pedestrian ramps as directed by the City in Phase 1A.**
 - c. Revise SD, curb alignment, street light and Rule 20 plans at Hale 2A conform per changes during construction of Phase 2A.**
 - d. Add Storm Drain Trash Capture Structure required by the City to be designed by Schaaf & Wheeler.**
 - e. Prepare Plats and Legal Descriptions for three Public Utility Easements required for Rule 20 Utility Undergrounding.**
- 2. Design Services During Construction including:**
 - a. Review of Submittals and RFI's.**
 - b. Attendance at weekly construction meetings.**
 - c. Coordination with PG&E and other utility companies.**

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

COST PROPOSAL FOR PROJECT SCOPE: Hale Ave - Phase 2A and Phase 2B (Final PS&E/DSDC)

 MARK THOMAS											Subconsultants				TOTAL COST	
		Principal	Sr. Project Manager	Design Engineer II	Design Engineer I	LAUD Project Manager	Landscape Architect	Landscape Designer I	Project Coordinator	Total Hours	Total MT Cost	Y&C Transportation	Schaaf & Wheeler	PMG		Sub Mark-Up 10%
	\$438	\$270	\$147	\$121	\$216	\$162	\$103	\$121								
1.0 HALE AVE -HALE 2A AND 2B																
1.1	Final (Bid) PS&E	4	20	90	20	24	48	168	4	378	\$53,550	5,000	-	5,000	\$1,000	\$64,550
1.2	Design Support During Construction Hale 2A		20	120	40	4	20		8	212	\$32,952	5,000		10,000	\$1,500	\$49,452
1.2	Design Support During Construction Hale 2B		40	80	20	16	20		8	184	\$32,644	5,000	14,850	5,000	\$2,485	\$59,979
1.3	Trash Capture Structure		4	8						12	\$2,256	-	40,670	-	\$4,067	\$46,993
1.4	PUE's									0	\$10,000	-	-	-	\$0	\$10,000
Subtotal Phase 1		4	84	298	80	44	88	168	20	786	\$131,402	\$15,000	\$55,520	\$20,000	\$9,052	\$230,974
2.0 CONTINGENCY																
2.1	Contingency									0	\$15,026	-	-	-	\$0	\$15,026
Subtotal Phase 2		0	0	0	0	0	0	0	0	0	\$15,026	\$0	\$0	\$0	\$0	\$15,026
TOTAL HOURS		4	84	298	80	44	88	168	20	786						
TOTAL COST		\$1,752	\$22,680	\$43,806	\$9,680	\$9,504	\$14,256	\$17,304	\$2,420		\$146,428	\$15,000	\$55,520	\$20,000	\$9,052	\$246,000

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2022*

HOURLY CHARGE RATE RANGES

Engineering Services

Intern	\$52 - \$90
Technician	\$72 - \$137
Planner I	\$85 - \$115
Design Engineer I	\$101 - \$144
Planner II	\$111 - \$137
Sr. Technician	\$124 - \$180
Design Engineer II	\$131 - \$169
Project Engineer	\$154 - \$191
Sr. Project Engineer	\$167 - \$227
Sr. Technical Engineer	\$167 - \$227
Project Manager	\$200 - \$256
Technical Lead	\$200 - \$256
Sr. Project Manager	\$232 - \$328
Sr. Technical Lead	\$222 - \$328
Engineering Manager	\$294 - \$378
Practice Area Leader	\$294 - \$378
Sr. Engineering Manager	\$327 - \$450
Principal	\$422 - \$500

Construction Management Services

Office Technician	\$65 - \$108
Office Engineer	\$115 - \$216
** Asst. Resident Engineer	\$164 - \$297
** Inspector - CM	\$164 - \$297
RE/Structural Representative	\$213 - \$360
Project Manager - CM	\$213 - \$324
Sr. Project Manager - CM	\$229 - \$360
Area Manager - CM	\$321 - \$468
Division Manager - CM	\$294 - \$360

District Management Services

** Inspector - Apprentice	\$69 - \$104
** Inspector	\$101 - \$140
** Sr. Inspector	\$128 - \$166
Assistant Sanitary Engineer	\$144 - \$184
Associate Sanitary Engineer	\$160 - \$216
Sanitary Project Engineer	\$160 - \$248
Sr. Sanitary Project Engineer	\$203 - \$295
Operations Manager	\$232 - \$328
Deputy District Manager	\$288 - \$353
District Manager-Engineer	\$321 - \$374

Grant Writing Services

Funding Specialist	\$158
Sr. Funding Specialist	\$263

Survey Services

Survey Intern	\$65 - \$112
Survey Technician	\$85 - \$151
Sr. Survey Technician	\$98 - \$186
Surveyor	\$118 - \$171
Sr. Surveyor	\$134 - \$198
Lead Survey Technician	\$131 - \$218
Project Surveyor	\$164 - \$216
Sr. Project Surveyor	\$180 - \$238
Survey Manager	\$191 - \$263
Sr. Survey Manager	\$238 - \$311
Survey Division Manager	\$284 - \$396
** Single Chief	\$157 - \$216
** Single Instrumentman	\$150 - \$191
** Single Chainman	\$132 - \$187
** Apprentice	\$71 - \$176
** 1 Person Field Crew	\$157 - \$216
** 2 Person Field Crew	\$290 - \$403
** 3 Person Field Crew	\$361 - \$580
Drone Pilot	\$220

Project Support/Coordination Services

Project Assistant	\$72 - \$108
Technical Writer	\$69 - \$115
Sr. Project Assistant	\$101 - \$137
Project Coordinator	\$98 - \$144
Graphic Designer	\$105 - \$162
Sr. Technical Writer	\$105 - \$176
Project Accountant	\$105 - \$162
Sr. Project Coordinator	\$131 - \$173
Sr. Graphic Designer	\$118 - \$198
Sr. Project Accountant	\$164 - \$223
Sr. Graphic Manager	\$147 - \$216

Urban Planning/Landscape Architecture Services

Landscape Intern	\$49 - \$90
Landscape Designer I	\$85 - \$115
Landscape Designer II	\$111 - \$137
Landscape Architect	\$115 - \$198
LAUD Division Manager	\$255 - \$284
LAUD Project Manager	\$193 - \$248
Sr. LAUD Project Manager	\$229 - \$281
Sr. LAUD Division Manager	\$268 - \$317

Special Services

Expert Witness	\$440
Strategic Consulting	\$440

Note: Additional Promotional Steps Exist within Various Rate Categories

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Delivery and Filing Fees	Cost Plus 5%	Outside Consultant Fees	Cost Plus 5%
Mileage	Per IRS Rate	Survey Field Expenses	Cost Plus 5%

* Rates subject to escalation with new hourly rate schedule as of July 1, 2022

** These charge rates are subject to Prevailing Wage laws and Union contract.

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

1171 Homestead Rd., Suite 255
Santa Clara, CA 95050-5485
408-246-4848
Fax 408-246-5624

Hourly Charge Rate Schedule

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

Classification	Rate/Hr	Classification	Rate/Hr
Principal Project Manager	\$240	Construction Manager	\$225
Senior Project Manager	\$225	Senior Resident Engineer	\$200
Senior Engineer	\$210	Senior Scientist	\$200
Associate Engineer	\$190	Associate Scientist	\$180
Assistant Engineer	\$175	Resident Engineer	\$180
Junior Engineer	\$165	Assistant Resident Engineer	\$165
Designer	\$155		
GIS Analyst	\$150		
Technician	\$150		
Engineering Trainee	\$120		

Litigation Charges

Work done in preparation for litigation and other very high level-of-expertise assignments is charged at \$350 per hour. Court or deposition time as an expert witness is charged at \$450 per hour.

Materials and Services

Subcontractors, special equipment, outside reproduction, data processing, computer services, etc., will be charged at 1.10 times cost.

Effective 1/1/21

EXHIBIT C
SCHEDULE OF PERFORMANCE

Professional design services are ongoing throughout the project with no deadlines or milestones.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Anthony Eulo, Program Administrator

APPROVED BY: City Manager

APPROVE AGREEMENT WITH SANTA CLARA COUNTY FOR WEED ABATEMENT PROGRAM ADMINISTRATION

RECOMMENDATION(S)

Authorize the City Manager to execute the agreement with Santa Clara County for weed abatement program services.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

REPORT NARRATIVE:

The purpose of this item is to present an agreement for the Council's review and consideration for weed abatement program services with Santa Clara County. The proposed agreement reflects current operational parameters and is not intended to result in any program impacts.

The City controls the growth of hazardous vegetation under the authority set out in Chapter 8.20 of the Morgan Hill Municipal Code and in Government Code Sections 39560 and following. The City has a contract with the Santa Clara County Consumer and Environmental Protection Agency which provides for abatement of the property if the property owner does not maintain the property as required. Under this agreement, the County administers nearly every aspect of the program in the field from customer communications, through abatement, and onto the imposition of program charges. This agreement was entered into in 1996 and has been amended six times over the years for various reasons.

The County wishes to modernize the agreement and the City and County have negotiated the attached agreement (Attachment1) for the Council's consideration. Staff recommends that the Council authorize the City Manager to execute the agreement.

COMMUNITY ENGAGEMENT:

Not Applicable - The recommended actions should not result in any changes to the program's operations and do not warrant any community engagement.

ALTERNATIVE ACTIONS:

N/A

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has historically taken actions related to weed and hazardous vegetation abatement two - three times annually as part of normal program operations. The last time the agreement with the County was amended was in 2016.

FISCAL AND RESOURCE IMPACT:

The Hazardous Vegetation Program is user fee supported. The per-lot assessment includes costs for doing the weed and brush control work plus overhead County costs to administer the program. The City does not retain any revenues for this activity. In addition to charges for failed inspections and actual abatement work, an annual inspection fee of \$91 is charged to all property owners in the Program. These fees are communicated to the property owners when they are annually notified about the Program. The actual total charge per parcel will vary based on whether or not the property owner abated their own weeds and whether or not they did so before the County's inspection, after the May 1 deadline. The County returns the actual proposed assessment list to the City in the summer for the assessment of program charges. Per the approach adopted by the Council, the program charges are discussed at a local prehearing with City staff and then imposed via an administrative hearing held by the County's Hearing Officer.

Item (Current County Fee)

Annual Inspection and Administration (\$91 annually)

Noncompliant Fee charged to properties not in compliance by the May 1 deadline (\$505)

Abatement Administration Fee charged to properties requiring County abatement (Contractor costs + \$858)

As the County has found that its revenues in the past were not always adequate to support the program, the Board of Supervisors has adopted a fee schedule designed to achieve full cost recovery and has shifted ultimate fiscal responsibility to participating jurisdictions. If the County determines that program-wide revenues in a given year were insufficient to cover program-wide costs, the jurisdictions participating in the Program will be billed for their prorata share of the shortfall. City staff does not currently anticipate receiving a bill within the upcoming fiscal year nor has funding been budgeted for this purpose.

Administering this Program is an activity in the Public Services Department work program and budget.

CEQA (California Environmental Quality Act):

Not a Project / Categorical Exemption

The recommended action is entirely administrative in nature and will not result in an impact to the environment. In addition, the program activities, when executed, are categorically exempt from environmental review under the California Environmental

Quality Act pursuant to California Code of Regulations, Title 21, Section 15304(i) (Minor Alterations to Land - Fuel Management Activities).

**AMENDED AND RESTATED AGREEMENT BETWEEN
THE COUNTY OF SANTA CLARA AND THE CITY OF
MORGAN HILL FOR WEED ABATEMENT SERVICES**

THIS AGREEMENT for the Abatement of Weeds by County of Santa Clara for the City of Morgan Hill (“AGREEMENT”) is made and entered into by and among the County of Santa Clara, a political subdivision of the State of California (“COUNTY”), and the City of Morgan Hill (“CITY”), a municipal corporation, effective this _____ (“EFFECTIVE DATE”). COUNTY and CITY may be collectively referred to herein as the “PARTIES” and individually as a “PARTY,” unless specifically identified otherwise.

RECITALS

WHEREAS, pursuant to California Government Code Sections 39501 et seq., the CITY has the authority to require and provide for the abatement of hazardous weeds on properties within its jurisdiction either by ordinance or pursuant to the procedures set forth in Article 2 of Chapter 13, Division 3 of Title 4 of the Government Code (commencing with Section 39560); and

WHEREAS, the CITY has duly established under Chapter 8.20 of the Morgan Hill Municipal Code a program to abate as a public nuisance hazardous weeds and brush situated on properties in the CITY; and

WHEREAS, under provisions of the California Health and Safety Code and its ordinances, the County also has duly established a program to enforce the abatement of hazardous weeds; and

WHEREAS, for reasons of efficiency, economy of operations and resources, and the mutual benefit of both parties, the CITY and the COUNTY desire the COUNTY to provide weed abatement services on properties in the CITY and to assist the CITY in administering certain parts of the CITY’S weed abatement program under Chapter 8.20 of the Morgan Hill Municipal Code, all in accordance with the terms and provisions set forth in this AGREEMENT; and

WHEREAS, the CITY may contract with COUNTY pursuant to Government Code section 51300 et seq. for the County’s performance of specified City functions; and

WHEREAS, the CITY and COUNTY entered into an “Agreement Between the City of Morgan Hill and County of Santa Clara for Weed Abatement Services” on January 4, 1996, as subsequently amended, which provided for the abatement of weeds by the COUNTY on behalf of the CITY; and

WHEREAS, the CITY and COUNTY desire to enter into an amended and restated AGREEMENT for the abatement of weeds to provide for the COUNTY to fully recover its service costs in administering the CITY’s weed abatement program and to make other clarifying changes.

NOW, THEREFORE, in consideration of their mutual promises, covenants, and agreements set forth in this AGREEMENT, the PARTIES hereby agree as follows:

SECTION 1. PURPOSE.

The purpose of this AGREEMENT is to promote efficiency and economy of operations and resources in the abatement of weeds in the CITY and COUNTY. To achieve this end, the CITY hereby delegates to the COUNTY and the COUNTY hereby accepts the responsibility of abating weeds on properties in the

CITY and administering the CITY's weed abatement program, set forth in Chapter 8.20 of the Morgan Hill Municipal Code ("PROGRAM"), subject to and in accordance with this AGREEMENT.

SECTION 2. TERM.

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall continue until the CITY or the COUNTY exercises the right to terminate this AGREEMENT pursuant to SECTION 18 of this AGREEMENT. This AGREEMENT supersedes and replaces the previous "Agreement Between the City of Morgan Hill and County of Santa Clara for Weed Abatement Services" and any and all subsequent amendments thereto.

SECTION 3. SCOPE OF SERVICES; PERFORMANCE SCHEDULE.

- A. The COUNTY shall perform weed abatement services on properties located in the CITY and administer the PROGRAM (collectively, the "SERVICES") in accordance with all applicable laws, rules, and regulations, including Chapter 8.20 of the Morgan Hill Municipal Code, and the provisions of this AGREEMENT, as they may be amended from time to time.
- B. The COUNTY shall perform these SERVICES in accordance with the schedule set forth in EXHIBIT "A," entitled SCHEDULE OF PERFORMANCE," attached hereto and incorporated herein by this reference, except that SERVICES on properties owned by the CITY shall be performed only upon written request by the CITY.
- C. The COUNTY shall attend all meetings of the City Council or meetings of other CITY committees, boards or hearing bodies at which weed abatement SERVICES, refunds of weed abatement charges, or other issues related to the SERVICES or this AGREEMENT are discussed, when the COUNTY's attendance is requested by the CITY.
- D. Upon request by the CITY, the COUNTY shall provide to the CITY for its review and comment the COUNTY's specifications and qualifications for contractors or other agents of the COUNTY obtained or hired by the COUNTY to perform weed abatement SERVICES on behalf of the COUNTY on properties located in the CITY.
- E. Upon request by the CITY, the COUNTY shall convene an administrative hearing for the purposes of considering the placement of special assessment liens on properties for weed abatement charges. The administrative hearing shall eliminate the need for CITY to convene a public hearing regarding the placement of special assessment liens on properties for weed abatement charges,

SECTION 4. NOTICES.

The COUNTY shall prepare copies of all notices required in connection with the SERVICES and cause such notices to be posted, published, mailed, and/or distributed as required by applicable law. The COUNTY shall provide copies of such notices to the CITY for prior review and approval as set forth on EXHIBIT A, entitled "SCHEDULE OF PERFORMANCE," or where not provided for in the SCHEDULE OF PERFORMANCE, at least thirty (30) days prior to the date that the COUNTY desires or is required to post, publish, mail, or otherwise distribute the material.

SECTION 5. HEARINGS.

The City Council, or the committee, board, or other hearing body designated by the City Council to

conduct hearings in connection with the PROGRAM, retains the responsibility to conduct public hearings and adopt appropriate resolutions and orders in accordance with Chapter 8.20 of the Morgan Hill Municipal Code and this AGREEMENT, including its EXHIBIT A, "SCHEDULE OF PERFORMANCE." Per Section 3.E of this agreement, the CITY may delegate its responsibility to convene a public hearing for the consideration of the placement of assessment liens to the COUNTY for an administrative hearing held for the same purposes.

SECTION 6. STATEMENT OF COSTS.

- A. In December of each calendar year, the COUNTY shall deliver to the CITY a schedule of all reasonable and necessary fees and costs approved and adopted by the COUNTY Board of Supervisors for administrative, enforcement, and abatement services to be provided under this AGREEMENT ("FEE SCHEDULE"). Such fees and costs shall not exceed the reasonable costs of providing such services. All fees and costs in said FEE SCHEDULE shall be recoverable by the COUNTY pursuant to this SECTION and SECTION 7 of this AGREEMENT unless within sixty (60) days of the COUNTY's delivery of said schedule to the CITY, the City Council of the CITY expressly declines to accept any fee or cost in said FEE SCHEDULE. In the event the City Council does decline to accept any fee or cost in said FEE SCHEDULE, the COUNTY shall be relieved of any and all obligations to provide any SERVICES under this AGREEMENT for the weed abatement season associated with the disapproved fee or cost.
- B. At least ten (10) days prior to the date of the public hearing before the CITY or the administrative hearing before the COUNTY regarding the placement of special assessment liens on properties for weed abatement charges, which meeting usually occurs before August 10 of each year, the COUNTY shall render to the CITY a report of weed abatement SERVICES performed by the COUNTY on properties within the CITY during the preceding twelve (12) months ("REPORT"). The REPORT shall include, without limitation, all of the following information:
1. The total number of weed abatements performed in the CITY;
 2. The total number of properties upon which weed abatements were performed in the CITY;
 3. A statement of all the costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed on properties located in the CITY, itemized with the aggregate administrative, enforcement, and abatement expenses and costs incurred by the COUNTY on each property, which shall be in accord with the fees and costs in the FEE SCHEDULE submitted by the COUNTY to the CITY pursuant to Section 6.A of this AGREEMENT;
 4. A description of all the properties in the CITY, by address and Assessor's Parcel Number, on which weed abatement SERVICES were performed; and
 5. Verification of the truthfulness, accuracy, and completeness of the REPORT, executed by the COUNTY employee charged with the supervision of the SERVICES.

SECTION 7. PAYMENT FOR SERVICES.

- A. Except as provided in SECTIONS 7.B and 7.C, the COUNTY shall be reimbursed for SERVICES provided under this AGREEMENT by remittances from property owners for weed abatement and

related costs and expenses for SERVICES performed on their respective lots and parcels of land. The City Council, after hearing, shall require the costs and expenses of SERVICES performed for the current year to be entered as a special assessment on bills for taxes levied against the respective lots and parcels of land. Such special assessments shall be liens on the respective properties until paid to the COUNTY.

- B.** Within 60 days of receipt of an invoice for costs and expenses incurred on CITY-owned parcels, the CITY shall reimburse the COUNTY for the costs of such SERVICES. Charges for SERVICES on parcels owned by the CITY shall equal the cost of SERVICES performed by the weed abatement contractor on the CITY-owned parcels plus 20% of said contractor service costs.
- C.** If the amounts submitted for collection from property owners in Santa Clara County for provision of weed abatement services by the COUNTY are inadequate to reimburse the COUNTY for its fixed costs of administering countywide services during the preceding twelve (12) months, the COUNTY may make a demand to the CITY for its proportional share of the shortfall (less amounts offset by accrued program revenues) by September 1 of each year. The CITY agrees to pay the COUNTY for the CITY's proportional share of any such shortfall within sixty (60) days of demand by the COUNTY. The CITY'S proportional share shall be calculated based on the percentage of parcels on which weed abatement services were performed which are located in the CITY. The COUNTY's demand for payment under this SECTION 7.C. shall be accompanied by a statement of the total shortfall in the COUNTY's reimbursement for fixed program costs for the preceding twelve (12) months and of any accrued program revenues available to offset the shortfall, as well as a statement of the CITY's proportional share of that shortfall (minus offsets by accrued program revenues).
- D.** Except as provided in SECTIONS 7.B and 7.C., the CITY has and assumes no liability for the payment of salary, wages, benefits, pensions, compensation or any other amounts to officers, agents, employees or contractors of COUNTY performing SERVICES hereunder.

SECTION 8. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by PARTY shall not be shared pro rata but, instead, COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the PARTIES hereto shall fully indemnify and hold each of the other PARTIES, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No PARTY, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other PARTIES under this AGREEMENT.

SECTION 9. RECORDS.

Each officer or department of the COUNTY performing any SERVICES pursuant to this AGREEMENT shall keep itemized and detailed work or job records covering the costs of services performed under this AGREEMENT. COUNTY shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, following the performance of any SERVICES.

SECTION 10. ENTIRE AGREEMENT.

This AGREEMENT and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the PARTIES. It incorporates and supersedes all the agreements, covenants and understandings between the PARTIES concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this AGREEMENT. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the PARTIES or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

SECTION 11. AMENDMENTS.

This AGREEMENT may only be amended by a written instrument signed by the PARTIES.

SECTION 12. GOVERNING LAW, VENUE.

This AGREEMENT has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this AGREEMENT shall be in the County of Santa Clara.

SECTION 13. ASSIGNMENT.

No assignment of this AGREEMENT or of the rights and obligations hereunder shall be valid without the prior written consent of the other PARTY.

SECTION 14. WAIVER.

No delay or failure to require performance of any provision of this AGREEMENT shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a PARTY shall be in writing and shall apply to the specific instance expressly stated.

SECTION 15. COMPLIANCE WITH LAWS.

COUNTY and CITY shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies in the performance of services under this AGREEMENT.

SECTION 16. THIRD PARTY BENEFICIARIES.

This AGREEMENT does not, and is not intended to, confer any rights or remedies upon any person or entity other than the PARTIES.

SECTION 17. INDEPENDENT CONTRACTORS.

The COUNTY and the CITY agree that this AGREEMENT is by and between independent contractors. This AGREEMENT is not intended, nor shall it be construed, to create a relationship of agent, servant, employee, partnership, joint venture, or association between the COUNTY and the CITY.

SECTION 18. TERMINATION

- A. The COUNTY or the CITY may terminate this AGREEMENT as of the first day of September of any year by giving notice to the other PARTY not less than thirty (30) days prior to the date of termination.
- B. The City Manager, or his or her delegate or designee, is authorized to terminate this AGREEMENT on behalf of the CITY.
- C. The COUNTY's Agricultural Commissioner, or his or her delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the COUNTY.

SECTION 19. NOTICES

Except as otherwise stated, any notice required or permitted by this AGREEMENT will be in writing and delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of delivery; (c) by email, telecopy, or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, upon confirmation of delivery. The PARTIES may deliver notice as follows:

TO COUNTY:

County of Santa Clara Consumer and Environmental Protection Agency
1553 Berger Drive #200, San Jose, CA 95112
Fax: 408-286-2460
Email: SCCweedabatement@cep.sccgov.org
Attn: Weed Abatement Manager

TO CITY:

City Manager
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

With a copy to:

City Clerk
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

SECTION 20. INTERPRETATION.

The captions preceding the sections of this AGREEMENT have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this AGREEMENT. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters contained herein. This AGREEMENT shall be interpreted to achieve the intents and purposes of the PARTIES, without any presumption against the PARTY responsible for drafting any part of this AGREEMENT. Provisions in this AGREEMENT relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a

bank or COUNTY holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. The Recitals are incorporated and made a part of this AGREEMENT.

SECTION 21. COUNTERPARTS.

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

SECTION 22. CONTRACT EXECUTION

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

THE PARTIES TO THIS AGREEMENT hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives.

COUNTY OF SANTA CLARA

Jeffrey V. Smith
County Executive

Dated: _____

CITY OF MORGAN HILL

Christina Turner
Title: City Manager

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO FORM:

Willie Nguyen
Deputy County Counsel

Donald A. Larkin
City Attorney

EXHIBIT “A”

SCHEDULE OF PERFORMANCE

The COUNTY shall perform the SERVICES as follows:

On or before November 15 of each year:	The County shall request a resolution from the CITY declaring that certain weeds located on properties in the CITY constitute a public nuisance and setting a date for a public hearing.
Before the date of the CITY governing body meeting declaring weeds a nuisance subject to abatement:	The COUNTY shall provide to the CITY for review and processing by the CITY a complete Master List of properties, including Assessor’s Parcel Numbers, located in the CITY upon which hazardous weeds are growing or are likely to grow.
No later than ten (10) days prior to the day of the CITY hearing on objections to the notices to destroy weeds:	The COUNTY shall post notices to destroy weeds at property or mail notices to destroy weeds to property owners regarding the CITY hearing, as directed by resolution of the City Council.
No later than ten (10) days prior to the day of the CITY hearing on objections to the notices to destroy weeds:	The COUNTY shall deliver to the CITY a FEE SCHEDULE listing all reasonable and necessary fees and costs approved and adopted by the COUNTY Board of Supervisors for administrative, enforcement, and abatement services to be provided under this AGREEMENT in accordance with SECTION 6.A of this AGREEMENT.
	The City Council shall hold a public hearing to hear objections to the notices to destroy weeds. By resolution at the conclusion of the hearing, the City Council shall allow or overrule any or all objections to proposed weed abatement.
After adoption of CITY resolution ordering the abatement of weeds on certain properties as public nuisances:	The COUNTY shall proceed with weed abatement work on properties located in the CITY in accordance with the resolution adopted by the City Council and this AGREEMENT.
At least ten (10) days prior to the date of the public hearing before the CITY’s governing body or the COUNTY’s administrative hearing	Pursuant to SECTION 6.B of this AGREEMENT, the COUNTY shall provide to the CITY for review and processing a complete and accurate REPORT

regarding the placement of special assessment liens on properties for weed abatement charges:	of costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed in the CITY during the preceding twelve (12) months under this AGREEMENT.
On or before August 10 of each year:	The COUNTY shall obtain a resolution from the CITY to confirm the REPORT and order the weed abatement costs to be a special assessment against the affected properties.
On or before August 10 of each year:	If requested by CITY, the COUNTY shall convene an administrative hearing for the purposes of considering the placement of special assessment liens on properties for weed abatement charges.
At least ten (10) days prior to the CITY public hearing or COUNTY administrative hearing to hear objections to the REPORT:	The CITY shall mail a notice to all property owners identified in the REPORT, which provides the date, time, and place of the hearing on the REPORT at which person may appear and object to the REPORT.
Upon adoption of resolution by the City Council confirming or amending REPORT and ordering weed abatement costs become a special assessment lien against the affected properties:	The COUNTY shall comply with the resolution.
Upon request by CITY	The COUNTY shall perform weed abatement SERVICES on CITY-owned lots and parcels.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

APPROVE INNOVATIVE TRANSIT AGREEMENTS

RECOMMENDATION(S)

1. Authorize the City Manager to execute and administer a grant agreement for innovative transit funding with the Valley Transportation Authority; and
2. Authorize the City Manager to execute and administer a consultant services agreement with Rideco, Inc. for the provision of transit services within the City of Morgan Hill; and
3. Adopt a budget resolution appropriating \$60,000 for Fiscal Year 2021-22 to fund the initiation of the program.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land
Supporting our Youth, Seniors, and Entire Community
Advancing Regional Initiatives

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

In October 2020, the City Council authorized the City to partner with RideCo, Inc to apply for the Innovative Transit Service Models Grant Program sponsored by the Santa Clara Valley Transportation Authority (VTA). In the Spring of 2021, the City was informed that it had been awarded grant funding of \$1,372,400 to run a three-year program in Morgan Hill. Since that time, the City has worked on the service agreement with RideCo and the funding agreement with the VTA. Due to the complexity of negotiating both agreements, it has taken longer than expected to finalize the program. Unfortunately, during this time period, inflationary costs associated with managing the program have increased for RideCo's transportation provider and the original funding

was not adequate to fund a three-year program. City staff have worked with VTA and RideCo and developed an alternate two-year program for which available grant funding will support. The agreements associated with the program are now ready and attached to this item for review.

Should the Council approve the associated agreements, the City of Morgan Hill, in partnership with RideCo, will operate an on-demand microtransit system that operates citywide. Riders will be able to book trips from any one of a hundred virtual stops to any other, and stops will be placed at the Morgan Hill Transit Center, the Morgan Hill Caltrain Station, and existing VTA bus stops in order to facilitate multimodal trips in and out of the City. Additionally, virtual stops will be placed at highly visited amenities within the City, including shopping centers, City Recreation Centers and other locations.

Service hours of 14 hours per day (7am-9pm Monday through Saturday) will be available for residents and visitors to utilize the service. Riders anywhere in the City will be able to walk to the nearest virtual stop in under 5 minutes, whereas many of our residents currently would have to walk upwards of 50 minutes to reach the nearest available transit. The service will operate using three fully ADA-accessible minivans and will be available to serve lower-income residents and elderly/disabled residents who do not have the option of driving on short local trips. The service will also support commuters who take Caltrain or the 68 Bus to and from work each day, by providing first and last mile service, enabling these regional transportation stops to be reached without use of a car. Fares for the service have been outlined through the grant award and include a \$2.50 regular fare and a reduced \$1 fare for disabled, low income, and youth riders.

RideCo is a technology company that contracts with private sector transit companies to provide low-density area mobility, first and last mile service and paratransit programs. With their experience and success in this area, City staff believe that RideCo will be an optimal partner, with RideCo's technology and transportation system automated booking, scheduling, and creation of vehicle itineraries through an app-based system. Additionally, RideCo will operate a call center to allow residents to alternatively book by phone, including Spanish speakers.

The grant program is for a two-year pilot program. As the program progresses and if successful, City staff will be working with the VTA to look at alternatives for sustaining the program.

COMMUNITY ENGAGEMENT:

Consult/Inform

No specific outreach on the development of the program for the Innovative Transit Grant. However, residents were consulted on ideas for program delivery through the Community Based Transportation Plan outreach occurring in 2019. One of the concerns heard repeatedly was the limited bus service and public transportation moving within the City limits and the distance traveled to reach regional public transportation. The grant application was specifically catered to address this deficiency. With the planned service beginning this summer, the City staff will be working with RideCo and VTA on development of a marketing plan for the service, which will be followed by intense

outreach to residents.

ALTERNATIVE ACTIONS:

The City Council could choose not to move forward with the innovative transit program or provide staff with other alternative direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 21, 2020, the City authorized the City Manager to execute a Memorandum of Understanding with RideCo, Inc. for the application and implementation of the Innovative Transit Grant Program with the Valley Transportation Authority.

FISCAL AND RESOURCE IMPACT:

VTA grant funding totals \$1,372,400 for the two-year program and the program is anticipated to generate \$175,500 in fares over the two-year period. The City's out of pocket matching costs after this revenue is anticipated to be approximately \$80,000 for the two-year period and will be funded by the General Fund. With the exception of a \$60,000 appropriation for initial start-up costs, the remainder of the funds will be budgeted in the Fiscal Year 22/23 and 23/24 Budget. The initial start-up costs will cover the initial marketing and promotion of the program and for any initial service provided prior to July 1.

CEQA (California Environmental Quality Act):

General Rule Exemption

The Innovative Transit Grant Program is sponsored by the Valley Transportation because it has the potential to reduce greenhouse gas emissions by supporting first and last-mile connections to the existing transit network, increasing transit ridership and reducing single-occupancy vehicle travel. Increasing the ability for Morgan Hill residents to reduce the use of single-occupancy vehicles provides for no possibility of adverse affects on the environment and therefore meets the General Rule Exemption.

**FUNDING AGREEMENT
BETWEEN
CITY OF MORGAN HILL
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
RIDE MORGAN HILL**

THIS AGREEMENT ("AGREEMENT") is between the CITY OF MORGAN HILL, referred to herein as "CITY", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA". Hereinafter, CITY and VTA may be individually referred to as "PARTY" or collectively referred to as "PARTIES".

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("2016 MEASURE B") for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program ("PROGRAM") and adopted the 2016 Measure B Program Category Guidelines; and
5. Whereas, the PROGRAM includes a Transit Operations program category ("TRANSIT OPS CATEGORY") to increase ridership, improve efficiency, enhance mobility services for seniors and disabled, and improve affordability for the underserved and vulnerable constituencies in the county; and
6. Whereas, the TRANSIT OPS CATEGORY consists of three sub-categories, including an Innovative Transit Service Models Competitive Grant Program ("INNOVATIVE TRANSIT PROGRAM"); and
7. Whereas, on December 5, 2019 the VTA Board of Directors adopted the INNOVATIVE TRANSIT PROGRAM criteria; and
8. Whereas, on October 5, 2020 the Fiscal Year ("FY") 2020 (July 1, 2020 to June 30, 2021) to Fiscal Year 2021 (July 1, 2021 to June 30, 2022) INNOVATIVE TRANSIT PROGRAM call for projects was released; and
9. Whereas, on March 4, 2021 the VTA Board of Directors approved the project list for the INNOVATIVE TRANSIT PROGRAM; and

10. Whereas, Ride Morgan Hill is an eligible project on the VTA Board of Directors approved project list for the INNOVATIVE TRANSIT PROGRAM; and
11. Whereas, VTA and CITY desire to specify herein the terms and conditions under which the INNOVATIVE TRANSIT PROGRAM funds will be administered to CITY by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

For the Ride Morgan Hill project, the CITY will provide, manage, and coordinate the operation of the transportation services (the "PROJECT") to public during the term of this AGREEMENT. The PROJECT should be provided in accordance with the service area and parameters, attached hereto and incorporated herein as Attachment A.

2. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the later of two years after the Effective Date or completion of the PROJECT. The term of the PROJECT may conclude earlier through cancellation of the PROJECT or termination of this AGREEMENT pursuant to the terms herein.

3. COST OF PROJECT

Total cost of the PROJECT ("TOTAL PROJECT COST") is estimated not to exceed \$1,717,600. TOTAL PROJECT COST means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

4. FINANCIAL CONTRIBUTION TO COST OF PROJECT

- a. VTA's Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$1,372,400 of INNOVATIVE TRANSIT PROGRAM funds to be used by CITY for completion of the PROJECT. All funds will be available on a reimbursement basis only, pursuant to the terms and conditions set forth herein.
- b. CITY's Financial Contribution for PROJECT. CITY's financial contribution for PROJECT is TOTAL PROJECT COST less VTA's Financial Contribution for PROJECT. CITY must not seek reimbursement from VTA toward the PROJECT prior to Effective Date of this AGREEMENT.
- c. Additional Funds. Any additional funds required to complete the PROJECT will be CITY's sole responsibility.

- d. PROJECT Savings. If the PROJECT is anticipated to be delivered under budget, INNOVATIVE TRANSIT PROGRAM funds will be reduced in proportion to CITY's Financial Contribution to PROJECT.
- e. In all circumstances, regardless of the TOTAL PROJECT COST, CITY is responsible for contributing a minimum of 20% of the TOTAL PROJECT COST. If CITY receives over \$274,700 in PROJECT fare recovery by the end of the AGREEMENT term, CITY must use any fare recovery over \$274,000 to extend PROJECT as long as funds are available, for up to 12 months.

5. ELIGIBLE USE OF FUNDS

Only ELIGIBLE COSTS (as defined herein) directly related to the PROJECT costs incurred by CITY after Effective Date, will be eligible for reimbursement.

VTA will only reimburse CITY for actual costs directly related to the PROJECT ("ELIGIBLE COSTS"). ELIGIBLE COSTS are costs that: (i) are directly related to the planning, operation, and administration of the PROJECT; and (ii) were incurred in compliance with all applicable 2016 Measure B Program requirements.

6. CITY'S ROLE

- a. Tasks. CITY will be the sponsor and implementing agency for the PROJECT. In its role as sponsor and implementing agency under this AGREEMENT, CITY must perform and/or be responsible for the following tasks:
 - i. Serve as project manager to provide, manage, and coordinate the operation of PROJECT in accordance with service parameters in Attachment A.
 - ii. Perform all procurement actions necessary for PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.
 - iii. Begin PROJECT service operation within one (1) year of the Effective Date of this AGREEMENT.
 - iv. Obtain all necessary permits and certifications for PROJECT.
 - v. Keep VTA apprised of potential changes that may affect PROJECT operations.
 - vi. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.

b. Other PROJECT Management Duties. CITY must:

- i. Submit a project management plan (“PMP”) to VTA in accordance with the PMP template in Attachment B within thirty (30) business days of the Effective Date of this AGREEMENT. The PMP must be in writing and must include information regarding service scope, staffing plan, cost, schedule, and contracting plan.
- ii. Actively monitor actual PROJECT expenditures to ensure that the 2016 MEASURE B funds are used to pay only for ELIGIBLE COSTS (as defined in Section 5).
- iii. Provide VTA with written quarterly progress reports (“PROGRESS REPORTS”) (as supplied by VTA to CITY) on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, PROJECT status, monthly PROJECT performance such as ridership, total miles, total hours, fare collection and any other information VTA may require for inclusion in the progress updates.
- iv. Submit the PROJECT’s final report (“FINAL REPORT”) to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT costs, total ridership, total revenue miles and total revenue hours, fare collection, along with any other information VTA may require for inclusion in the FINAL REPORT.
- v. CITY will make staff available to present on the PROJECT at VTA committees as needed.

7. VTA’S ROLE

VTA will review PROJECT’s PMP, PROGRESS REPORTS and FINAL REPORT, and provide oversight of the PROJECT to ensure PROJECT compliance with the 2016 Measure B Program Category Guidelines.

8. CITY’S OBLIGATIONS

CITY must:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable INNOVATIVE TRANSIT PROGRAM expenditures as described above in Section 5. ELIGIBLE USE OF FUNDS.
- b. Begin request for reimbursement of ELIGIBLE COSTS (see Section 5. ELIGIBLE USE OF FUNDS) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors’ invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. CITY shall make

such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.

- e. Submit invoices to VTA at vta.accounts payable@vta.org, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 5. ELIGIBLE USE OF FUNDS). CITY must submit invoices within one year of the date CITY incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

9. VTA'S OBLIGATIONS

VTA will remit the amount due to the CITY under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

10. MODIFICATION TO PROJECT SERVICE

CITY must inform VTA, in writing, of any minor modifications to PROJECT service, including, but not limited to removal of any proposed pick up/drop off locations and schedule adjustments within a one-hour window that do not impact frequency or service or service area changes.

CITY must inform VTA, in writing, of potential major modifications to PROJECT, including but not limited to extended or reduced service hours of more than 30 minutes and changes in service areas.

11. INDEMNIFICATION

Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to CITY's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. Pursuant to California Government Code §895.4, CITY must fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to CITY's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to CITY under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.

12. INSURANCE

At all times during this AGREEMENT, CITY must comply with the insurance requirements and specifications of Attachment C attached hereto, and herein incorporated by reference.

13. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between the CITY and a third party for purposes related in any way to the subject matter of this AGREEMENT ("Third Party Contract"), the CITY must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable required in the Third Party Contract and (ii) indemnified parties in any indemnity provision contained in the Third Party Contract.

14. PUBLIC WORKS

If the CITY awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "Public Works Contract") in connection with this AGREEMENT, the CITY must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, the CITY must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

15. COMPLIANCE WITH APPLICABLE LAW

In the execution of the PROJECT and performance of its responsibilities set forth herein, CITY and any contractor or subcontractors must comply with all applicable requirements of state, federal, and local law. CITY and any contractor or subcontractors must comply with any applicable laws, regulations, and/or guidelines relating to COVID-19, including, but not limited to, Centers for Disease Control and Prevention (CDC) guidelines and Santa Clara County Department of Public Health orders and/or guidelines.

16. COMPLIANCE WITH WAGE AND HOUR LAWS

CITY and any contractor or subcontractors they employ to perform work of the PROJECT under this AGREEMENT, must 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, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

17. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this AGREEMENT, CITY must comply with, and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the TRANSIT OPS CATEGORY as identified in Attachment D, attached hereto.

18. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to other PARTY. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination as set forth herein, CITY must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination solely for ELIGIBLE COSTS incurred by CITY prior to the effective date of the termination (see Section 5. ELIGIBLE USE OF FUNDS).

19. AUDIT AND RECORDS

a. CITY must maintain, and shall require their contractors to maintain, in accordance with

generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.

- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, VTA shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

20. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

VTA:
Marcella Rensi
Deputy Director, Grants & Allocations
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

CITY:
Chris Ghione
Public Services Director
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA, 95037
Email: chris.ghione@morganhill.ca.gov

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

21. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.
- b. **Construction and Interpretation of Agreement.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not

be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.

- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both of the PARTIES hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the PARTIES hereto.
- d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and CITY relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
- e. **Representation of Authority.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a party to this AGREEMENT.
- f. **No Waiver.** The failure of either PARTY to insist upon the strict performance of any of the terms, covenants and conditions of this AGREEMENT will not be deemed a waiver of any right or remedy that either PARTY may have, and will not be deemed a waiver of either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this AGREEMENT or its performance, or (ii) the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation shall give written notice thereof to the other PARTY. The PARTIES shall promptly meet in an effort to resolve the issues raised. If the PARTIES fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the PARTIES to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this AGREEMENT (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and CITY shall negotiate an equitable adjustment in the provisions this AGREEMENT with a view toward effecting the purpose of this AGREEMENT, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between CITY and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this AGREEMENT must be commenced and prosecuted in the courts of Santa Clara County, California. CITY agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
- k. **Attribution to VTA.** CITY must include attribution to VTA that indicates PROJECT was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded

in part or in whole by 2016 Measure B Funds. Acceptable forms of attribution include 2016 Measure B's branding on project-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to CITY.

- l. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The PARTIES and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- m. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- n. **Warranty of Authority to Execute Agreement.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a PARTY to this AGREEMENT.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below (“Effective Date”).

***Santa Clara Valley
Transportation Authority***

City of Morgan Hill

Carolyn M. Gonot
General Manager/CEO

Christina Turner
City Manager

Date

Date

Approved as to Form:

Approved as to Form:

Shannon Smyth-Mendoza
Senior Assistant Counsel

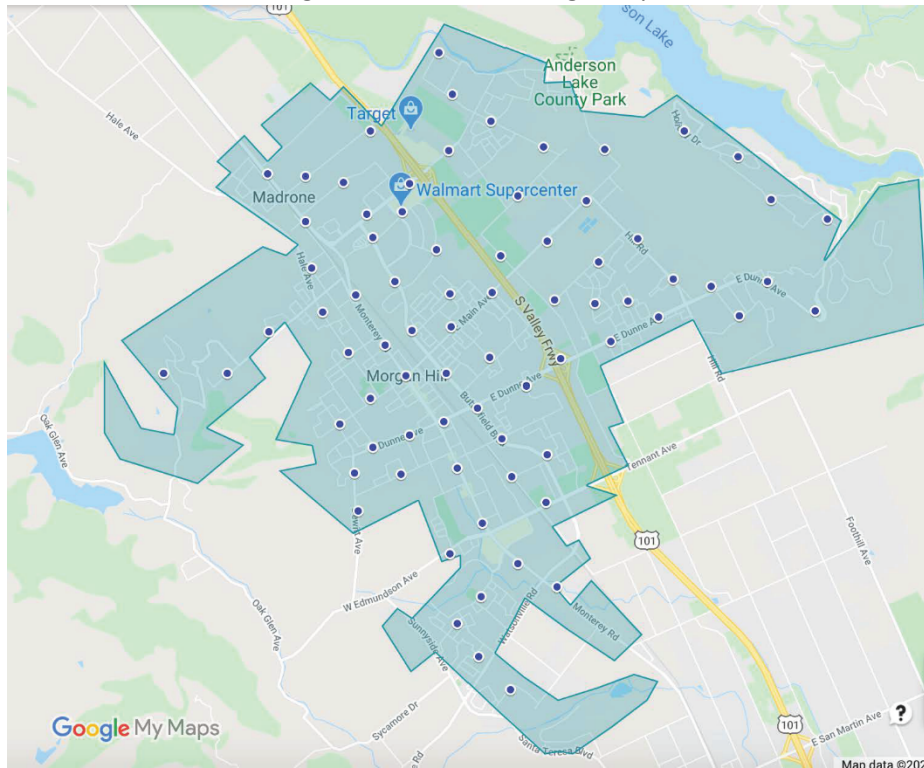
Donald Larkin
City Attorney

ATTACHMENT A

Service Parameters

1. Service Span: Service runs Monday through Saturday between 7:00 AM to 9:00 PM (14 hours per day).
2. Service Coverage: City limit of Morgan Hill, as shown in Figure 1.
3. Routes: Service is on-demand micro-transit service that has many virtual stops across the city limit of Morgan Hill. Vehicles may pick up passengers from anywhere within the service coverage area and may take the shortest route to the next stop on the ever-updating vehicle itinerary.
4. Infrastructure: Service operates with three fully ADA-accessible vehicles. Service vehicle accommodates bicycles on board.
5. Fares: \$2.5 regular fares and \$1 for disabled, low-income, or youth population.
6. Online App: Passengers can book trips through mobile and web applications. All service data is available through a real-time dashboard. The software allows riders to pay in a variety of ways including cash, credit/debit cards, and any applicable VTA fare media. The online app offers seat selection options for mobility-limited riders/wheelchair users as well as standard seat types for ambulatory passengers.

Figure 1: Service Coverage Map



ATTACHMENT B

Project Management Plan Template

Submitted by: Contact for this PMP.

First submittal date:

Revision version & date:

PART A – PROJECT INFORMATION

1. Project Name:
2. Project Sponsor:
3. Partnering Agencies: <List all project partners>
4. Date
5. Project Description:
 - a. Service type
 - b. Service area, route & stops
 - c. Service span
 - d. Vehicles
<Note any accommodation of wheelchair users and bikes>
 - e. Scheduling

<Note any technology, website, online applications for the user and operators>

f. Fare collection

<Describe how you plan to collect fares>

6. Project team

(Identify project staff/team/partner roles and responsibilities as applicable)

a. Project Manager

<The PM must be a Member Agency staff. Please identify email/phone and VTA will contact the PM for any project or PMP questions.>

b. Procurement manager

c. Operations

d. Coordinator

e. Safety and Training

f. Marketing/outreach

g. Others

Attach a project organization chart.

PART B – FINANCIAL MANAGEMENT

1. Total project cost estimate:

a. Capital cost

b. Operating cost

2. Source of Funds

(Identify 2016 Measure B fund and non-2016 Measure B fund sources)

PART C – PROJECT IMPLEMENTATION & MANAGEMENT

1. Project schedule

<Modify the following schedule table as needed.>

Project Milestone	Month/Year
Release RFP for service provider/operator	
Develop contract	
Award/Execute contract	
Recruit project staff	
Conduct project outreach and marketing	
Start-up operation (if applicable)	
Full operation	

2. Training and qualifications of project staff and operators

3. Agreements

<Identify any existing/anticipated agreements and provide date of execution & expiration>

ATTACHMENT C

Insurance Requirements

CITY'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CITY CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.

INSURANCE

Without limiting City's obligation to indemnify and hold harmless VTA, City must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by City, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in Contract price. In the event of any material change in the Contract Scope of Services, VTA reserves the right to change the insurance requirements set forth herein. City must furnish complete copies of all insurance policies, within three (3) business days of any request for such by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001), including Products/Completed Operations Liability. General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employer's Liability insurance.

- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of City's services under this Agreement. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. Cyber Liability (including privacy liability and network security coverage).

2. Minimum Limits of Insurance

City must maintain limits no less than:

- a. General Liability \$10,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Automobile Liability (including umbrella/excess liability): \$10,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- c. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.
- d. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying professional liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- e. Cyber Liability: \$1,000,000 per occurrence.

3. Self-Insured Retention

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$250,000 must be declared to and approved by VTA. If City is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$250,000, City must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess City's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require City to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by City. City may request execution of a nondisclosure agreement prior to submission of financial reports.

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy must be in effect as of the date of this Agreement and the retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, City must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the contract period.
4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of City, including VTA's general supervision of City; products and completed operations of City and its subcontractors; premises owned, occupied or used by City; or automobiles owned, leased, hired or borrowed by City. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. City's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. Products/Completed Operations Liability coverage must be maintained for a minimum of two (2) years following completion of this Contract.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by City and its subcontractors for VTA.
- b. City's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to City's insurance. City's insurance must not seek contribution from VTA's insurance program.

3. Other insurance provisions

- a. The Certificate must disclose the actual amounts of all deductibles or self-insured retentions.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the rights to require City to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

E. Certificates of Insurance

City must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. City must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

It is a condition precedent to award of this Contract that all insurance certificates and endorsements be received and approved by VTA before Contract execution. No work may be performed until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If City receives notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, City must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

F. Maintenance of Insurance

If City fails to maintain insurance as required herein, VTA, at its option, may suspend payment for work performed and/or may order City to suspend work at City's expense until a new policy of insurance is in effect.

ATTACHMENT D

Transit Operations Program Guidelines

(Adopted by VTA Board of Directors on October 5, 2017)

Definition from Resolution No. 2016.06.17

The revenue from this program category will provide additional funds specifically for bus operations to serve vulnerable, underserved, and transit dependent populations throughout the county. The goals of the program category are to increase ridership, improve efficiency, enhance mobility services for seniors and disabled, and improve affordability for the underserved and vulnerable constituencies in the county. As VTA considers modifications to bus operations and routes to improve ridership and efficiencies, these funds may also be utilized to maintain and expand service to the most underserved and vulnerable populations. The funds may be used to increase core bus route service frequencies, extending hours of operations to early morning, evenings and weekends to improve mobility, safe access and affordability to residents that rely on bus service for critical transportation mobility needs. Attachment D describes the list of Candidate Projects and Programs.

Total Funding

- \$500 million in 2017 dollars.

Distribution

- VTA anticipates that allocations will be programmed based upon the total allocation for the Transit Operations Program contained in 2016 Measure B divided by the number of years in the measure.
- Future allocations will vary depending upon the amount of sales tax revenue collected.
- The Transit Operations Program Area funding will be allocated for the following four programs identified in 2016 Measure B Attachment D:
 - Enhance Frequent Core Bus Network by increasing core bus route service frequencies, and expanding or adding additional evening, late night and weekend service.
 - Expand mobility services and affordable fare programs for seniors, disabled, students and low-income riders.
 - Support new/innovative transit service models to address first/last mile connections and transit services for the transit dependent, vulnerable populations and paratransit users that is safe and accountable.
 - Improve amenities at bus stops to increase safety, security and access with lighting and access improvements.

The proposed allocations for the four categories are as follows:

2016 Measure B Transit Operations Program Area

Area	Funding Allocation (Proposed)
Frequent Core Bus Network	73%
Innovative Mobility Models & Programs	8%
Fare Programs	15%
Bus Stop Amenities	4%

Implementation

For FY18 & FY19 Budget Allocation:

- The Enhanced Frequent Core Bus Network will directly fund VTA's core bus network of services increasing core bus route service frequencies, and expanding or adding evening, late night and weekend service.
- The Fare Programs will fund the Transit Assistance Program (TAP) and reduced fares for youth.
- The Innovative Transit Models Program will support goals to address first/last mile connections. Strategies may include competitive grant programs to help fund services operated by local jurisdictions, utilize excess paratransit capacity, and other programs that encourage investments in local service.
- The Bus Stop Amenities Program will directly fund improvements at VTA's bus stops. The bus stop improvements will be prioritized based on VTA's Transit Passenger Environment Plan and ongoing maintenance needs.

Six to 12 months into the implementation of the Next Network, staff will have ridership data available to evaluate potential increases to the ridership hours where we see higher demand for service. To meet our commitment as expressed in 2016 Measure B and in collaboration with the public, VTA will make increased investments in service hours in the system focusing on those areas where we see the greatest demand by transit dependent populations.

VTA will consider the potential for further reducing the fares for seniors and youth with a requested goal of free rides.

Criteria

- Only projects and programs currently listed on 2016 Measure B Attachment D are eligible.

Requirements

- For potential competitive grants for the Innovative Transit Models Program:
 - Reporting requirements will be detailed in agreements executed with VTA for project funding.
 - All applications must include a delivery schedule.
 - Funds will be available on a reimbursement basis.
- VTA Complete Streets reporting requirements will be required for all capital

improvements projects.

- All collateral material will be required to display a 2016 Measure B logo.

SERVICE AGREEMENT

RideCo US Inc.

THIS AGREEMENT is entered into and becomes effective on _____ (“Effective Date”), by and between the **CITY OF MORGAN HILL**, a municipal corporation, (“CITY”), and **RideCo US, Inc.**, a Delaware corporation (“RideCo” or “SERVICE PROVIDER”) duly authorized to do business in California and will remain so during the term of this Agreement, hereinafter may referred to individually as a Party and collectively as “Parties.” In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

RECITALS

- A. With the assistance of RideCo, CITY applied for and received a transportation grant for implementing a technology-driven transportation service within the CITY.
- B. CITY has or is concurrently entering into a Grant Agreement with the Santa Clara Valley Transportation Authority (VTA), and RideCo is familiar with the terms of the Grant Agreement.
- C. RideCo is a technology provider for on-demand transit services.
- D. RideCo intends to subcontract with a transportation operations provider to provide drivers and vehicles to transport community members throughout the community (“**Transportation Operations Provider**”).
- E. CITY wishes to implement a technology-driven transportation service and RideCo is willing to provide access to RideCo’s Dynamic Transit System (as defined herein) on a license basis and to coordinate the provision and delivery of transportation services on the terms set out herein (the “**Project**”).

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on April 6, 2022.

2. **Term of Agreement.** This Agreement shall cover services rendered for **2 years from the launch date to the passengers** (the “**Initial Term**”) at which time SERVICE PROVIDER’S services shall be deemed completed. The City Manager is authorized to extend the term of this Agreement for an additional 36 months, in 12 month increments at CITY’S option, subject to the Parties’ agreement of applicable terms including the appropriate Subscription and Services Fee. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be to implement and operate a technology-driven transportation service as further described in **Exhibit A**.

- 3.1. **License Grant:** Subject to the terms of this Agreement, RideCo grants CITY a limited, revocable, non-exclusive, and non-transferable license to access and use the Dynamic Transit System in the geographic area identified in Exhibit A. The Distributed Software may only be used in combination with the Approved Equipment/Third Party Software. RideCo or its agents, resellers or distributors may release from time to time to CITY at no additional charge during the term of this Agreement, software bug fixes and patches

and such releases shall be considered “Software” hereunder and subject to the terms of this Agreement unless otherwise specified by RideCo.

3.2. Restrictions & End User Terms:

- a) Restrictions. Except as otherwise expressly permitted in this Agreement, CITY shall not, and shall not encourage any third party to: (i) customize, modify or create any derivative works of the Services; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software (except to the extent applicable laws specifically prohibit such restriction); (iii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Distributed Software; (iv) publish any results of benchmark tests run on the Software to a third party without RideCo’s prior written consent; (v) redistribute, encumber, sell, rent, lease, sub-license or otherwise transfer rights to the Services; (vi) copy, reproduce, distribute, modify or in any other manner duplicate the Software, in whole or in part and CITY may not copy any written materials (except for training materials and for internal use) accompanying any portion of the Services unless specifically authorized in writing to do so by RideCo. CITY shall not access the Services in order to build a competitive product or service or to copy any ideas, features, functions or graphics of the Dynamic Transit System or the Documentation. For greater certainty, CITY will not be in breach of this Section 3.2 if CITY independently develops a competing product or service without use or reference to RideCo’s Confidential Information.
- b) End Users. RideCo and its subcontractors shall ensure that end users agree to appropriate terms of service and privacy policy in accordance with requirements of applicable law before using the Services. RideCo will inform end users that the transportation services are provided on behalf of the CITY by the Transportation Operations Provider

4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:

- 4.1. All amounts are in United States dollars and exclude taxes.
- 4.2. **Amount.** **\$1,539,099.** Total compensation to SERVICE PROVIDER under this Agreement during the Initial Term set forth in Section 2 above shall not exceed one million five hundred thirty-nine thousand and ninety-nine dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended annual term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the Initial Term of this Agreement.
- 4.3. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. For services billed on an hourly rate, the minimum unit of

billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.**

- 5.1. **City Manager's Authority.** The City Manager of CITY is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.
- 5.2. **Termination without Cause.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving ninety (90) days' written notice or less under urgent circumstances, to the other Party.
- 5.3. **Termination with Cause.** Either Party may terminate this Agreement with written notice if the other party: (i) fails to correct a material breach of its obligations under this Agreement within thirty (30) days after receipt by such other party of written notification from the notifying party of such material breach; (ii) ceases to carry on business as a going concern; or (iii) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy reorganization or insolvency proceedings are instituted by or against the other party. SERVICE PROVIDER may also terminate this Agreement in accordance with Section 20 below.
- 5.4. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.
- 5.5. **Effect of Termination.** Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents. SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. CITY shall destroy all copies of the Software (and cease all access to the same), destroy or delete all accompanying Documentation and Confidential Information of RideCo and shall provide confirmation of having done so within one (1) week of the effective date of termination.

6. **Performance of Work.**

- 6.1. SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth herein. CITY'S City Manager is authorized on behalf of CITY to modify the timeframes set forth on the schedule within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a

CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY'S City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

- 6.2. RideCo Warranties. RideCo represents and warrants to CITY that RideCo will perform its duties and obligations hereunder in a careful, diligent, professional, proper, efficient, and business-like manner. RideCo further represents and warrants that:

- (6) The Services do not infringe any patent, copyright or trademark or violate the trade secret or other proprietary rights of any third party;
- (ii) RideCo owns or has exclusive or non-exclusive rights in all patents, copyrights, trademarks, trade secrets and other proprietary rights in and to the Services necessary to grant the licenses herein; and
- (iii) RideCo possesses the legal right and authority to execute and perform this Agreement.

- 6.3 Disclaimer of Implied Warranties: Except as set forth in this Agreement, there are no other warranties or conditions of any kind, including without limitation, the warranties that the Software Services are free of defects, merchantable or fit for a particular purpose. Specifically, SERVICE PROVIDER makes no representation or warranty regarding the merchantability, fitness for a particular purpose or functionality of the Software Services. All Approved Equipment/Third Party Software is subject to the warranty of its respective manufacturer and no warranty whatsoever is provided by SERVICE PROVIDER. SERVICE PROVIDER makes no guarantee of the performance, accuracy, and results of the Software Services. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Software Services is authorized under this Agreement except under this disclaimer.

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

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence.
- 7.1.2. **Automobile Liability.** SERVICE PROVIDER'S Transportation Operations Provider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability)

against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of two million dollars (\$2,000,000.00) combined single limit for any one accident or occurrence. Transportation Operations Provider shall provide coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limit no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

7.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of one million dollars (\$1,000,000.00) for any one accident or occurrence. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

7.1.4. Pollution (Environmental) Liability. Intentionally deleted.

7.1.5. Professional Liability.

7.1.5.1. If the performance of SERVICE PROVIDER'S work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of one million dollars (\$1,000,000.00) each claim. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of SERVICE PROVIDER'S work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of one million dollars (\$1,000,000.00) each claim.

7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of SERVICE PROVIDER'S work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of two hundred thousand dollars (\$200,000.00) each claim.

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

7.2.1. General Liability and Automobile Liability.

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.1.4. Santa Clara Valley Transportation Authority (VTA) be named as Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance.

7.2.2. Workers Compensation.

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

7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by an insurer who must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

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

Certificate Holder address:

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

7.5 SERVICE PROVIDER must ensure that each Transportation Operations Provider maintains the same insurance coverage required under this Section 7, with respect to its provision of services, including those requirements related to the additional insureds and waiver of subrogation.

7.5.1 SERVICE PROVIDER shall contractually require Transportation Operations Provider to add CITY as an additional insured to such policies; and (ii) add CITY as a third-party beneficiary to the contract between RideCo and Transportation Operations Provider to enable CITY, in its sole discretion, to bring any transportation, vehicular or driver-related claims in connection with the Project directly against Transportation Operations Provider.

7.5.2 SERVICE PROVIDER must confirm that each Transportation Operations Provider has complied with requirements as outlined herein. The insurance requirements for Transportation Operations Provider do not replace or limit the SERVICE PROVIDER'S insurance obligations.

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

9. **Compliance with Law.**

- 9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The SERVICE PROVIDER and its officers, employees, agents, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- 9.2. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.
- 9.3 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.
- 9.4 Prior Judgments against SERVICE PROVIDER and/or its subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.
- 9.5 Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SERVICE PROVIDER learns of such a judgment, decision, or order that was not previously disclosed, SERVICE PROVIDER shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. SERVICE PROVIDER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final

judgment, decision, or order within five (5) days of satisfying the final judgment, decision, or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

- 9.6 City's Right to Withhold Payment: Where SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, CITY reserves the right to withhold payment to SERVICE PROVIDER until such judgment, decision or order has been satisfied in full.
- 9.7 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.
- 9.8 Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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

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

11.1. *Confidential Information.* As used herein, "**Confidential Information**" means all confidential information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**") that is designated in writing as confidential or ought to be considered confidential based on the nature of the information and the circumstances of disclosure. For greater certainty, the Documentation and the functionality of the Software are all Confidential Information of RideCo. Personal Data of any user of the service is Confidential Information. Confidential Information shall not include any information that the Receiving Party can demonstrate by its written records: (i) was known to it prior to its disclosure hereunder by the Disclosing Party; (ii) is or becomes known through no wrongful act of the Receiving Party; (iii) has been rightfully received from a third party without restriction on disclosure and without breach by such third party of a non-disclosure obligation; (iv) is independently developed by the Receiving Party; or (v) has been approved for release by the Disclosing Party's prior written authorization.

11.2. *Obligations.* Neither party shall use any Confidential Information of the other party except as necessary to exercise its rights or perform its obligations under this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own Confidential Information of like nature. Neither party shall disclose the other party's Confidential Information to any person or entity other than its officers, employees, service partners, consultants and legal advisors who need access to such Confidential Information in order to effect the intent of the Agreement and who have entered into written confidentiality agreements with it at least as restrictive as those in this Section. Upon any termination of this Agreement, the

receiving party will promptly return to the disclosing party or destroy, at the disclosing party's option, all of the disclosing party's Confidential Information.

- 11.3. ***Injunctive Relief.*** Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party may not have an adequate remedy in money or damages if any unauthorized use or disclosure of its Confidential Information occurs or is threatened. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

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

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

Address of SERVICE PROVIDER is as follows:

RideCo US, Inc.
ATTN: VP, Customer Success & Operations
10880 Wilshire Boulevard, Suite 1101
Los Angeles, CA 90024

Address of CITY is as follows:

Chris Ghione, Public Services Director
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

- 16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 5 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 5-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the

request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 16.3. RideCo Intellectual Property. RideCo retains all right, title and interest in and to the Dynamic Transit System including all Documentation, all intellectual property rights in the Software and all copies and derivative works thereof. CITY acknowledges and agrees that the Dynamic Transit System, and all intellectual property rights therein (including without limitation, copyrights, patents, trade secrets, trademarks, moral rights and other intellectual property rights, in and to the Dynamic Transit System and all modifications, changes, enhancements, or additions thereto) and all intellectual property rights relating to the provision of professional services, feedback, technical support, maintenance and other support if any, (collectively, "RideCo IP"), are owned or licensed by RideCo. To the extent CITY acquires rights in the RideCo IP, CITY assigns such rights to RideCo and waives any moral rights it may have in the RideCo IP to and in favor of RideCo. Nothing in this Agreement gives CITY any right, title or interest in, to or under any of the Dynamic Transit System or any intellectual property rights therein (including without limitation patent rights) or arising pursuant to professional services, product feedback, technical support, and other support.
- 16.4. Operational Data. As between CITY and RideCo, CITY will own the Operational Data from the Project and CITY acknowledges and agrees that RideCo is not responsible for any liability arising out of the collection, retention, use, operation, and disclosure by CITY of Operational Data. Subject to the personal data protection undertakings set out in Schedule "C", CITY hereby grants to RideCo for the duration of this Agreement a worldwide and royalty-free right and license to access and use the Operational Data for the sole purposes of: (i) providing the Services to CITY, (ii) assessing the performance of the Services; and (iii) creating System Log Data (as defined in Section 16.6 below). CITY is not entitled to receive any compensation or re-imbursement of any kind from RideCo for use of said Operational Data. Except as otherwise expressly permitted in this Agreement, RideCo does not claim any right, title or interest in the Operational Data.
- 16.5. Personal Data Protection Undertaking. RideCo hereby agrees and undertakes to comply with the personal data protection undertakings set out in Schedule "C".
- 16.6. System Log Data. "System Log Data" means data derived by SERVICE PROVIDER from Operational Data which has been aggregated with other SERVICE PROVIDER customer data, and which has been de-identified information and, in a manner, so that it contains no Personal Data and does not, and cannot reasonably be used, to identify CITY or any individual. For greater certainty, System Log does not identify a specific passenger or driver, nor does it contain any Confidential Information of CITY.
- 16.7. Suggestions. RideCo shall have a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into its products, services, and business any suggestions, enhancement requests, recommendations or other feedback provided by CITY relating to the operation of the Services.
- 16.8. Reservation of Rights. Except for the rights and licenses granted in this Agreement, CITY acknowledges and agrees that RideCo owns and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and all other intellectual property rights therein) in and to the technology used to provide the Services) and all related RideCo IP and RideCo grants CITY no further licenses of any kind hereunder, whether by implication, estoppel or otherwise. CITY acknowledges that only RideCo shall have the right to maintain, enhance or

otherwise modify the Dynamic Transit System.

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

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

19. **No Assignment.** Subject to Section 20 below, neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Subcontractors:** RideCo may sub-contract the performance of the transportation services provided by and/or managed by to the Transportation Operations Provider to third party service providers. In the event that the Transportation Operations Provider's subcontract is terminated in accordance with its terms, RideCo will use commercially reasonable efforts to find a suitable replacement acceptable to CITY. CITY shall not unreasonably withhold, condition, or delay consent to the same. In the event that RideCo cannot find a suitable replacement, or the replacement is not approved by CITY, this Agreement will terminate automatically on written notice from RideCo to the CITY. Termination under this Section 20 will be without liability, obligation, or penalty for any reason. For greater certainty, RideCo will be solely responsible for payment of its subcontractors, including the Transportation Operations Provider.

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

22. **Defense and Indemnification; Liability.**

22.1. **Defense and Indemnification.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, and Satna Clara Valley Transportation Authority (VTA) ("INDEMNITEES") from and against any and all third party claims and any documented liabilities, expenses, liens, or damage awards, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses directly incurred by the INDEMNITEES which arise out of, pertain to, or relate to the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM"). As conditions for the foregoing commitments by SERVICE PROVIDER, CITY will promptly notify SERVICE PROVIDER of any CLAIM and provide reasonable assistance to SERVICE PROVIDER with respect to handling the CLAIM. SERVICE PROVIDER will have the sole right to defend, negotiate and settle any such CLAIM.

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

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

22.4. Right to Offset. CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER'S failure to pay CITY promptly any indemnification arising under this Section 22 and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

22.6. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO THE CITY FOR ANY LOST PROFITS OR FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS), IN CONNECTION WITH THE SOFTWARE SERVICES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SERVICE PROVIDER'S cumulative liability to the CITY or any other party for damages for any cause whatsoever arising in relation to the Software Services will be limited to no more than the Subscription and Services Fees paid under this Agreement in the six (6) month period prior to the applicable claim.

For the avoidance of doubt, Transportation Operations Provider's liability in respect of any transportation, vehicular or driver-related claims brought against the CITY by third parties will not be subject to the foregoing caps and exclusions and will instead be capped at the levels of the required insurance.

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

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

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

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

27. **Publicity**. RideCo shall be entitled to disclose and publicize in the form of customer lists and on its web site and marketing materials, the identity of the CITY as a client of RideCo, provided that the use of any trademark/logo of CITY shall be subject to CITY'S prior written consent.

28. **Non-Solicitation**. During the term of this Agreement and for one (1) year thereafter, the CITY shall not, directly, or indirectly, in any manner whatsoever, including, without limitation, either individually or in partnership, jointly or in conjunction with any other person, or as employee, principal, agent, director or shareholder, hire any employees of RideCo or induce or attempt to induce any such employees to leave their employment.

29. **Force Majeure**: Neither party shall be liable for any delay or failure in performance due to such acts of God, earthquake, labor disputes, strikes, shortages of supplies, riots, war, fire, epidemics, pandemics, or transportation difficulties, to the extent not in control of such party. The obligations and rights of the excused party shall be extended on a week-to-week basis, provided, however, that a delay of thirty (30) days shall entitle the other party to terminate this Agreement without liability.

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

31. **Representations and Warranties by Each Party**. Each party represents, warrants to the other party that: (i) it is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) it has all requisite power and authority and approvals to execute, deliver and perform its obligations under this Agreement; (iii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by it and any necessary third parties; (iv) it will comply with all applicable laws in connection with this Agreement.

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[Signatures on Next Page]

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

RideCo US Inc.

City Attorney

CEO



Donald A. Larkin

Prem Gururajan

Print Name

Print Name

Date: _____

Date: _____ April 6, 2022

EXHIBIT A SCOPE OF SERVICES

Zone: Morgan Hill, CA

Service model: City-wide OnDemand program using virtual stops within the zone.

Vehicles: Approximately Two (2) 6-seat Dodge Caravan (or equivalent) minivans and One (1) ADA-accessible 4-seat Dodge Caravan (or equivalent) minivans. The actual number of vehicles scheduled to be in revenue operation will vary subject by day of week, time of day and passenger demand. RideCo will ensure each vehicle is equipped with a bicycle rack that holds at least two (2) bikes.

Service Hours: 7:00 am - 9:00 pm, Monday-Saturday

Vehicle Revenue Hours: Approximately 26,208 vehicle revenue hours for the initial Project Term with a minimum of 30 vehicle revenue hours per day and minimum 302 annual operating days. CITY and RideCo may, if mutually agreed upon, add additional hours of service, service area, target rider market, or vehicles in accordance with the terms of the Agreement.

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner.
2. RideCo shall coordinate with CITY to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential subsidization).
3. RideCo shall ensure the adequate and complete initial training of operators, dispatchers, operations manager(s), and CITY staff that are involved in the operation or monitoring of the service. CITY may request additional training sessions for CITY staff under Professional Services fee of \$120 per hour.
4. RideCo will ensure that the functions listed in Schedule "D" Software Functional Requirements are met.
5. RideCo and CITY will agree upon data reporting expectations and shall include daily ridership information, virtual stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with CITY to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a standard daily KPI report, including data mutually agreed upon by the CITY and RideCo. Custom reporting is out of scope but may be requested under Professional Services fee of \$120 per hour.
8. RideCo will review data dashboard with the CITY and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
9. RideCo will periodically provide CITY with any recommendations for changes in virtual stops, service hours, or promotions to ensure meeting project goals.
10. RideCo will provide CITY with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to city staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. CITY will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise the city in the marketing of the service to passengers, including providing examples of successful marketing materials from other client efforts.
3. RideCo will configure and manage referral and promotional codes throughout the duration of the Project.
4. All other marketing – including but not limited to program branding, website design and development, print materials, digital ads, digital communications by others.

Vehicles and Drivers:

1. RideCo, through its subcontractor Transportation Operations Provider, will be responsible for the acquisition, storage, fueling, and maintenance of the appropriate vehicles. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 300,000 miles during any time during the initial Project Term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers will serve as proof of age. Vehicles must meet all EPA standards. All wheelchair-accessible vehicles must meet ADA (49 CFR Parts 37 and 38) standards.
2. RideCo, through its Transportation Operations Provider, will provide current California licensed drivers that meet the following criteria:
 - a. No more than two moving violations in the past three (3) years
 - b. No at fault accidents or major violations (Driving Under the Influence or Driving While Intoxicated) in the past seven (7) years.
 - c. Speak, write, and read English fluently.
 - d. Successfully pass background checks annually which include social security number verification, no sex offender, no government restricted lists, no county, state and federal court records, no criminal misdemeanor convictions within the past three (3) years related to the possession, sale or use of illegal drugs, and verification of past living history or other available public records.
3. RideCo, through its Transportation Operations Provider, will regularly screen drivers for legal and illegal substances via an independent medical agency in accordance with the U.S. Department of Transportation regulations.
4. RideCo, through its Transportation Operations Provider, will train drivers focused on customer service including the ability to:
 - a. Handle inquiries and/or complaints
 - b. Develop rapport and the ability to respond to an individual's needs.
 - c. How to handle doubt, misunderstandings, and objections.
5. RideCo, through its Transportation Operations Provider, will provide road driver training to include:
 - a. Vehicle Familiarization Training
 - b. Tech Applications
 - c. Vehicle Inspection Training
 - d. Onsite Local Knowledge and Culture Training
 - e. On Demand Route Training
 - f. Maintenance Protocol
 - g. Parking and Storage Locations
 - h. Lost & Found Protocol

Customer Service:

1. RideCo, through its subcontractor Transportation Operations Provider, will maintain customer service access through an operations center, during hours of revenue service operations. For those who are not able to access the service via the software application, customers shall be able to call, during hours of revenue service operations, and book rides over the telephone and receive customer support including information about lost items.

1. INTERPRETATION

- 1.01 Definitions:** In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings:

“Distributed Software” means the RideCo passenger mobile application and driver mobile applications, and any other software tools or components made available by RideCo for download under this Agreement;

“Dynamic Transit System” means RideCo’s proprietary software programs including optimization algorithms, data analysis algorithms, web application, passenger mobile application, driver mobile application, dashboards, graphical user interface, all documentation and end user manuals;

“Documentation” means any and all of the following that are provided by RideCo, in any form of media, in connection with the Agreement (a) know-how, proprietary information and methodologies, document templates and best practice guides; (b) scripts and data analysis tools; (c) user manuals and guides, that explain or facilitate the use of the Software, including all updates thereto; and (d) data sheets, specifications and other technical documents and materials in respect of the Software;

“Maintenance and Support Services” means the maintenance and support services provided by RideCo as further described in Section 2 of this Exhibit;

“Personal Data” has the meaning given in Schedule “C”;

“Platform Software” means collectively the RideCo Dynamic Transit System (DTS) cloud platform technology and underlying software, including its dynamic routing technologies, ride-sharing technologies, algorithms, implementation architectures, operations dashboards, user interfaces, and application programming interfaces (“APIs”) to third party systems;

“Operational Data” means data recorded by the Distributed Software and presented through export on the operations dashboard end-user interface, where such data is provided by CITY or passengers or partner drivers of CITY. For greater certainty, Operational Data includes passenger ride booking information (origin, destination, time, payment, status) and driver action data (location data, pickup/drop-off times) however Operational Data does not include system log data or any other data that is not provided as an export to an end user through the operations dashboard end-user interface;

“Software Services” means collectively the provision of access to the Software, Documentation, associated APIs and interfaces to third party systems provided by RideCo under this Agreement and Maintenance and Support Services all as further described in the schedules hereto;

“Services” means collectively the Software Services together with the vehicular transportation services provided by the Transportation Operations Provider;

“Software” means collectively the Distributed Software, Platform Software, and any interfaces between the two;

“Software Enhancements” means an update or upgrade to the Distributed Software or to the Platform Software, which update or upgrade may include new product features that change the character or structure of the software or its functional use or operation and will usually form part of an automatic update to the Software without any action being required from Customer;

“Subscription and Services Fee” means the fees set forth in Exhibit B; and

“Transportation Operations Provider” means the subcontractor that is contracted by RideCo to provide drivers and vehicles for the Project.

1.01 RideCo shall:

- a) provide and supply all necessary hardware and software to run the Project with the Dynamic Transit System;
- b) contract with a Transportation Operations Provider, acceptable to the CITY, that will supply drivers and vehicles that meet applicable bylaws, insurance requirements, and regulations of the CITY;
 - a. Transportation Operations Provider shall partner with RideCo to establish physical locations for virtual stops throughout the CITY.
 - i. Transportation Operations Provider and RideCo shall make a good faith effort to provide virtual stops within 5 minutes walking distance to 95% of Morgan Hill residents.
 - ii. CITY shall have the right to deny use of any virtual location based on public safety concerns or other reasons in the CITY’S best interest.
 - b. Transportation Operations Provider shall be required to follow all applicable laws during provision of service.
 - c. Transportation Operations Provider shall be required to provide a full background check to all drivers responsible for providing the service.
 - d. Transportation Operations Provider is required to maintain all vehicles in a safe operating condition.
- c) perform logistics activities involved in running the Services, including without limitation:
 - i. the coordination of the dispatch, selection, scheduling, training and itinerary management for the Transportation Operations Provider, vehicles and drivers in relation to the Project;
 - ii. managing hours of operation and operating parameters as defined herein;
 - iii. communicating itinerary information with passengers and drivers (digitally via the website, SMS, or the mobile app);
 - iv. collecting fare payments (**“Fare Payments”**) from passengers of the ride-share service, via credit card (if applicable). The Fare Payments shall be reported in the Invoice (as such term is defined in Section 4.2); and
 - v. utilizing the Float (as defined herein) to pay costs involved in the operation of drivers and vehicles on the Project,
- d) advise CITY of the assistance it requires from CITY in connection with the completion of its responsibilities under this Agreement;
- e) support the CITY in marketing and promoting the Services;

- f) coordinate with the CITY on providing the CITY with customer service and dispute related issues; and
- g) complete the Project in a professional and competent manner by persons qualified and skilled in their occupations and the roles that they are required to perform hereunder, and in accordance with: (a) this Agreement; (b) industry standards; and (c) any requirements of law, as applicable.

2. MAINTENANCE AND SUPPORT SERVICES

2.01 Maintenance Services: RideCo shall provide the following maintenance services to CITY:

- a) Supply or deploy corrections to the Software as required to correct errors, defects, malfunctions, and deficiencies, if any, in the Software; and
- b) Supply or deploy improvements, extensions, upgrades, enhancements, and other changes to the Software developed from time to time by RideCo.

2.02 Support Services: In response to a support request from CITY, RideCo shall provide the following support services to CITY as per the priority levels, response times and procedures specified in Schedule "B" to be provided remotely:

- a) Clarification of software functionality
- b) Adjustments to software configuration; and
- c) Advice on the use and results of the Services;

2.03 Services Outside Scope of Maintenance and Support: The Maintenance and Support Services to be provided under this Agreement do not include:

- a) Correction of errors or defects caused by operation of the Software in a manner other than specified in the Software documentation;
- b) Rectification of errors caused by incorrect use of the Software;
- c) Correction of errors caused in whole or in part by the use of computer programs other than the Software unless the use of such programs has been approved by RideCo in writing; or
- d) Diagnosis or rectification of faults not associated with the Software.

2.04 Professional Services: CITY may request at any time and from time to time that RideCo provide to CITY any other professional services or Software modifications which are within the scope of its business and which are not provided for herein and which are not covered by the Subscription and Services Fee. RideCo shall evaluate such requests and may provide the CITY an estimate of the cost of such professional services. In no event shall RideCo be obligated to provide professional services not agreed in writing with CITY.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

- 1.01 **Float:** CITY shall provide a pre-payment deposit ("**Float**") to RideCo for the costs for the ride-share drivers with the amount of the Float specified below ("**Float Amount**") until changed by notice in writing from CITY to RideCo. RideCo shall have no right to apply the Float Amount to any amounts owing to it with respect to any Invoice unless and until it receives approval in writing from CITY of such Invoice. Upon termination or expiry of this Agreement, the Float shall be applied to the final approved Invoice payable to RideCo pursuant to this Agreement and the balance of any remaining amount of the Float shall be paid by RideCo to CITY within thirty (30) days following the expiry or termination of this Agreement. RideCo shall keep detailed records and documents with respect to the Transportation Operations Provider costs, operating hours, and Float Amount and shall provide copies of all documents as may be requested from time to time by CITY relating thereto.
- 1.02 **Taxes:** All charges and fees provided for in this Agreement are exclusive of and do not include any foreign or domestic governmental taxes or charges of any kind imposed by any federal, state, provincial or local government on the transactions contemplated by this Agreement, including without limitation excise, sales, use, property, license, value-added taxes, goods and services, harmonized, franchise, withholding or similar taxes, customs or other import duties or other taxes, tariffs or duties other than taxes that are imposed based on the net income of RideCo. Any such taxes that are imposed on the net income of RideCo shall be the sole responsibility of RideCo. CITY will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of RideCo or its employees or subcontractors.
2. **Subscription and Services Fee:** \$58.65 per vehicle revenue hour
- 2.01 **Any change in requirements such as an increase in insurance coverage may result in an increase in per vehicle revenue hour Subscription and Services Fee.**
3. **Marketing Budget:** \$0 – Marketing budget to be managed by the City of Morgan Hill
4. **Budget for the initial Project Term:** \$ 1,539,099
5. **Float Amount:** \$25,000

SCHEDULE "B"
RIDECO SERVICE LEVEL AGREEMENT

1. APPROVED EQUIPMENT / THIRD PARTY SOFTWARE

Driver Mobile App Requirements:

- Android Device running the most recent Android OS major version release and one previous major version release with Google Play Services
- GPS Enabled Phone
- High speed (4G recommended) data plan with a minimum of 2GB/month
- Minimum screen resolution 800x480
- Minimum recommended CPU: Mid-to-High range performance CPU based on ARMv8-A 64-bit Architecture
- 2GB RAM
- 1GB internal storage

Passenger Mobile App Requirements:

- iPhone running the most recent iOS major version release and two previous major version releases, or Android device running the most recent Android OS major version release and two previous major version releases with Google Play Services
- Minimum screen resolution 800x480
- Minimum recommended CPU: dual-core 1.5GHz
- 1GB RAM
- 200MB internal storage

Browser requirements for operations dashboards:

- Internet Explorer 11
- Google Chrome (the most recent major version release and one previous major version release)
- Firefox (the most recent major version release and one previous major version release)
- Safari (the most recent major version release and one previous major version release)

2. AVAILABILITY, PRIORITY LEVELS, RESPONSE TIMES AND PROCEDURES

Availability:

(a) RideCo shall make the Service Offerings Available, as measured over the course of each calendar month during the term and any additional periods during which RideCo does or is required to provide Service Offerings (each such calendar month, a “**Service Period**”), at least 99.9% of the time (the “**Availability Requirement**”). “**Available**” means the Service Offerings are available and operable for access and use by the majority of end users of CITY over the Internet in conformity with the specifications and documentation therefor. “**Availability**” has a correlative meaning. The Service Offerings are not considered Available in the event of any of the following:

- (i) an issue affecting entire system or single critical production function for the majority of end users of the CITY;
- (ii) System down or operating in materially degraded state for the majority of end users of the CITY.

Priority Levels

High	Business critical problems that affect the availability or access of or to the Service Offering for most users
Medium	Not critical but important problems that materially interrupt or restrict the normal production running of the Software (affecting a minority of users)
Low	Not business critical or important. Issues that do not materially impact the normal production running of the Software

Resources and Forms of Support

Support Portal	Utilized for medium or low priority items [** CITY specific slack channel(s)] (typically one slack channel for each active service)
Emergency hotline	Used for critical / high priority items [**CITY specific emergency telephone number] [**CITY specific emergency slack channel]

Support Response Time

Priority	Response Time	Update Frequency	Resolution Time
High	Reviewed by RideCo staff and support ticket updated/created within 2 hours	Every 2 hours or as mutually determined	Within 24 hours RideCo will attempt to resolve all high priority issues within 24 hours, however resolution times may be longer depending on the nature and complexity of the problem.
Medium	Reviewed by RideCo staff and support ticket updated/created within 12 hours	Every working day or as mutually determined	Within five (5) business days

Low	Reviewed by RideCo staff and support ticket updated/created within 24 hours	Every week or as mutually determined	RideCo shall notify CITY within ten (10) business days of the analysis of the problem, the intended fix and the release in which it will be delivered. Where feasible, RideCo shall provide a temporary workaround to CITY.
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**SCHEDULE “C”
PERSONAL DATA PROTECTION UNDERTAKING**

“Personal Data” means data, whether true or not, about an individual who can be identified: (a) from that data; or (b) from that data and other information to which the organization has or is likely to have access;

RideCo agrees that the following terms shall apply where RideCo accesses, handles, or uses any Personal Data under the Agreement, including in the course of and/or in connection with exercising its rights or carrying out its obligations under the Agreement:

- a. Unless otherwise permitted by the CITY, RideCo may only collect, use, or process Personal Data as allowed under this Agreement, and RideCo shall comply with any written instructions the CITY gives RideCo in advance relating to compliance with any laws, regulations, court orders, or self-regulatory programs applicable to the collection, use, disclosure, treatment, protection, storage and return of Personal Data.
- b. RideCo shall maintain commercially reasonable policies and procedures to protect the security, privacy, integrity, and confidentiality of Personal Data.
- c. If RideCo knows of any breach or potential breach of protective measures or if there has been any actual or potential unauthorized or accidental disclosure of Personal Data, RideCo must inform the CITY immediately and cooperate with the CITY in any post-breach investigation or remediation efforts.
- d. RideCo shall notify the CITY promptly in the event of any claim or complaint from any individual to whom the Personal Data relates and/or where there has been an event of non-compliance with any data privacy laws by RideCo, whether discovered by RideCo or forming the subject of an investigation and/or action by the relevant authorities.
- e. RideCo shall notify the CITY promptly in the event that RideCo is required by law, court order, warrant, subpoena, or other legal or judicial process to disclose any Personal Data to any person.
- f. If under the Agreement, RideCo has to collect any Personal Data from the CITY’S employees or any other individuals directly, RideCo must notify the individuals about the purpose of RideCo’s collection and must obtain and record (for future reference) their consent before RideCo does so, and RideCo must follow any reasonable instructions which the CITY may give RideCo in this regard, and must comply with all applicable laws for such collection of Personal Data.
- g. RideCo must not disclose any CITY Personal Data to any other persons/entities (e.g. to RideCo’s related company/affiliate) or transfer any Personal Data outside of the USA or Canada without the CITY’S permission in writing.
- h. RideCo shall promptly return to the CITY or destroy any Personal Data received in error. RideCo must destroy Personal Data as soon as practicable if required by the CITY. At the end of the Agreement, RideCo must notify the CITY if RideCo or other recipients (if disclosure of Personal Data to such other recipients has been permitted by the CITY in writing) have any Personal Data collected/received as part of the Agreement, and follow the CITY’S instructions on destroying the Personal Data. Following such destruction, the CITY may require RideCo to certify that RideCo (and such recipients) no longer have Personal Data. If RideCo wants to retain any Personal Data beyond the end of the Agreement, RideCo will be required to inform the CITY of RideCo’s reasons and seek the CITY’S agreement on the same.

SCHEDULE "D"

SOFTWARE FUNCTIONAL REQUIREMENTS

Passenger Application Requirements

Rider Account

- Trip history menu to see trip details
 - Start & end time
 - Starting & ending address
 - Trip cost (if applicable)
 - Help menu to provide feedback, or report other issue
- Reserved trip details
- Recent destinations are automatically saved to rider account

Ride Booking and Tracking:

- Ability to enter an address or select current or specific location on the map
- Reserve multiple seats or seat types (e.g. accessible)
- Reserve trips up to 5 business days in advance
- Reserve multiple trips at once (same trip for multiple days in one week)
- Retain recently queried locations so they are easy to pull up even if rider does not designate them as a "favorite"
- Ability to restrict virtual vs. doorstep drop-off and pick-up points
- Vehicle location, vehicle ID and driver information are displayed while waiting for pickup
- Ability to call and/or leave a note for driver

Payment

- Ability to hold credit card information.
- Place to enter promotional codes

Rating System

- Ride rating (e.g., 1 to 5 stars)

Customer Support

- Legal/terms and conditions
- A place for Frequently Asked Questions (FAQs)
- In app requests for support
- Customer service system that creates trackable tickets for follow up and resolution
- Ability to mask phone number when contacting driver

Driver Application Requirements

- Automatic trip dispatching
- Dynamic routing capabilities to adjust vehicle allocation efficiently.
- Make phone calls to a rider via anonymized phone number
- Ability to launch turn-by-turn driving directions

Operations Dashboard Requirements

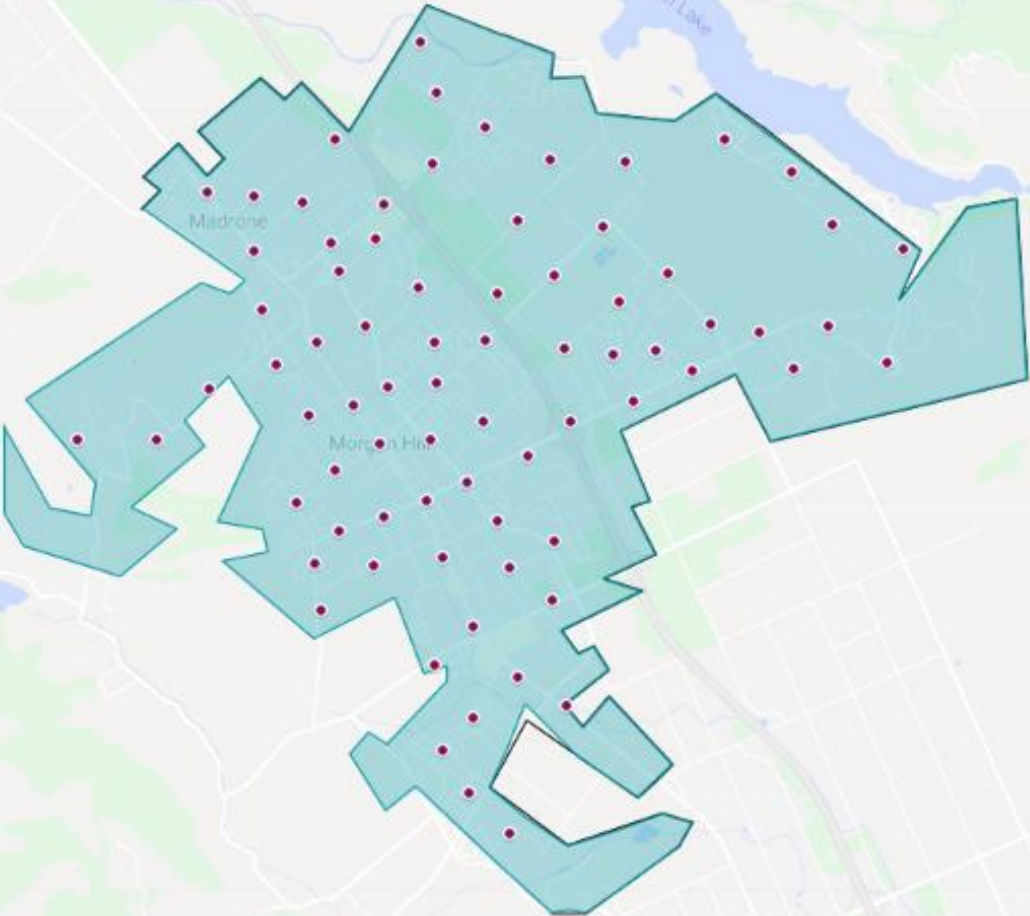
- Dashboards accessible to operations coordinators and authorized individuals by the CITY
- Dashboard displays real-time data on riders, vehicles, drivers, and service performance/Key Performance Indicators (KPIs). Data available includes:
 - Ridership
 - Travel times
 - Trip denial rate
 - Booking abandonment rates
 - On-time performance
 - Trip and driver reviews
 - Trip and driver comments
- Ability to assign different user-level permissions and rights based on operator, seniority, or role.
- The data gathered will be shared with / available to the operator or agency in multiple formats:
 - **Dashboards** to visualize rider, driver, and performance data, aggregated across a period or at an individual trip/driver level
 - **Weekly and monthly performance reports** provided in Excel, in a performance format to be mutually agreed upon
 - **Exports of the raw data** (rides, vehicles, times, locations etc.) in CSV format that can be further analyzed by the operator or agency staff if they desire

Software Security, Reliability & Privacy Requirements

- The passenger and driver apps are 'stateless' and do not store any confidential passenger data on the local device.
- All data is stored securely in the cloud (Amazon Web Services – 'AWS').
- The passenger and driver apps communicate securely with the cloud-based platform using RESTful APIs.
- RideCo's Platform Software has a 99.9%+ historical uptime performance record.
- Data is encrypted in transit using standard HTTPS, using an SSL wildcard certificate.
- All public facing webservers have been hardened using industry standard practices.
- Internal networks are shielded by AWS security groups which define allowable ports and IP addresses for internal services.
- APIs are all secured using token authentication using an identity management system. Tokens are only valid for one user and can only be acquired by successfully authenticating against our authentication API. APIs used by internal components are never exposed publicly. For certain API calls, throttling exists to prevent against DOS type attacks.
- Daily backups of production databases for disaster recovery.
- Software does not store any payment card or billing information on RideCo's servers.
- The mobile applications and operations dashboards include their own terms of service to end users that include provisions relating to data privacy, confidentiality, and intellectual property rights.

On-Demand Morgan Hill

	On-Demand across Entire City
	Parameters of Service Model
Service Model	Virtual Stop to Virtual Stop
Service Hours	Monday – Friday: 7 am to 10 pm Saturday – Sunday: 7 am to 7 pm
Virtual Stops	Virtual Stops within 5-8 minutes of walking
Service Frequency	15-minutes
Vehicles	3 Minivans



RESOLUTION NO. 21-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AN AMENDMENT TO
THE CITY'S FISCAL YEAR 2021-2022 BUDGET IN THE
GENERAL FUND (FUND NO. 010) TO APPROPRIATE
\$60,000, THEREFOR**

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

WHEREAS, the reasons supporting this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Innovative Transit Agreements" submitted for City Council consideration at its meeting of April 6, 2022, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2021-2022 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2021-2022 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2021-2022 Budget of City.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 6th day of April 2022 by the following vote:

AYES:	COUNCIL MEMBERS:	None
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

RICH CONSTANTINE, 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. 21-_____ adopted by the City Council at the meeting held on the 6th day of April 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

AGENDA BUDGET SCORECARD**FISCAL YEAR 2021-2022****ADJUSTMENT #**

011

FUND:

010 General Fund

DEPARTMENT:

2170 Innovative Transit

OBJECT:

42231 CONTRACT SERVICES

AGENDA DATE:

02/02/22

AGENDA ITEM TITLE:

Innovative Transit

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	24,896,179	43,435,456	44,689,214	23,642,421
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	210,530	(210,530)
RECOMMENDED ACTION		-	60,000	(60,000)
RESULT OF RECOMMENDED ACTION	<u>24,896,179</u>	<u>43,435,456</u>	<u>44,959,744</u>	<u>23,371,891</u>

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

APPROVAL OF SECOND AMENDMENT TO AGREEMENT WITH WEST COAST DOOR AND GATE

RECOMMENDATION(S)

1. Approve the Second Amendment to the On-Call Maintenance Service Agreement with West Coast Door and Gate for one additional year of service for \$40,000 for a total contract amount of \$100,000;
2. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
3. Authorize the City Manager to execute and administer the amendment with West Coast Door and Gate.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a second amendment to the City's maintenance service agreement for on-call door and gate replacement and repairs at City facilities.

The City has contracted with West Coast Door and Gate since September 2016 to provide on-call door and gate replacement and repair services. In May 2019, the City released a Request for Proposals (RFP) for on-call door and gate replacement and repair services. No proposals were received. The City then contacted West Coast Door and Gate and entered into the current on-call agreement in August 2019. This current agreement expires on June 30, 2022. The original amount of the agreement was

\$60,000 for two years per City Manager authority. On July 6, 2021, the First Amendment extended the term one year to June 30, 2022. During FY 19-20 and FY 20-21, the average annual amount of expenditures for these types of services was \$29,500. This Amendment is proposing an increase of \$40,000 for on-call services that would ensure there is sufficient funding available should there be an increase in these types of services. Per the Second Amendment, West Coast Door and Gate has also agreed not to increase their hourly rate for this agreement.

Section 3.04.150 (1) of the Morgan Hill Municipal Code authorizes this action if the Council determines that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances. Staff has been highly satisfied with the services provided by West Coast Door and Gate. Since no proposals were received as a result of the last RFP for on-call door and gate replacement and repair services, and West Coast Door and Gate has agreed not to increase their hourly rates, staff recommends that the second amendment be approved based on the City Council's determination that soliciting bids would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances. The Second Amendment would extend the term by one year and the total compensation amount would increase by \$40,000 to a not to exceed amount of \$100,000.

COMMUNITY ENGAGEMENT:

Not Applicable

As the provision of door and gate replacement and repairs are a regular and expected City service, no efforts were made to inform the community about this proposed agreement amendment.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to proceed with a request for proposals (RFP) for on-call door and gate replacement and repair services, so that a new agreement is in place by July 1, 2022.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has not taken prior action on this agreement. The amount of the original agreement was \$60,000, therefore it was approved via City Manager Authority on August 19, 2019. The First Amendment was approved via City Manager authority on July 6, 2021 with no increase to the amount of the contract.

FISCAL AND RESOURCE IMPACT:

The funding for on-call door and gate replacement and repair is included in the contract services line items of individual City facilities.

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 alterations of existing City facilities involving negligible or no expansion of use of those facilities.

SECOND AMENDMENT TO AGREEMENT WEST COAST DOOR AND GATE

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and WEST COAST DOOR AND GATE, a California Sole proprietorship ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of August 19, 2019, for services for a maximum compensation of Sixty-Thousand Dollars (\$60,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of July 6, 2021, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was not increased. The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from August 20, 2019, until June 30, 2023. The City Manager is authorized to extend the term of this Agreement for up to an additional one-year period. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on call door and gate repair services to CITY. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED THOUSAND AND NO/00 DOLLARS (\$100,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended

term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk
Date: _____

Christina J. Turner, City Manager
Date: _____

APPROVED AS TO FORM:

WEST COAST DOOR AND GATE

Donald A. Larkin, City Attorney
Date: _____

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

Date: 3/14/2022

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

Date: _____

EXHIBIT 1

**FIRST AMENDMENT TO AGREEMENT
WEST COAST DOOR AND GATE**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 7/6/2021 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and WEST COAST DOOR AND GATE, a California Sole Proprietorship ("SERVICE PROVIDER" or "CONSULTANT" or "CONTRACTOR").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of August 19, 2019, for services for a maximum compensation of Sixty Thousand and no/100 dollars (\$60,000.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from August 19, 2019, until June 30, 2022. The Agreement may be renewed for up to two additional years if SERVICE PROVIDER has demonstrated superior performance in provision of on-call door and gate repair services to CITY, subject to approval by City Council. Any such extension shall be in writing and signed by both Parties to this Agreement."

B. Paragraph 5 shall be amended by adding the following:

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

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Signatures on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

DocuSigned by:
 Michelle Bigelow
 Michelle Bigelow, City Clerk
 Date: 7/7/2021

APPROVED AS TO FORM:

DocuSigned by:
 Donald Larkin
 Donald Larkin, City Attorney
 Date: 6/30/2021

CITY OF MORGAN HILL

DocuSigned by:
 Christina Turner
 Christina J. Turner, City Manager
 Date: 7/6/2021

WEST COAST DOOR AND GATE

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

Date: 6/25/2021

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

Date:

12804-19-115

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
West Coast Door and Gate**

THIS AGREEMENT is entered into and becomes effective on 8/19/19 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and West Coast Door and Gate a California sole proprietorship ("SERVICE PROVIDER" or "CONTRACTOR") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The Agreement may be renewed for up to three additional years if the SERVICE PROVIDER has demonstrated superior performance in provision of services to the CITY. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Additional extensions may be subject to approval by City Council. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call door and gate maintenance and repair services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$60,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Sixty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

8.1. **Insurance Types and Amounts.**

8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such

insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

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

8.2.1. **General Liability.**

8.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates,

may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

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

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

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

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Address of SERVICE PROVIDER is as follows:

John Komar
West Coast Door and Gate
305 Vineyard Towncenter #360
Morgan Hill, CA 95037

Address of CITY is as follows:

Keri Russell, Maintenance City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037	with a copy to: City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037
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15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

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

17. **Maintenance of Records.**

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

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

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

18. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or

as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.

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

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

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

22. **Defense and Indemnification.**

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

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

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

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

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

ATTEST:

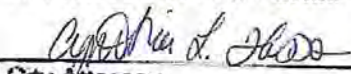

City Clerk/Deputy City Clerk

for Michelle Bigelow
Print Name

Date:

8/20/19

APPROVED AS TO FORM.


City Attorney

for Donald A. Latkin
Print Name

Date:

8-16-19

CITY OF MORGAN HILL


City Manager

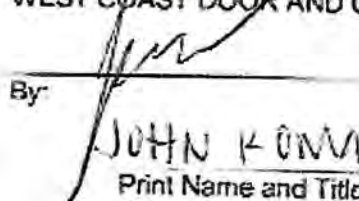
Christina J. Turner
Print Name

Date:

8/19/19

WEST COAST DOOR AND GATE

By:


JOHN K. O'NEIL, OWNER
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

6/27/2019

By:

Print Name and Title of Signer.

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

Date:

1000031459

743815
Contractor's License Number(s) (if applicable)

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

Expiration Date(s)

12/31/2019

Expiration Date(s)

6/30/2020

Seal

U:\Legal Forms\Consultant Agreements\City Maintenance Services Agreement.docx

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call door and gate repair services and administer the duties and responsibilities, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call door replacement and repair work at various City facilities and per Work Hours (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, installing, replacing, and testing door and gate components and other related issues as they arise and are necessary to insure safe, well maintained doors and gates for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform door and gate maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all non-emergency requests for repairs within four (4) hours. The Contractor shall respond to emergency requests for repairs within two (2) hours, 24 hours per day, 365 days per year, including holidays.

The Contractor is responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE: The Contractor shall provide full-service on-call door and gate maintenance and repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility door and gate maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of on-call door and gate repair services in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's door and gate maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED: It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility door and gate maintenance and repair functions during hours of operation and for response after normal working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 WORK HOURS: Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- Morgan Hill Community Playhouse- coordinate hours with Maintenance Manager or Coordinator
- The Outdoor Sports Complex – coordinate hours with Maintenance Manager or Coordinator
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.
- El Toro Fire Station is open 24 hours
- Dunne Hill Fire Station is open 24 hours

2-4 SERVICE AVAILABILITY: The contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time
NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-5 TROUBLE-CALL/REPAIR SERVICE Should the City request the contractor to make unscheduled, emergency door replacement or repairs, the City shall be responsible for labor and travel costs associated therewith. The City reserves the right to contract with others for trouble calls and repairs.

2-6 BILLABLE WORK The Contractor shall not be paid for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs as determined by the City's Maintenance Manager or Maintenance Coordinator.

2-7 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call door and gate maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality maintenance at all times. The Contractor shall possess and maintain a C-61/D-28 Doors, Gates and Activating Devices Contractor license by the State of California Contractors Licensing Board

through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-8 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-9 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining doors and gates in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-10 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing doors and gates in City buildings.

2-11 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of doors and gates to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-12 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-13 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-14 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

ATTACHMENT A MUNICIPAL FACILITIES LOCATIONS

DOOR AND GATES TO BE MAINTAINED AT THESE LOCATIONS:

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 W. Edmundson Ave.	25,135
City Hall	17575 Peak Ave.	13,900
Community & Cultural Center & Playhouse	17000 Monterey Road	20,500; 5,000
Community Garden	15690 Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Pricing applies to the period from July 1, 2019 to June 30, 2021.

The hourly rate is \$85 per hour. If the contract is renewed, a 3% costs escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

Mark-up on parts and materials may not exceed 10% of Contractor's cost.

Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The Contractor shall respond to non-emergency requests for repairs within four (4) hours. After hours repair calls will be responded to within four (4) hours of opening for regular business hours of the next business day.

The Contractor shall respond to all emergency requests for repairs within two (2) hours.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO AGREEMENT WITH TESCO CONTROLS, INC. FOR SCADA HARDWARE PURCHASE

RECOMMENDATION(S)

Authorize the City Manager to execute a first amendment to the agreement with Tesco Controls, Inc. for SCADA hardware for a total contract amount of \$217,190.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

On November 3, 2021, City Council approved an agreement with Tesco Controls to upgrade and implement technology improvements to the Supervisory Control Data Acquisition (SCADA) system which remotely supports and monitors the City's water and wastewater facilities. Part of the agreement was to determine the hardware (servers) needed to meet the needs of the City's SCADA system. Tesco has determined what hardware is needed and the list is attached as Exhibit D in the amendment to the agreement.

The City's IT Director has reviewed the list and is recommending the equipment be procured by the Consultant, Tesco, to ensure both hardware and software systems are fully supported for our critical infrastructure by Tesco. Additionally, with supply chain challenges, if a part needs to be substituted, Tesco's expertise in SCADA systems would allow for the potential use of replacement components based on availability. This

will ensure the project schedule and avoids costly delays. Tesco is further recommended, due to their familiarity with this critical infrastructure and the responsive, professional service they have provided to the City over the past eighteen years the SCADA system has been in operation.

COMMUNITY ENGAGEMENT:

Not Applicable

Ongoing maintenance of the City's water and wastewater infrastructure is an expected service provided by the City.

ALTERNATIVE ACTIONS:

The Council could elect to instruct staff to prepare a request for bids for the hardware. This will delay the SCADA system upgrades and is not recommended. The Municipal Code notes that "the City Council finds and declares that the competitive bid process is ill-suited for the selection of consultants," which is accurate in this case. A competitive process would create unnecessary risks to system operations and time delays.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has previously awarded Tesco Controls a contract for purchase and implementation of the SCADA system on June 18, 2003. Subsequently on December 17, 2008, and October 16, 2013, City Council awarded Tesco a contract for SCADA system integration services. Most recently, City Council approved Tesco to do SCADA integration services on November 3, 2021.

FISCAL AND RESOURCE IMPACT:

The funding for the hardware for SCADA upgrades will be 60% from computer equipment for water enterprise funds and 40% from computer equipment for wastewater enterprise funds. There are adequate savings in the funds overall to cover this purchase without a budget increase.

CEQA (California Environmental Quality Act):

Categorical Exemption

This project is Categorically Exempt pursuant to Section 15301 of CEQA Guidelines, Class 1 Existing Facilities, because the work to be performed is implementation and upgrade of existing water and wastewater infrastructure involving no expansion of existing use.

**FIRST AMENDMENT TO AGREEMENT
TESCO CONTROLS, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and TESCO CONTROLS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement for Design Professional Services" made as of November 23, 2021, for consultant services for a maximum compensation of Eighty-Seven Thousand Ninety and no/00 Dollars (\$87,090.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from November 23, 2021, until December 31, 2023. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

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

Supplying hardware and software required for the SCADA upgrade."

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed TWO HUNDRED SEVENTEEN THOUSAND ONE HUNDRED-NINETY AND NO/00 DOLLARS (\$217,190.00) and shall be billed based on the rate and basis set forth in **Exhibit B** and **Exhibit 2**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter

3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk
Date: _____

Christina J. Turner, City Manager
Date: _____

APPROVED AS TO FORM:
Donald Larkin, City Attorney

TESCO CONTROLS, INC.

By: _____



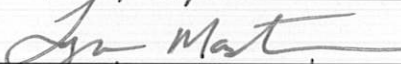
Date: _____

By: SHARON THOMAS
Title: CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 3/21/22



By: LYN MASTERON
Title: VP OPERATIONS

Print Name and Title of Signer.

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

Date: 3/21/22

128-04-21-080

EXHIBIT 1

**CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS
TESCO CONTROLS, INC.**

THIS AGREEMENT is entered into and becomes effective on 11/23/2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and TESCO Controls, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on November, 3, 2021.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service.** The services to be performed by CONSULTANT shall be SCADA upgrade and implementation services as further described in **Exhibit A**.

4. **Compensation.** CONSULTANT shall be compensated as follows:

4.1. **Amount.** \$87,090.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Eighty-Seven Thousand, Ninety dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.

4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

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

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

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

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

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

7.3. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to

carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR

INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

TESCO Controls, Inc.
8440 Florin Road
Sacramento, CA 95828

Address of CITY is as follows:

Utilities Division
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

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

16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the

property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

21. **Defense and Indemnification.**

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

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

- 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
22. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
26. **Binding Agreement.** Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest,

legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

DocuSigned by:

Michelle Bigelow

City Clerk/Deputy City Clerk

Michelle Bigelow

Print Name

Date: 11/23/2021

APPROVED AS TO FORM:

DocuSigned by:

Donald A. Larkin

City Attorney

Donald A. Larkin

Print Name

Date: 11/22/2021

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner

City Manager

Christina J. Turner

Print Name

Date: 11/23/2021

TESCO Controls, Inc.

[Signature]

By:

SHAWN THOMAS, CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 10/26/2021

[Signature]

By:

SETH ROBINSON, CFO

Print Name and Title of Signer.

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

Date: 10/26/21

EXHIBIT A SCOPE OF SERVICES

Consultant services shall include required SCADA engineering services to upgrade the existing City of Morgan Hill SCADA system using the latest server hardware including latest Microsoft Windows operating systems and SCADA software package. This will include and is not limited to, upgrade/refresh of the City's Wonderware Intouch, Historian, and alarm software licenses. Consultant shall provide and configure the new host SCADA servers in a VMWare ESXi Virtualized environment.

Any and all software and licensing including Wonderware software, communication servers/drivers, computer software, and Microsoft software shall be relinquished and registered to the City.

The upgrade will be a hardware and software refresh of the existing configuration. The existing SCADA screens shall be reused for graphical interface of all current sites. Consultant services shall include configuration of a timed message at the existing L3000 Gateway Modules located at Server 1 and Server 2 to eliminate dual polling upon a communication failure between the Servers. The Gateways will be configured to monitor communication of all RTU's only allowing one of the two servers to acquire data from remote sites.

The system hardware including new rack mounted virtual host servers, Network attached storage (NAS) device, UPS, network router, switches, firewall, and thin clients shall be procured by the City of Morgan Hill to be delivered to TESCO for configuration and factory test. In addition to the new system hardware package, the City will procure and furnish to TESCO all updated SCADA software licenses, Microsoft operating system software, and virtualization software.

Consultant shall coordinate with City Operations and IT Department to conduct a focused workshop for review and determination of the City's SCADA and network requirements which may include and is not limited to System Redundancy, Mobile Access, and Alarm Notifications. Upon completion of the workshop, TESCO shall provide a draft design submittal package to include the following:

- Recommendations for any SCADA software license modifications or additions, operating system software, and virtualization packages.
- Recommendations for SCADA system hardware including servers, storage devices, power supplies, network routers/switches/firewalls, and work stations.
- Diagrams illustrating the proposed SCADA network.
- Project schedule for review and acceptance by the City.
- Installation and cut over plan.

TESCO shall also perform field integration of the new system including startup, testing, and commissioning for a turn-key upgrade of the existing SCADA system. This shall include demonstration testing and system training prior to the City's final acceptance.

TESCO Professional Services to Include:

Project Management: - Project coordination and scheduling

Project Engineering:

- ☐ Develop system diagram / communication overview diagram

- ☐ Develop submittals, project schedule, system cut over plan
- ☐ Develop factory and field test schedules, training schedule, and O&M's

SCADA Configuration:

- ☐ Setup and installation of upgraded and new software packages including Microsoft, Wonderware, OPC, and client access licenses
- ☐ Import existing SCADA database, graphics, trends, setpoints, alarms, etc.
- ☐ Modify/Reconfigure Front End Processors/Gateways at both server locations
- ☐ Perform factory test
- ☐ Perform on site implementation, installation, and setup
- ☐ Perform startup, operational test, and SCADA training

Network & Telemetry: setup and configuration of SCADA network devices, including firewall, router, and switches.

As part of TESCO's established standards, they will partner with The City of Morgan Hill to include the following base procedures to address some of the most critical aspects of the cybersecurity of your system:

1. Document the installed equipment for tracking purposes and define who within the City will be responsible for the new equipment
2. Apply strict controls to all removable media such as USB ports and CD/DVD drives
3. Disable auto-run at the BIOS & operating system levels (to the extent that the manufacture allows)
4. Update all computer firmware to the latest appropriate versions
5. Secure the configurations, enable security logging, and track all remote access to the system
6. Install the latest approved patches for the operating system and all installed software packages
7. Disable unnecessary operating system services to minimize known vulnerabilities
8. Limit the use of administrator rights to the extent necessary on all operating systems
9. Configure operating system security through the use of a Domain Controller installed within a virtual machine for the SCADA application and supporting software modules (to the extent that the manufacture allows)
10. Change all default passwords on all hardware and software to strong managed passwords (to the extent that the manufacture allows)
11. Configure auto-logout within all SCADA application software (system becomes view only)
12. Configure auto-lockout (after three failed login attempts) on all operating systems and networking equipment (provided by TESCO) to the extent that the manufacture allows
13. Clock synchronization on all devices (provided by TESCO) by utilization of a network time server so that all timestamps within the various event and security logs are synchronized (to the extent that the manufacture allows)
14. Enable security logging on all equipment that we provide and restrict access to configuration settings and security settings (to the extent that the manufacture allows)
15. Follow strict internal change management policies and procedures to ensure that any changes to hardware or software are documented to ensure that the control system is protected against improper modifications prior to and during commissioning

16. Perform verification of industrial grade remote access device to ensure that all physical access to the device is tightly controlled (to the extent that the manufacture allows)
 - a. Implement a default deny all rule
 - b. Implement egress filters where there is no need for outbound traffic (block internet access for staff)
 - c. Enable and monitor firewall logs to look for anomalous traffic
17. Utilize the existing VPN appliance for remote access to the control system
 - a. Change the TCP port numbers for well-known remote access protocols from their defaults
 - b. Configure VPN such that split tunneling is not allowed
 - c. Monitor and log all remote access sessions
 - d. Require the use of strong passwords
18. Implement secure backup procedures to ensure that the City of Morgan Hill can recover their systems completely should there ever be a security breach
19. Create comprehensive software and configuration backups and securely store them at TESCO
20. Provide a confidentiality agreement and a Service Level Agreement with TESCO that provides 24/7/365 availability of TESCO resources in the event of an emergency

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Item	Description
1	TESCO Professional Services to Include: ▪ Project Management: - Project coordination and scheduling ▪ Project Engineering: ▪ Develop system diagram / communication overview diagram ▪ Develop submittals, project schedule, system cut over plan ▪ Develop factory and field test schedules, training schedule, and O&M's ▪ SCADA Configuration: ▪ Setup and installation of upgraded and new software packages including Microsoft, Wonderware, OPC, and client access licenses ▪ Import existing SCADA database, graphics, trends, setpoints, alarms, etc. ▪ Modify/Reconfigure Front End Processors/Gateways at both server locations ▪ Perform factory test ▪ Perform on site implementation, installation, and setup ▪ Perform startup, operational test, and SCADA training Network & Telemetry: setup and configuration of SCADA network devices, including firewall, router, and switches
	TOTAL FOR ITEM 1: \$87,090.00

EXHIBIT C
SCHEDULE OF PERFORMANCE

All work shall be scheduled with City Utilities staff and be completed by the termination date of this agreement.

EXHIBIT "2"

Additional Scope of Work:

Tesco will supply the hardware and software listed in the Scope of Supply below. This quotation is for supply only and does not include any programming or configuration services as they are covered under the SCADA System upgrade contract (T-27797XL).

This quotation includes upgrading the existing Wonderware licensing only. This does not include any additional Wonderware licenses.

SCOPE OF SUPPLY

Item	Description
1	Corp Yard - SCADA Hardware to Include: - Qty. of Two (2): Dell R440 Host Servers - Core SCADA Hypervisor - DMZ Hypervisor - Qty. of One (1): QNAP Network Attached Storage Rack Mount - TS-453DU-RP-4G-US - RAIL-B02 - Qty. of Four (4): Western Digital 4TB Hard Drives (for NAS) - HUS726T4TALA6L4 - Qty. of One (1): Virtual Private Network (VPN) Appliance - Palo Alto PA-220 Firewall with Subscriptions - Qty. of One (1): Cisco Core Router - ISR-4331-SEC-K9 - NIM-ES2-8 - Qty. of Two (2): Cisco C2960CX Network Switches - DMZ Switch - Inter-Facility Switch - Qty. of One (1): Network Time Protocol (NTP) Appliance 760-2000-000 - Rails, Antenna, & mount - Qty. of One (1): Marathon Uninterruptible Power Supply 3000VA/2700W - Extended Battery Pack - SNMP Card - Qty. of One (1): Tripp Lite KVM - B070-008-19 & Cabling - Qty. of One (1): Alarm Notification Voice Callout Modem - Grandstream – UCM6301 - Qty. of One (1): Alarm Notification SMS Modem - Multitech – MTR-LNA7-B07-US \$42,400.00

Item	Description
2	<u>Corp Yard - SCADA Software to Include:</u> ▪ Upgrade Licensing for Updated Wonderware Version (<u>No Cost</u>) ▪ Included with Client's Wonderware Customer FIRST Support ▪ Qty. of One (1): Microsoft Office Pro ▪ 79P-05729 ▪ Qty. of Twenty-Four (24): Microsoft Server 2019 2-Core Licenses ▪ 9EM-00653 ▪ Qty. of Fifteen (15): MS Server 2019 Client Access Licenses ▪ R18-05768 ▪ Qty. of Eights (8): MS Server 2019 Remote Desktop Services Licenses ▪ 6VC-03748 ▪ Qty. of One (1): VMWare ESXi Essentials Virtualization (w/ 2-yr's support) ▪ VS7-ESSL-KIT-C ▪ VS7-ESSL-3SUB-C ▪ For Core SCADA Hypervisor ▪ Qty. of One (1): Top View Software Auto-Dialer (w/ Failover) ▪ TV-WW-RESTR-UNL-B ▪ Qty. of Two (2): McAfee Antivirus Software ▪ ePO ▪ Qty. of One (1): SNMP Driver ▪ KWP-ISNMP1-PRD ▪ With 1 Year Support \$40,700.00
3	<u>Police Station - SCADA Hardware to Include:</u> ▪ Qty. of One (1): Dell R440 Host Server ▪ Core SCADA Hypervisor ▪ Qty. of One (1): Virtual Private Network (VPN) Appliance ▪ Palo Alto PA-220 Firewall with Subscriptions ▪ Qty. of One (1): Cisco Core Router ▪ ISR-4331-SEC-K9 ▪ NIM-ES2-8 ▪ Qty. of One (1): Cisco C2960CX Network Switch ▪ Inter-Facility Switch ▪ Qty. of One (1): Network Time Protocol (NTP) Appliance ▪ 760-2000-000 ▪ Rails, Antenna, & mount ▪ Qty. of One (1): Marathon Uninterruptible Power Supply ▪ 3000VA/2700W ▪ Extended Battery Pack ▪ SNMP Card ▪ Qty. of One (1): Tripp Lite KVM ▪ B070-008-19 & Cabling ▪ Qty. of One (1): Alarm Notification Voice Callout Modem ▪ Grandstream – UCM6301 ▪ Qty. of One (1): Alarm Notification SMS Modem ▪ Multitech – MTR-LNA7-B07-US \$31,200.00

Item	Description
4	Police Station - SCADA Software to Include: ▪ Upgrade Licensing for Updated Wonderware Version (<i>No Cost</i>) ▪ Included with Client's Wonderware Customer FIRST Support ▪ Qty. of Twenty-Four (24): Microsoft Server 2019 2-Core Licenses ▪ 9EM-00653 ▪ Qty. of Fifteen (15): MS Server 2019 Client Access Licenses ▪ R18-05768 ▪ Qty. of Eights (8): MS Server 2019 Remote Desktop Services Licenses ▪ 6VC-03748 ▪ Qty. of One (1): SNMP Driver ▪ KWP-ISNMP1-PRD ▪ With 1 Year Support
	\$15,800.00
TOTAL for Items 1-4 (including applicable sales tax):	
	\$130,100.00

Project Clarifications

- Unless otherwise indicated by the Scope of Work above, quote is to **furnish only** and does not include any trade labor, trade work, construction work, site improvement, contractor services, or any trade installation services. Any trade labor and/or related trade work shall be performed by others/contractor.
- Unless otherwise indicated by the Scope of Work above, the following is **not** included within this quotation:
 - Conduit, field wire, tubing, or basic trade installation materials (brackets, screws, bolts, j-box, stanchions, pull-box, etc.)
 - Instrumentation mounting components, brackets, stanchions, sunshields, etc.
 - Local control stations and/or field mounted disconnects.
 - Instrumentation, devices, components, or equipment not specifically identified in the above quotation.
 - Fiber optic patch panels, cable, splicing or terminations.
 - Networking infrastructure or architecture modifications to existing facilities.
 - Any 3rd party testing, harmonic testing/analysis, protective device coordination study, short-circuit analysis, or Arc-Flash Risk Assessment (AFRA) services.
 - Electrical interconnection diagrams for equipment not furnished by TESCO
 - ISA process control loop diagrams.
 - Signal loop diagrams for equipment not furnished by TESCO.
 - SCADA Programming
 - Networking and Telemetry Configuration
 - PLC Programming
 - OIT Programming
 - Onsite Startup

Clauses, Terms and Conditions

- Delivery: to be scheduled approximately **18-30** weeks minimum after submittal approval; however, delivery schedule(s) will be contingent on supply-chain availability and variability for material components, therefore, lead-times are subject to change without notice.

- Lead-Time & Supply Chain Impacts: Due to the supply chain impacts imposed by the pandemic, all quoted lead-times are subject to change without notice.
- Unless otherwise stated above, price does not include any sales tax, use tax, or applicable fees; please apply any taxes and/or fees as appropriate. Please note that all invoices will include sales tax where applicable.
- TESCO price is FOB factory, full freight allowed.
- TESCO warranties against defect in design, workmanship, and materials for a period of one year from date of installation; and does not exceed 18 months from the date of shipment from the factory.
- Hardware within this project comes with a 2-year manufacturer's warranty.
- TESCO carries liability insurance, with full workman's compensation coverage.
- Terms are net 30 days on approved credit accounts.
- All merchandise sold is subject to lien laws.
- Final retention to be paid within 10 days after the project notice of completion.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Kim Mancera, Municipal Services Assistant

APPROVED BY: City Manager

APPROVE THE MARCH 16, 2022 CITY COUNCIL MEETING MINUTES

RECOMMENDATION(S)

Approve the March 16, 2022 City Council Meeting Minutes.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

REPORT NARRATIVE:

COMMUNITY ENGAGEMENT:

ALTERNATIVE ACTIONS:

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

FISCAL AND RESOURCE IMPACT:

CEQA (California Environmental Quality Act):



Meeting Minutes

City Council

Rich Constantine - Mayor
Gino Borgioli - Mayor Pro Tem
John McKay - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, March 16, 2022 7:00 PM

Virtual Meeting

Link to join the meeting can be found below

CALL TO ORDER

Mayor Constantine called the City Council meeting to order at 7:01 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rich Constantine, Rene Spring, Gino Borgioli, John McKay, Yvonne Martinez Beltran
ABSENT	None

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow declared the posting of the agenda.

REGULAR MEETING

7:00 P.M.

PROCLAMATIONS

Proclaiming the month of March 2022 as American Red Cross Month

PRESENTATIONS

YAC Presentation - Asset #3 - Other Adult Relationships

CITY COUNCIL REPORTS

Council Member Martinez Beltran shared that she is excited to celebrate Women's History Month. She had the honor of sharing and learned some insight from her San Jose colleges. It was awesome to meet with some of the younger women in this class. She also wanted to remind everyone about the AAUW Wildflower Run at Live Oak on Sunday, March 29th. Yvonne thanked all the women in our organization that lead and run this City for their contributions and all they do. She was elected to the SVCE executive board last month. Had a great visit for their Slate Project which is a solar battery storage project. This project will bring 257,907 megawatt hours onto the grid, enough to bring clear energy for a year to the City of Morgan Hill and residents. This is the largest solar battery project in California and the second largest in the nation. SVCE approved 3 million in customer relief to income qualified customers and will have 17 million added to our programs' budget to support emissions reductions. Yvonne is on the Latino Caucus Board for Cal Cities and as a Legislative Chair they had a lobbying 101 webinar. They are providing a Gavilan College Scholarship from the Latino Caucus this year and there will be more to come on that. She had a meeting for the South County Youth Taskforce. There is a Santa Clara County District Attorney Justice For All poster award contest happening. First prize is \$1,500, second \$1,000 and third \$500. It's called What is the Face of Pentenyl. The unhoused count was at 5:30am last month and she thanked staff for joining in that. She also thanked the family of Ann Sobrato student Ryan Last, who lost his life last month, for bravely sharing Ryan's story to protect our kids from cyber bullying. Ryan fell victim to a worldwide scam that makes multi-millions of dollars by blackmailing children and be-friending them on social media and then threatening to expose them if they don't pay money, specifically targeting 16–17-year-olds. Morgan Hill School District is partnering with Internet Crimes Against Children to bring the vigilant parent initiative to our schools, a program designed to educate parents on the dangers of the internet. More information is available through the schools.

CITY MANAGER'S REPORT

City Manager Christina Turner introduced Morgan Hill's new Fire Chief, George Huang. It is very exciting to have our new fire chief with us. He started his fire service with Cal Fire in 2002 as a Firefighter 1 with the San Luis Obispo unit. In 2020 he was promoted to Assistant Chief of Administration in the Santa Clara Unit. He has served for 12 years on different incident management teams as a qualified type one finance section chief, a type one safety officer and most recently appointed as the incident commander for Cal Fire Incident Management team one. He is also a certified state Fire Marshall instructor for multiple courses. Chief Hess has been promoted and we are very sad to see him go, but very excited to have Chief Huang join us. A community member brought in a photo of the gathering that was held at the outdoor amphitheater downtown from the recognition event for Ukraine. This will be hanging up at City Hall and thanked the community member for providing this. She invited the community to join us for our next town hall. Our first budget town hall will be this month on March 24th. In addition to talking about the operating as well as the capital budget we will have an opportunity to discuss water rates and our water rate study. We will also be starting up our City booths at the farmers market and sidewalk Saturdays on April 9th. They will be held on the second Saturdays of the month located in front of Coffee Guys. There are a couple of seats available on our Parks & Recreation Commission as well as the Library, Culture and Arts Commission. Check our website for more information. Our Cadet Ambassador program is back up and running at the end of this month. They will be in downtown Thursday through Saturday in the evenings.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

None.

PUBLIC COMMENT

Public comment opened at 7:35 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 Spring
SECONDER:	Council Member Martinez Beltran

AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 7.

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

1. **ACCEPT GENERAL PLAN AND HOUSING ELEMENT ANNUAL PROGRESS REPORT (APR) 2021**

Recommendation:

Accept the 2021 General Plan and Housing Element Annual Progress Report (APR) and direct staff to file the report with the Governor's Office of Planning and Research (OPR) and the State Department of Housing and Community Development (HCD).

2. **ADOPT ORDINANCE NO. 2329, NEW SERIES, PERMANENTLY ADOPTING AND RATIFYING ORDINANCE NUMBER 2320 PREVIOUSLY ADOPTED AS AN URGENCY ORDINANCE ADDING SECTION 18.76.140 (" MAXIMUM DOCK HIGH DOOR RATIO") TO CHAPTER 18.76 PERFORMANCE STANDARDS") AND AMENDING SECTIONS 18.124.050 ("INDUSTRIAL USES") OF CHAPTER 18.124 (" LAND USE DEFINITIONS") AND 18.128.020 ("DEFINITIONS") OF CHAPTER 18.128 ("GENERAL TERMS") OF TITLE 18 ("ZONING") OF THE MORGAN HILL MUNICIPAL CODE TO CREATE A MAXIMUM DOCK - HIGH - DOOR RATIO FOR CERTAIN STRUCTURES AND TO ADD DEFINITIONS**

Recommendation:

Waive the reading, adopt Ordinance No. 2329, 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.

3. **ADOPT RESOLUTION DETERMINING THAT CONDUCTION OF IN-PERSON MEETINGS WOULD PRESENT A PUBLIC HEALTH RISK AND CONTINUING TELECONFERENCE MEETINGS**

Recommendation:

Adopt resolution to continue holding City Council and commission meetings by teleconference.

4. **ADOPT RESOLUTION AUTHORIZING THE DISPLAY OF THE NATIONAL FLAG OF UKRAINE AT CITY FACILITIES IN SUPPORT OF THE LEADERS AND PEOPLE OF UKRAINE**

Recommendation:

Adopt resolution authorizing the display of the national flag of Ukraine at the Community and Cultural Center, Centennial Recreation Center, and City Hall from March 19 to April 19, 2022, to support the leaders and people of Ukraine.

5. **APPROVE MITIGATED NEGATIVE DECLARATION FOR THE FISHER CREEK DETENTION BASIN EXPANSION PROJECT**

Recommendation:

Approve and certify the project Mitigated Negative Declaration.

6. **APPROVE THE MARCH 2, 2022 SPECIAL/REGULAR CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the March 2, 2022 Special/Regular City Council Meeting Minutes.

7. **REAPPOINTMENT OF TWO (2) COMMISSIONERS ON THE LIBRARY, CULTURE, AND ARTS COMMISSION (LCAC) AND TWO (2) COMMISSIONERS ON THE PARKS AND RECREATION COMMISSION (PRC) AND RECRUITMENT TO FILL VACANCIES ON THE TWO COMMISSIONS**

Recommendation:

1. Reappointment of Commissioners Emily Borchers and Patrice Lyn to the Library, Culture, and Arts Commission with terms ending April 1, 2026;
2. Reappointment of Commissioners Craig van Keulen and Maureen Grzan-Pieracci to the Parks and Recreation Commission with terms ending April 1, 2026;
3. Extending the terms of Commissioners Neil Berman and Ron Locicero until such time that their seats can be filled; and
4. Direct staff to commence recruitment efforts to fill the one (1) vacancy on the LCAC and the two (2) vacancies on the PRC.

PUBLIC HEARINGS

8. ADOPT INDUSTRIAL PRESERVATION AND OPTIMIZATION POLICY

Recommendation:

Adopt an Industrial Land Preservation and Optimization Policy

Estimated Time: 30 Minutes

Economic Development Director Matt Mahood provided the report and presentation for items 8 and 9 together.

The public hearing opened at 8:37 p.m. There being no requests to speak, the public hearing closed.

MOTION:

Approving the recommended action including a statement that the intention is to protect employment lands including both industrial and commercial lands.

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

9. ADOPT ZONING CODE AMENDMENT TO SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS

Recommendation:

1. Open/close the public hearing.
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment as recommended by staff and amended by the Planning Commission.

Estimated Time: 30 Minutes

The public hearing opened at 8:58 p.m. The following people were called to speak:

Nick Gaich
Munjal Shah
Hiral Khatri
Jai Singh
Debbie McConnell

There being no further requests to speak, the public hearing closed.

MOTION:

Waive the first and second reading of the ordinance approving the planning recommendation to include home improvement and staff's hybrid recommendation about medical offices.

RESULT:	Failed
MOVER:	Council Member Martinez Beltran
SECONDER:	None
AYES:	
NAYS:	
ABSTAIN:	
ABSENT:	

MOTION:

Waiving the first and second reading of the ordinance including the following language; Medical Office and Clinics – IL, CI, IO, IC Zones; 5,000 square feet or less - Permitted by right, 5,001 - 20,000 square feet - Administrative Use Permit, and 20,001 square feet or more - Conditional Use Permit.

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

MOTION:

Introducing the ordinance as amended by the previous motion.

RESULT:	Passed
MOVER:	Council Member Spring

SECONDER:	Council Member Martinez Beltran
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

OTHER BUSINESS

10. MONTHLY BUDGET UPDATE AND JANUARY 2022 FINANCIAL AND INVESTMENT REPORTS

Recommendation:
Accept and file report.

Estimated Time: 10 Minutes

Finance Director Dat Nguyen provided the report and presentation.

Public Comment opened at 9:39 p.m. There being no requests to speak, public comment closed.

Report received.

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Martinez Beltran requested that the commercial workplan be moved up and requested staff identify which commercial sites can be identified for industrial use.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 9:40 p.m. in honor of Ryan Last, who lost his life to cyberbullying.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD 2022 PARKING LOT SEAL COAT PROJECT

RECOMMENDATION(S)

1. Award contract to Silicon Valley Paving, Inc. in the amount of \$78,148;
2. Authorize the expenditure of contingency funds not to exceed \$7,814; and
3. Authorize City Manager to execute and administer that certain construction contract with Silicon Valley Paving, Inc.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The purpose of this item is to present the Council with an opportunity to review and consider the contract prepared to complete the Community Service Department's 2022 Parking Lot Seal Coat Project. The scope of work for the 2022 Parking Lot Seal Coat Project will include asphalt pavement seal coating and associated striping at the following parking lots: Galvan Park and Go Kids, Community Christian Offices, Nordstrom Park, City of Morgan Hill Corporation Yard, Paradise Park, and City of Morgan Hill Council Chamber Building.

In soliciting bids for this project, the City contacted licensed contractors on the City's Bidders' list with the following Contractor's State Licensing Board classifications: Class A-General Engineering, C-12 Earthwork and Paving, or C-32 Parking and Highway Improvements. The bid documents were also posted on the City of Morgan Hill website,

two online bid services, Public Purchase and Online Plan Service, as well as the County of Santa Clara Builders Exchange.

The informal bid opening was held online via a Zoom meeting on March 8, 2022 and eight bids were received.

Bidder	Bid Amount
Silicon Valley Paving, Inc.	\$78,147.38
Dryco Construction, Inc.	\$80,283.35
Graham Contractors, Inc.	\$87,402.62
Always Paving, Inc.	\$89,738.00
American Asphalt Repair and Resurfacing Co.	\$103,444.15
Asphalt Surfacing, Inc.	\$105,041.00
Atlantis Paving and Grading	\$121,610.00
Galeb Paving, Inc.	\$186,844.22

Silicon Valley Paving, Inc. submitted the lowest bid of \$78,147.38. Per the attached informal bid documents, the City is awarding this contract based on the lowest bid of \$78,147.38.

Silicon Valley Paving, Inc. has 25 years of substantial experience in the pavement resurfacing business. Staff recommends the award of this contract to Silicon Valley Paving, Inc. for \$78,148. Staff also recommends a 10% contingency of \$7,814 for a total construction authorization of \$85,962.

The project is anticipated to begin construction in April and is expected to take not more than 45 calendar days from the commencement of construction.

COMMUNITY ENGAGEMENT:

Inform

The Contractor is required to post signs informing the public of the dates and times of work at least three (3) days prior to the commencement of work. In addition, the City will include information about the planned project in the 411 and The Scoop.

ALTERNATIVE ACTIONS:

An alternative action would be to not approve the project or to delay the work.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While the City Council has not previously taken action on this particular item, conducting parking lot seal coat paving projects is an ongoing public safety activity and the Council has approved numerous contracts for parking lot seal coat paving projects with the most recent award in September 2018. Due to smaller scopes of work, the contracts for the years between 2019 and 2021 were below the \$60,000 contract threshold amount requiring City Council approval. The scope of work is planned on a rotational basis with different lots and trails receiving treatments each year.

FISCAL AND RESOURCE IMPACT:

The authorized amount for this contract is \$78,148, and a 10% contingency of \$7,814 for a total authorization of \$85,962. This project is budgeted in Fund 741 - Building Replacement.

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 CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Silicon Valley Paving, Inc. ("Contractor") for work on the 2022 Parking Lot Seal Coat Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20____, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following:

"No other documents"
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Seventy-Eight Thousand One Hundred Forty-Seven Dollars and Thirty-Eight Cents (\$78,147.38) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within Forty-Five (45) calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

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

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: keri.russell@morganhill.ca.gov

Contractor:

Name: Silicon Valley Paving, Inc.
Address: 1050 Commercial Street, #101
City/State/Zip: San Jose, CA 95112
Phone: (408) 286-9101
Attn: Todd Slyngstad, President
Email: todd@svpinc.com
Copy to: toddr@svpinc.com

10. General Provisions.

- 10.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

10.5 Integration; Severability. This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

10.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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

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

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Bigelow
City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

CONTRACTOR:
SILICON VALLEY PAVING, INC.

Signature

Todd Slyngstad - President

Name/Title [print]

Date: 3/14/2022

Corporate entities must provide a second signature:

Signature

Jose Vizcaino - Secretary

Name/Title [print]

Date: 3/14/2022

732923
Contractor's License Number(s)

03/31/2023
Expiration Date(s)

Seal:

1000005040
Contractor's DIR Registration Number(s)

06/30/2023
Expiration Date

END OF CONTRACT

SPECIFICATION and CONTRACT DOCUMENTS
FOR
2022 PARKING LOT(S) SEAL COAT PROJECT



MORGAN HILL, CALIFORNIA
COMMUNITY SERVICES DEPARTMENT

Bids Due:
Tuesday, March 8, 2022 at 11:00 a.m.
Via e-mail to cynthia.iwanaga@morganhill.ca.gov

Non-Mandatory, Virtual Pre-Bid Meeting:
Tuesday, February 15, 2022 at 9:30 a.m.

Pre-register at:
<https://bit.ly/2022SealCoat>

Virtual Bid Opening:
Tuesday, March 8th at 11:00 a.m.

Pre-register at:
<https://bit.ly/SealCoatBidOpening>

January 2022

NOTICE INVITING INFORMAL BIDS

- 1. Bid Acceptance.** The City of Morgan Hill ("City"), will accept electronic PDF bids for its 2022 Parking Lot Seal Coat Project ("Project"), by or before Tuesday, March 8, 2022, at 11:00 a.m., via e-mail to cynthia.iwanaga@morganhill.ca.gov , at which time the bids will be publicly opened and read aloud.

- 2. Project Information.**

2.1 Location and Description. The Project is located at various locations throughout the city of Morgan Hill and the Scope of Work is described as follows:

The application of seal coat and restriping at the parking lots located at:

- Galvan Park and Go Kids, 17666 Crest Avenue
- Community Christian Offices, 17620 Crest Avenue
- Nordstrom Park, East Dunne Avenue and Murphy Avenue
- City of Morgan Hill Corporation Yard, 100 Edes Court
- Paradise Park, La Crosse Drive and Calle Enrique
- City of Morgan Hill Council Chamber Bldg., 17575 Peak Avenue

2.2 Time for Completion. The planned timeframe for commencement and completion of construction of the Project is April 2022 through May 2022.

- 3. License and Registration Requirements.**

3.1 License. This Project requires a valid California contractor's license in one of the following classification(s): A: (General Engineering Contractor), C-12: (Earthwork and Paving), C-32: (Parking and Highway Improvement).

3.2 DIR Registration. City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

- 4. Contract Documents.** The specifications, bid and contract documents for the Project ("Contract Documents") may be obtained at no charge from www.publicpurchase.com or the City of Morgan Hill website <http://www.morgan-hill.ca.gov/bids.aspx>

5. Bid Proposal and Security.

5.1 Bid Proposal Form. Each Bid must be submitted using the Bid Proposal form provided with the Contract Documents.

5.2 Bid Security. The Bid Proposal must be accompanied by a PDF copy of the bid security of ten percent (10%) of the maximum bid amount, in the form of a PDF of the cashier's or certified check made payable to City, or a PDF of the bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The City will request the original bid security documents, e.g., wet signed bid bond or cashier's check, from the two lowest bidders. The two lowest bidders will then have 48 hours to overnight the original bid security documents to the City. Submitted bid packages that do not include a PDF copy of the bid security documents will be deemed non-responsive. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.

6. Prevailing Wage Requirements.

6.1 General. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

6.2 Rates. These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work must be at least time and one-half (1/2).

6.3 Compliance. The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code Section 1771.4.

7. Performance and Payment Bonds. The successful bidder will be required to provide performance and payment bonds for one hundred percent (100%) of the Contract Price.

8. Substitution of Securities. Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code Section 22300.

9. **Subcontractor List.** Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one half (1/2) of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.
10. **Instructions to Bidders.** Additional and more detailed information is provided in the Instructions for Bidders, which should be carefully reviewed by all bidders before submitting a Bid Proposal.
11. **Non-Mandatory Virtual Bidders' Conference.** A non-mandatory virtual bidders' conference will be held on **Tuesday, February 15, 2022 at 9:30 a.m.**, via a Zoom meeting. Please pre-register at the following link: <https://bit.ly/2022SealCoat> The purpose of the conference is to acquaint all prospective bidders with the Contract Documents and the Work. The bidders' conference is not mandatory.

By: Michelle Bigelow, City Clerk

Date: January 21, 2022

Publication Dates: 1) January 28, 2022

END OF NOTICE INVITING INFORMAL BIDS

INSTRUCTIONS TO BIDDERS

Each Bid Proposal submitted to the City of Morgan Hill ("City") for its 2022 Parking Lot Seal Coat Project ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

1.1 General. Each bid ("Bid Proposal") must be signed, sealed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in the Notice Inviting Informal Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all indirect costs such as applicable taxes, insurance and field offices.

1.2 E-mail Bid Submittal. The City of Morgan Hill ("City") will accept bids via e-mail to cynthia.iwanaga@morganhill.ca.gov for its 2022 Parking Lot Seal Coat Project ("Project"), by or before Tuesday, March 8, 2022 at 11:00 a.m., at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/SealCoatBidOpening> Please pre-register at the link.

Bids must be received by the City staff's e-mail inbox no later than 11:00 a.m. on March 8, 2022. No late bids will be accepted.

Please note: If City is unable to confirm that the bidder's DIR registration is current, City must disqualify the bidder and return its bid unopened (Labor Code section 1725.5).

2. Examination of Contract Documents and Project Site. Each bidder is solely responsible for diligent and thorough review of the Contract Documents (as defined in the General Conditions), examination of Project site, and reasonable and prudent inquiry concerning known and potential site conditions prior to submitting a Bid Proposal. However, bidders should not enter onto City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104. City expressly disclaims responsibility for assumptions the bidder might draw from the presence or absence of information provided by City.

3. **Requests for Information.** Questions regarding the Project, the bid procedures or any of the Contract Documents must be submitted in writing to cynthia.iwanaga@morganhill.ca.gov no later than Tuesday, February 22, 2022 at 5:00 p.m.
4. **Addenda.** Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time. It is the bidder's responsibility to check for issued addenda on the City website or www.publicpurchase.com prior to submitting a bid.
5. **Brand Designations and "Or Equal" Substitutions.** 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 bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code Section 3400(c).
 - 5.1 **Pre-Bid Requests.** Any request for submission made before the Contract is awarded must be submitted to the City Project Manager at least ten (10) days before the opening of bids so that all interested bidders may be notified of any approved alternative.
 - 5.2 **Post-Award Requests.** After the Contract is awarded, Contractor may submit a substitution within fourteen (14) days after the date of award of the Contract, or as specified in the Special Conditions.
6. **Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one (1) Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
7. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with terms such as "negotiable," "will negotiate," or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 9

below, and by the completed Subcontractor List, and Non-Collusion Declaration using the forms included in the Contract Documents.

- 8. Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
- 9. Bid Security.** The Bid Proposal must be accompanied by a PDF copy of the bid security of ten percent (10%) of the maximum bid amount, in the form of a PDF of the cashier's or certified check made payable to City, or a PDF of the bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The City will request the original bid security documents, for example, wet signed bid bond or cashier's check, from the two lowest bidders. The two lowest bidders will then have 48 hours to overnight the original bid security documents to the City. Submitted bid packages that do not include a PDF copy of the bid security documents will be deemed non-responsive. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.
- 10. Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of ninety (90) days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code Section 5100 et seq.
- 11. Bid Protest.** Any bid protest must be submitted in writing via an e-mail to cynthia.hasson@morganhill.ca.gov and received by Cynthia Hasson, Assistant City Attorney before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:

 - 11.1 General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later

than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 11, a “working day” means a day that City is open for normal business, and excludes weekends and holidays observed by City.

11.2 Protest Contents. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the person representing the protesting bidder if different from the protesting bidder.

11.3 Copy to Protested Bidder. A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.4 Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

11.5 Copy to Protesting Bidder. A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.6 Exclusive Remedy. The procedure and time limits set forth in this section are mandatory and are the bidder’s sole and exclusive remedy in the event of bid protest. A bidder’s failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

11.7 Right to Award. City reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

- 12. Rejection of Bids; Award of Contract.** City reserves the right, acting in its sole discretion, to waive immaterial bid irregularities, the right to accept or reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within ninety (90) days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid.
- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract price as awarded, including additive alternates, if applicable.
- 14. Evidence of Responsibility.** Within twenty four (24) hours following a request by City, a bidder must submit to City satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by City, the bidder's organization available for the performance of the Contract and any other required evidence of the bidder's qualifications to perform the proposed Contract. City may consider such evidence before making its decision awarding the proposed Contract.
- 15. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in one of the classification(s) required by law to perform the Work. A: (General Engineering Contractor), C-12: (Earthwork and Paving), C-32: (Parking and Highway Improvement)
- 16. Taxes.** The bid price must include all applicable federal, state, and local taxes.
- 17. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.
- 18. DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the DIR to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
- 19. Bid Schedule.** Bidders are required to fully complete the Bid Schedule form accompanying the Bid Proposal form with unit prices as indicated, and to submit the completed Bid Schedule with their Bid Proposal.
- 19.1 Incorrect Totals.** In the event of a computational error for any bid item (base bid or alternate) resulting in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect

the corrected amount (estimated quantity X unit cost), unless the cumulative amount of correction changes the total amount of the base bid or bid alternate by more than five percent (5%). In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code Section 5100 et seq.

19.2 Estimated Quantities. The quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased.

- 20. Subcontractor Work Limits.** The prime contractor must perform at least 50% of the Work on the Project, calculated as a percentage of the base bid price, with its own forces, except for any Work identified as “Specialty Work” in the Contract Documents. The total bid amount for any such Specialty Work, as shown on the Bid Schedule, may be deducted from the base bid price before computing the 50% self-performance requirement. The remaining Work may be performed by qualified Subcontractor(s).
- 21. Local Preference.** Submittals will be evaluated based upon a local preference, which allows local businesses to reduce their bid amounts up to five (5%) percent in order to become the lowest bidder. The local businesses must also affirmatively mark on their bid submittal that they are a local business and that they willing to reduce their bid amount by up to 5% in order to make their bid the lowest. If the lowest price submitted for services is from a non-local business, local businesses who have affirmatively marked their willingness to reduce their bid amount by up to 5%, shall be given the opportunity to lower their bid prices by up to 5% to become the lowest bidder. This reduction in the bid amount will be allowed if their bid is otherwise equally responsive and responsible in meeting the requirements of the City’s Notice Inviting Informal Bids.
- 22. Bidder’s Questionnaire.** A completed, signed Bidder’s Questionnaire using the form provided with the Contract Documents and including all

required attachments must be submitted within forty-eight (48) hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

- 23. Non-Mandatory Virtual Bidders' Conference.** A non-mandatory virtual bidders' conference will be held on **Tuesday, February 15, 2022 at 9:30 a.m.**, via a Zoom meeting. Please pre-register at the following link: <https://bit.ly/2022SealCoat> The purpose of the conference is to acquaint all prospective bidders with the Contract Documents and the Work. The bidders' conference is not mandatory.

24. 2022 Seal Coat Project: Scope of Work and Technical Specifications

SCOPE OF WORK

Furnish all labor, equipment, materials, and performance of operation in connection with the application of Asphalt Pavement Coating, including but not limited to:

- Remove and sterilize any incidental vegetation
- Repair cracks with hot applied product(s)
- Patch low areas and failed pavement
- Clean pavement surface
- Application of bond coat (if required)
- Application of under sealer coat with 2 lb- 30 mesh sand/ gal sealer
- Application of top sealer coat; no granular or aggregate additives
- Re-striping to match existing

MATERIALS

Asphalt Pavement Coating will meet the following specifications or approved alternative:

Pavement coating shall be composed of a refined petroleum asphalt emulsion, fillers, and fibers such as Overkote manufactured by Reed and Graham, Inc., or approved equal. Screenings shall be of 30 mesh blast sand composed of clean, hard, durable, uncoated particles free of clay or organic matters. Sealer shall be mixed to a uniform, free-flowing consistency. Water shall be added to obtain a semi-fluid consistency. The amount of water added shall not exceed fifteen percent (15%) by volume. Contractor shall remove all weeds and vegetation growing through the pavement surface to be sealed. All surface cracks one-half inch (1/2") or wider in width shall be cleaned and filled with asphalt concrete.

Cracks one-eighth inch (1/8") to one-half inch (1/2") wide shall be cleaned and filled with crack filler. Cracks that are smaller than one-eighth inch (1/8") in width shall be cleaned and filled with multiple coats of sealer. Remove oil and grease deposits by scraping, burning or the use of detergent. When detergent is used, the pavement shall be thoroughly rinsed with water. After the oil or grease deposits are removed, the areas shall be sealed with oil-spot sealant prior to seal coat application. A tack coat consisting of one part emulsified asphalt binder (SS-1h) and four parts water shall be uniformly applied over the entire pavement surface at the rate of 0.05 to 0.10 gallon per square yard. Sweep out any "pools" of wet binder remaining in depressions. Allow the tack coat to dry before applying seal coat. No seal coating work shall be performed when the ambient temperature is below 55°F or above 110°F or within 24 hours prior to or during rainfall. Sealer shall be applied in continuous parallel lines and spread immediately by use of rubber face squeegees or power spreader. Pavement surface to be sealed shall receive two coats of sealer.

A primary seal coat application of a minimum thirty (30) gallons of undiluted sealer per one thousand (1,000) square feet of area shall be done to smooth out the rough surface. The surface after this primary application shall be uniformly smooth and show no evidence of coarse or uneven texture. As soon as the primary application is dry to the touch and will not scuff when walked on, another application shall be made. After the second application, the surface shall be allowed at least twenty-four (24) hours for complete curing. The Contractor shall protect all manhole and valve covers from seal coat by oiling or masking.

SURFACE PREPARATION

- Damaged asphalt and areas completely saturated by oil or grease shall be removed and replaced or repaired as required.
- All weed or other vegetation growing through the asphaltic concrete shall be removed and sprayed with a suitable chemical sterilant in accordance with the City of Morgan Hill's Integrated Pest Management Plan for Facilities, Parks, Streets and Public Open Space.
- Thoroughly clean all cracks of foreign matter. Cracks 1/8" to a maximum of 1/2" in width should be cleaned and filled with crack filler, per manufacturer's recommendations. Cracks wider than 1/2" should be repaired with asphaltic concrete. Allow crack filler to cure prior to sealing. All cracks under 1/8" should be filled with multiple coats of sealer.
- The surface must be free of all foreign material, such as sand, dust, clay and grease, which might adversely affect bonding of the sealer. High pressure air blowers, vacuums or sweepers shall be used to remove these objectionable materials. Where there are deposits of grease and oil, these areas must be cleaned by scraping, burning and/or the use of a

detergent. Trisodium Phosphate and a stiff brush should be used to scrub area clean. When detergents are used, the pavement shall be thoroughly rinsed with water, maintaining all environmental controls to assure no intrusion to storm systems or waterways. After cleaning and removing grease and oil spots, seal areas with oil spot sealant.

BOND COAT (if required*)

- A tack coat consisting of one (1) part emulsified asphalt binder (SS-1h) and four (4) parts water, shall be uniformly applied over the entire surface at the rate of .05 to .10 gallon per square yard. Sweep out any “pools” of wet binder remaining in the depressions. Allow to dry before applying sealer. *A bond coat is recommended in any case where the bond between the asphalt pavement and sealer may be questionable.

EQUIPMENT

- Mixing or agitating equipment furnished shall be a tank-type power mixer with a round bottom and equipped with a power driven mixer of sufficient capacity to maintain the mineral content in complete suspension.
- The mixture shall be applied by the combined or individual use of rubber faced squeegees and/or mechanized material spreading equipment or other suitable method approved by the inspector.

APPLICATION PROCEDURES

- Sealer shall be mixed to a uniform free-flowing consistency. Water shall be added (not to exceed 15% by volume) to obtain a semi-fluid consistency.
- Prior to the first application of sealer in extremely hot weather, dampen the surface with water. Remove any excess water to leave the surface only slightly damp.
- Sealer should be applied to the area in continuous parallel lines and spread immediately by use of rubber faced squeegees and/or mechanized material spreading equipment.

APPLICATION – NEW PAVEMENT OR OLD PAVEMENT WITH ONLY MINOR VOIDS

- First application – to each gallon of Sealer should be added 2 lbs of 30 mesh sand. Water shall be added to obtain a semi-fluid consistency.

- Subsequent application – Final application will be made using a minimum of 40 gallons of undiluted sealer per 1,000 square feet of area. The surface will be smooth and uniform, showing no evidence of course or uneven texture.

GENERAL

- Asphalt should be fully cured before application (new pavement – allow at least 30 days before application)
- Weather limitation – No part of the construction involving the application of sealer shall take place during or just prior to rainfall or freezing temperatures. Air temperature shall be at least 55°F and rising, or as per manufacturers recommendations. Do not apply if rain is forecast within 48 hours after application.
- Curing time – As per manufacturer's specs, generally as soon as application is dry to the touch and won't scuff under normal walking another application may be made.
- Contractor will supply the City of Morgan Hill with scale tags for the project with the following information: Product, Project Name, Gallons/Tons supplied to the project.
- Contractor will supply all MSDS (or MDS) for all materials used on the project.

PROJECT AREAS AND ESTIMATED QUANTITIES

All quantities are estimates. It is the contractor's sole responsibility to ensure accuracy by verifying field measurements for accurate bidding.

#1 Galvan Park and Go Kids Parking Lot-17666 Crest Avenue

Description of Bid Item	Approximate Quantity/Unit of Measure
Mobilization	LS
Seal Coat of parking lots	57,025 SF
4" white lines (110 ea @ 18')	2052 LF
4" blue lines (4 ea @ 18')	72 LF
Main Lot - Hashed Walkways 4" white	571 LF
Back Lot – White Hash	136 LF
Back Lot – Blue Lines	166 LF
Back Lot – "NO PARKING" Stencil 12"	1 EA
ADA Symbol	3 EA
Arrows (2 left, 1 right, 16 straight)	19 EA
Crack sealing	100 LF
Supplemental Work	LS

#2 Community Christian Offices Parking Lot -17620 Crest Avenue

Description of Bid Item	Approximate Quantity/Unit of Measure
Mobilization	LS
Seal Coat of parking lots	2,925 SF
4" white lines (3 ea @ 18')	54 LF
4" blue lines (Outlined Hash Area)	27 LF
Hashed Area 4" white	40 LF
"NO PARKING" Stencil 12"	1 EA
ADA Symbol	1 EA
Supplemental Work	LS

#3 Nordstrom Park Parking Lot – East Dunne Avenue and Murphy Avenue

Description of Bid Item	Approximate Quantity/Unit of Measure
Mobilization	LS
Seal Coat of parking lots	3,080 SF
4" white lines (4 ea @ 15')	60 LF
4" blue lines (1 ea @ 15')	18 LF
9' X 10' Blue Border (2 sides)	19 LF
9' X 12' 4" Hash Lines	21
ADA Symbol	1
12" 'NO PARKING" Stencil	1
6' X 3' Arrow	2
Crack sealing	100 LF
Supplemental Work	LS

#4 City Corporation Yard Parking Lot- 100 Edes Court

Description of Bid Item	Approximate Quantity/Unit of Measure
Mobilization	LS
Seal Coat of parking lots	55,550 SF
4" white lines (Varied Sizes)	1533 LF
Hash Area near Chemical Shed (white)	138 LF
Outline Near Paint Shed (white)	33 LF
"ELECTRIC VEHICLE PARKING" 10" Stencil (white)	1 EA
Front Parking Lot – 2 Hash areas and outlines (white)	182 LF
Front Parking Lot – Hash Outline (blue)	37 LF
ADA Symbol (Front Parking Lot)	1 EA
10" "VISITOR PARKING" Stencil (white)	2 EA
Delineator lines, 4" white near Streets Shed, East Exit gate and gate controller	26 LF
Crack sealing	100 LF
Supplemental Work	LS

#5 Paradise Park Parking Lot-LaCrosse Drive at Calle Enrique

Description of Bid Item	Approximate Quantity/Unit of Measure
Mobilization	LS
Seal Coat of parking lots	6,250 SF
4" Angle Parking Lines (white)	172 LF
4" Straight Parking Lines (white)	17.5 LF
4" Straight Parking Lines	17.5 LF
Parallel Parking Lines ("L" & "T") (white)	50 LF
8' X 18' Hash area lines (white)	47 LF
8' X 18' Hash area Outline (blue)	26 LF
ADA Symbol (Front Parking Lot)	2 EA
10' Straight Arrow	4 EA
Crack sealing	100 LF
Supplemental Work	LS

#6 Council Chamber Building Parking Lot -17555 Peak Avenue (enter from Alkire Avenue)

Description of Bid Item	Approximate Quantity/Unit of Measure
Mobilization	LS
Seal Coat of parking lots	11,350 SF
4" X 19' Parking Lines (white)	76 LF
4" X 19' Parking Lines (blue)	76 LF
ADA Symbol	4 EA
4" - 19' X 8.5' Rectangle outline (blue)	46.5 LF
4" Hash Lines (white)	45 LF
4" - 19' X 10' Rectangle outline (blue)	59 LF
4" Hash Lines (white)	66.5 LF
12" "NO PARKING" Stencil (white)	2 EA
12" "VISITOR" Stencil (white)	3 EA
Crack sealing	100 LF
Supplemental Work	LS

END OF INSTRUCTIONS TO BIDDERS

BID PROPOSAL

2022 Parking Lot Seal Coat Project

_____ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“City”) for the above-referenced project (“Project”) in response to the Notice Inviting Informal Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price (“Base Bid” from Bid Schedule-Grand Total on Bid Schedule Page 7):
\$ _____.

2. **Addenda.** Bidder acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

- 3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder’s knowledge there are no errors, omissions, or discrepancies in the Contract Documents subject to the limitations of Public Contract Code Section 1104.

- 3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

- 3.3 **Bidder is Qualified.** Bidder is fully qualified to perform the Work.

- 3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract .** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder will do all of the following:

4.1 Execute Contract. Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

4.2 Submit Required Bonds. Submit to City a payment bond and a performance bond, each for one hundred percent (100%) of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

4.3 Insurance Requirements. Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

- 5. Wage Theft Prevention.** All Bidders are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017.

The undersigned Bidder certifies that neither Bidder nor its principals have been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid. Bidder or its principals who are unable to so certify, must disclose wage and hour violations, and shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder's efforts to date to satisfy the order/judgment. Signing this bid shall constitute signature of this Certification.

The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

- 6. Bid Security.** As a guarantee that if awarded the Contract, it will perform its obligations under Section 4, above, Bidder is enclosing a PDF copy of the bid security in the amount of ten percent (10%) of its maximum bid amount in the following form:

_____ A PDF copy of a cashier's check or certified check payable to City of Morgan Hill and issued by _____ Bank in the amount of \$ _____.

_____ A PDF copy of the bid bond, using the Bid Bond form included with the Contract Documents, payable to City of Morgan Hill and executed by a surety licensed to do business in the State of California.

7. Local Preference.

☐ Check this box if you are a local business as defined by the Morgan Hill Municipal Code Section 3.04.030 and would like to apply the local business quotation preference by reducing the bid or proposal price submitted by up to five percent (5%) in order to be the low bidder.

This Bid Proposal is hereby submitted on _____, 20__:

s/ _____
Name and Title [print]

Company Name CSLB License #, Classification and Expiration Date

DIR Registration # and Expiration Date

Address Phone

City, State, Zip E-Mail

END OF BID PROPOSAL

Attachments: Bid Schedules 1 to 6
Bid Schedule Grand Total
Subcontractor List
Noncollusion Declaration
Bid Security

BID SCHEDULE 1

2022 PARKING LOT SEAL COAT PROJECT

The Bid Schedules 1 thru 6 and the Grand Total Bid Schedule forms must be completed and submitted with the electronic Bid Proposal. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, shall be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

GALVAN PARK & GO KIDS, 17666 CREST AVENUE

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	LS	na	
2	Seal Coat of parking lots	57,025 SF		
3	4" white lines (110 ea @ 18')	2052 LF		
4	4" blue lines (4 ea @ 18')	72 LF		
5	Main Lot - Hashed Walkways 4" white	571 LF		
6	Back Lot – White Hash	136 LF		
7	Back Lot – Blue Lines	166 LF		
8	Back Lot – “NO PARKING” Stencil 12”	1 EA		
9	ADA Symbol	3 EA		
10	Arrows (2 left, 1 right, 16 straight)	19 EA		
11	Crack sealing	100 LF		
12	Supplemental Work	LS	na	\$5,000

Bid Schedule I Total	
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BID SCHEDULE 2

2022 PARKING LOT SEAL COAT PROJECT

Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, shall be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

COMMUNITY CHRISTIAN OFFICES, 17620 CREST AVENUE

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	LS	na	
2	Seal Coat of parking lots	2,925 SF		
3	4" white lines (3 ea @ 18')	54 LF		
4	4" blue lines (Outlined Hash Area)	27 LF		
5	Hashed Area 4" white	40 LF		
6	"NO PARKING" Stencil 12"	1 EA		
7	ADA Symbol	1 EA		
	Supplemental Work	LS	na	\$5,000

Bid Schedule 2 Total	
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BID SCHEDULE 3

2022 PARKING LOT SEAL COAT PROJECT

Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, shall be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

NORDSTROM PARK – EAST DUNNE AVE AND MURPHY AVE

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	LS	na	
2	Seal Coat of parking lots	3,080 SF		
3	4" white lines (4 ea @ 15')	60 LF		
4	4" blue lines (1 ea @ 15')	18 LF		
5	9' X 10' Blue Border (2 sides)	19 LF		
6	9' X 12' 4" Hash Lines	21		
7	ADA Symbol	1		
8	12" 'NO PARKING' Stencil	1		
9	6' X 3' Arrow	2		
10	Crack sealing	100 LF		
12	Supplemental Work	LS	na	\$5,000

Bid Schedule 3 Total	
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BID SCHEDULE 4

2022 PARKING LOT SEAL COAT PROJECT

Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, shall be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

CITY CORPORATION YARD – 100 EDES COURT

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	LS	na	
2	Seal Coat of parking lots	55,550 SF		
3	4" white lines (Varied Sizes)	1533 LF		
4	Hash Area near Chemical Shed (white)	138 LF		
5	Outline Near Paint Shed (white)	33 LF		
6	"ELECTRIC VEHICLE PARKING" 10" Stencil (white)	1 EA		
7	Front Parking Lot – 2 Hash areas and outlines (white)	182 LF		
8	Front Parking Lot – Hash Outline (blue)	37 LF		
9	ADA Symbol (Front Parking Lot)	1 EA		
10	10" "VISITOR PARKING" Stencil (white)	2 EA		
11	Delineator lines, 4" white near Streets Shed, East Exit gate and gate controller	26 LF		
12	Crack sealing	100 LF		
13	Supplemental Work	LS	na	\$5,000

Bid Schedule 4 Total	
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BID SCHEDULE 5

2022 PARKING LOT SEAL COAT PROJECT

Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, shall be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

PARADISE PARK – LA CROSSE DR @ CALLE ENRIQUE

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	LS	na	
2	Seal Coat of parking lots	6,250 SF		
3	4" Angle Parking Lines (white)	172 LF		
4	4" Straight Parking Lines (white)	17.5 LF		
5	4" Straight Parking Lines	17.5 LF		
6	Parallel Parking Lines ("L" & "T") (white)	50 LF		
7	8' X 18' Hash area lines (white)	47 LF		
8	8' X 18' Hash area Outline (blue)	26 LF		
9	ADA Symbol (Front Parking Lot)	2 EA		
10	10' Straight Arrow	4 EA		
11	Crack sealing	100 LF		
12	Supplemental Work	LS	na	\$5,000

Bid Schedule 5 Total	
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BID SCHEDULE 6

2022 PARKING LOT SEAL COAT PROJECT

Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, shall be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

COUNCIL CHAMBER BLDG PARKING LOT – 17555 PEAK AVENUE (ENTER FROM ALKIRE)

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	LS	na	
2	Seal Coat of parking lots	11,350 SF		
3	4" X 19' Parking Lines (white)	76 LF		
4	4" X 19' Parking Lines (blue)	76 LF		
5	ADA Symbol	4 EA		
6	4" - 19' X 8.5' Rectangle outline (blue)	46.5 LF		
7	4" Hash Lines (white)	45 LF		
8	4" - 19' X 10' Rectangle outline (blue)	59 LF		
9	4" Hash Lines (white)	66.5 LF		
10	12" "NO PARKING" Stencil (white)	2 EA		
11	12" "VISITOR" Stencil (white)	3 EA		
12	Crack sealing	100 LF		
13	Supplemental Work	LS	na	\$5,000

Bid Schedule 6 Total	
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BID SCHEDULE – GRAND TOTAL

BASE BID

2022 PARKING LOT SEAL COAT PROJECT

**NAME OF
CONTRACTOR:** _____

Bid Schedule	Description of Parking Lot Location	Total
1	Galvan Park and Go Kids	
2	Community Christian Offices	
3	Nordstrom Park	
4	City Corporation Yard	
5	Paradise Park	
6	Council Chamber Building	

Base Bid:	
Grand Total of Bid Schedules 1 to 6	

SUBCONTRACTOR LIST

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number. **Bidders: Please print legibly. Illegible forms may be rejected.**

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER	DIR REG. NO.	LOCATION OF BUSINESS	LOCAL VENDOR ² YES/NO

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

NONCOLLUSION DECLARATION

(To be executed by bidder and submitted with bid)

State of California	)	SS.
	)	
County of _____	)	

The undersigned declares:

I am the _____ [title] of
_____ [business name], the party
making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on
_____ [date], at _____ [city],
_____ [state].

s/ _____

Name [print]

CIVIL CODE ' 1189

BID BOND

_____ (“Bidder”) has submitted a bid, dated _____, 20____ (“Bid”), to the City of Morgan Hill (“City”) for work on the 2022 Parking Lot Seal Coat Project (“Project”). Under this duly executed bid bond (“Bid Bond”), Bidder as Principal and

_____, its surety (“Surety”), are bound to City as obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid (the “Bond Sum”). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten (10) days following issuance of the notice of award to Bidder, Bidder must submit to City the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents (“Contract Documents”);
 - 2.2 **Payment Bond.** A payment bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required under the Instructions for Bidders.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

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

Fax: _____
Email: _____

- 4. Duration; Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise it will remain in full force and effect for ninety (90) days following award of the Contract or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code Sections 2819 and 2845.

This Bid Bond is entered into and is effective on _____,
20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgement, Notary Seal, and Attorney-In-Fact Certificate)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

BIDDER'S QUESTIONNAIRE

2022 PARKING LOT SEAL COAT PROJECT

Within forty eight (48) hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and including all required attachments. City may request the Questionnaire from one (1) or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part 1: General Information

Bidder Business Name: _____ ("Bidder")

Check One: ☐ Corporation
☐ Partnership
☐ Sole Proprietorship
☐ Joint Venture of: _____
☐ Other: _____

Address: _____

Phone: _____

Fax: _____

Owner of Company: _____

Contact Person: _____

Email: _____

Bidder's California Contractor's License Number(s):

Part 2: Bidder Experience

1. How many years has bidder been in business under its present business name? _____

2. Has bidder completed projects similar in type and size to this Project as a general contractor? _____

3. Has bidder ever been disqualified on grounds that it is not responsible? If yes, provide additional information on a separate sheet of paper regarding the disqualification, including the name and address of the agency or owner of the subject project, the type and size of the project, the reasons that bidder was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has bidder ever been terminated from a construction project, either as a general contractor or as a subcontractor? If yes, provide additional information on a separate sheet of paper regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether bidder was under contract as a general contractor or a subcontractor, the reasons that bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about bidder's past projects performed as general contractor as follows:

5.1 Six (6) most recently completed public works projects within the last three (3) years;

5.2 Three (3) largest completed projects within the last three (3) years; and

5.3 Any project which is similar to this Project.

6. Use separate sheets of paper provide all of the following information for each project identified in response to the above three (3) categories:

6.1 Project name

6.2 Location

6.3 Owner

6.4 Owner contact (name and current phone number)

6.5 Architect or engineer name

6.6 Architect or engineer contact (name and current phone number)

6.7 Project manager (name and current phone number)

6.8 Description of project, scope of work performed

6.9 Initial contract value (at time of bid award)

6.10 Final cost of construction (including change orders)

6.11 Original scheduled completion date

6.12 Time extensions granted (number of days)

6.13 Actual date of completion

6.14 Number and amount of stop notices or mechanic's liens filed

- 6.15 Amount of liquidated damages assessed against Bidder
- 6.16 Nature and resolution of any claim, lawsuit, and/or arbitration between Bidder and the owner.

Part 3: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By [name, title]: _____

END OF BIDDER'S QUESTIONNAIRE

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and _____ ("Contractor") for work on the 2022 Parking Lot Seal Coat Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20____, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following:

"No other documents"

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor

Dollars (\$_____) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.

5. **Time for Completion.** Contractor will fully complete the Work for the Project within Forty-Five (45) calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

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

7. **Labor Code Compliance.**

7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

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

7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

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

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

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: _____

Contractor:

Name: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

10. **General Provisions.**

- 10.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

10.5 Integration; Severability. This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

10.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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

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

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Bigelow
City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

CONTRACTOR:

[NAME OF CONTRACTOR]

Signature

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Signature

Name/Title [print]

Date: _____

Contractor's License Number(s)

Expiration Date(s)

Seal:

Contractor's DIR Registration Number(s)

Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2022 Parking Lot Seal Coat Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

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

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

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

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

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2022 Parking Lot Seal Coat Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

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

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

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

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

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

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

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

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

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2022 Parking Lot Seal Coat Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of _____ Dollars (\$_____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

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

attorneys' fees and costs in any action to enforce the provisions of this Bond.

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

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

Table of Contents:

Article 1 – Definitions	1
Article 2 – Roles and Responsibilities	5
Article 3 – Contract Documents	9
Article 4 – Bonds, Indemnity and Insurance.....	11
Article 5 – Contract Time	16
Article 6 – Contract Modification	21
Article 7 – General Construction Provisions.....	24
Article 8 – Payment.....	32
Article 9 – Labor Provisions	37
Article 10 – Safety Provisions	39
Article 11 – Completion and Warranty Provisions	40
Article 12 – Dispute Resolution.....	43
Article 13 – Suspension and Termination	48
Article 14 – Miscellaneous Provisions.....	50

Article 1 Definitions

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

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

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

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

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

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

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

Contract means the signed agreement between City and Contractor.

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

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

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

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

Day means a calendar day unless otherwise specified.

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

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

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

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

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

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

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

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

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

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

Project means the public works project referenced in the Contract.

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

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

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

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

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

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

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

Technical Specifications means Specifications.

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

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

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

Article 2 Roles and Responsibilities

2.1 Design Professional.

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

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

2.2 Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to the 50% limitation set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

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

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

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

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

2.4 Coordination of Work.

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

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

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

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

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

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

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

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

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for

any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

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

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

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

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

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

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

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those

meanings, unless otherwise specifically defined in the Contract Documents.

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

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

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

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

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

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of

these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

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

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

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

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

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

Article 4

Bonds, Indemnity, and Insurance

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

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the

“Indemnitees”) from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor’s bid for the Contract. Contractor’s failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

4.3 Insurance. No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VIII” or better. 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 shall maintain CGL and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.
- (2) **Builder’s Risk Insurance:** The Builder’s Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers’ Compensation Insurance and Employer’s Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims

and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

(6) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.
- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems

consultants), Contractor shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
 - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
- (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 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

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

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

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

Article 5

Contract Time

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

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

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply

with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

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

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

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

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

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

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

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

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

5.3 Delay and Extensions of Contract Time.

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

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

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;

(4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or

(5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

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

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

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

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

impact analysis must be submitted in a form or format acceptable to City.

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

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

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

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

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

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

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

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

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

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

Article 6

Contract Modification

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

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

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

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

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

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

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

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

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

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

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of

claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.”

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

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

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

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

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

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

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

Article 7 General Construction Provisions

7.1 Permits and Taxes.

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

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

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

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

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

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

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

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as

specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

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

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

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

7.6 Materials and Equipment.

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

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly

notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

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

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item 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 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 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, 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.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

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

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

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

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

(A) ***Duty to Update.*** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

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

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

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

7.14 Trenching and Excavations.

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

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

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

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

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

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

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

protective system less effective than that required by the Construction Safety Orders is prohibited.

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

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

7.18 Historic or Archeological Items.

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

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

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

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

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

Article 8 Payment

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

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

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

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

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

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

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

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

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

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

(E) Unexcused delay in performance of the Work;

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) ***Joint Checks.*** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint

check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

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

CONTRACT BALANCE FORM

Project Name: _____

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

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

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

Article 9 Labor Provisions

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

9.2 Labor Code Requirements.

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

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

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

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

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

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

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

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

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

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

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

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

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

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

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

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

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

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

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

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

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

Article 10 Safety Provisions

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

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

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

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

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

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

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

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

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

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

Article 11

Completion and Warranty Provisions

11.1 Final Completion.

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

relieve Contractor from fulfilling all requirements of the Contract Documents.

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

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

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

11.2 Warranty.

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

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

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

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

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

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

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

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

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

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

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

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

Article 12 Dispute Resolution

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A chronology of relevant events;

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

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

(4) Summary of issues and damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days

after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

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

(B) Government Code Claims.

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

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

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

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

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery

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

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

Article 13 **Suspension and Termination**

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.

(A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper

materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

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

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

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

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

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

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

- (A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
- (B) **Demobilization.** Actual and substantiated demobilization costs; and
- (C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

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

Article 14

Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party

waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

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

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

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Emergency Contact.** Prior to the commencement of Work on the Project, Contractor must provide contact information to the City's Project Manager for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding 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. **Authorized Work Days and Hours.**

(A) **Authorized Work Days.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:

Monday through Friday

(B) **Authorized Work Hours.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:

7:00 a.m. to 7:00 p.m.

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

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

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

Month	# Normal Weather Delay Days
April	3
May	1
June	0

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

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

4. Right-of-Way. City will provide the right-of-way 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.

(A) 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.

(B) Sidewalk Closure. Contractor must coordinate sidewalk closure with the City staff. Sidewalks on both sides of the street should not be closed or blocked to pedestrian access at the same time.

5. Pre-Construction Meeting. Contractor will attend Pre-Construction meeting during which the City's Project Manager will review the Contract administration procedures and project requirements.

6. Contractor's Construction Schedule. Project Manager will review Contractor's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

7. Warranty Bond. As a condition precedent to Final Payment, Contractor must provide a one (1) year Warranty Bond using the form included in the Contract Documents. The Bond Sum for the Warranty Bond shall be fifty (50%) of the final Contract Price, as defined in the General Conditions.

END OF SPECIAL CONDITIONS



COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

GENERAL: (408) 779-7271
FAX: (408) 779-3117

WWW.MORGANHILL.CA.GOV

ADDENDUM NO. 1

DATE: February 24, 2022

TO: ALL RESPONDING PARTIES TO THE BID FOR THE
2022 PARKING LOT SEAL COAT PROJECT

FROM: Dale Dapp, Maintenance Manager
Keri Russell, Maintenance Coordinator
Cynthia Iwanaga, Management Analyst

SUBJECT: Responses to Questions and Requests for Clarification

1. What is the estimated cost of this project?

The estimated cost is \$68,000.

2. In Section 5.2 Bid Security, the following sentences are deleted, "The City will request the original bid security documents, e.g., wet signed bid bond or cashier's check, from the two lowest bidders. The two lowest bidders will then have 48 hours to overnight the original bid security documents to the City."

The City requires all bidders to include electronic copies of bid security documents with the bid proposals that must be submitted via e-mail to the City, however, the City will not be requesting the original hard copy bid security documents from the two lowest bidders.

3. What are the locations and quantities for the patch work and asphalt repairs for each location? Please add a line item for Patchwork and Asphalt repairs in the bid schedule.

The City evaluated all of the areas in the scope of work and found only one area in the Corporation Yard that needs to be repaired. The City will make the Corporation Yard asphalt repair prior to the seal coating work, so bidders should bid assuming no patchwork or asphalt repairs are needs. Since the City is not requiring patchwork and asphalt repairs, no line item was added to the bid schedule.

The City is removing the following references from the scope of work.

Page 7: Remove "Patch low areas and failed pavement."

Page 8: Remove "Damaged asphalt and areas completely saturated by oil or grease shall be removed and replaced or repaired as required."

Page 10: Remove "Asphalt should be fully cured before application (new pavement-allow at least 30 days before application."



COMMUNITY SERVICES DEPARTMENT

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-
4. The due date and time for this bid remain the same, Tuesday, March 8, 2022 at 11:00 a.m. via e-mail to cynthia.iwanaga@morganhill.ca.gov Late proposals will not be accepted.

THIS DOCUMENT AND THE ATTACHMENTS SHALL BECOME PART OF THE PROJECTS SPECIFICATION

Bidder must acknowledge receipt of this Addendum in the Bid Proposal (Section 2. Addenda) that is submitted to the City of Morgan Hill.



COMMUNITY SERVICES DEPARTMENT

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MORGAN HILL, CA 95037

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ADDENDUM NO. 2

DATE: February 28, 2022

TO: ALL RESPONDING PARTIES TO THE BID FOR THE
2022 PARKING LOT SEAL COAT PROJECT

FROM: Dale Dapp, Maintenance Manager
Keri Russell, Maintenance Coordinator
Cynthia Iwanaga, Management Analyst

SUBJECT: Clarification

1. The correct address for the Council Chamber Building Parking Lot is 17555 Peak Avenue (entrance off Alkire Avenue).
2. The due date and time for this bid remain the same, Tuesday, March 8, 2022 at 11:00 a.m. via e-mail to cynthia.iwanaga@morganhill.ca.gov Late proposals will not be accepted.

THIS DOCUMENT AND THE ATTACHMENTS SHALL BECOME PART OF THE PROJECTS SPECIFICATION

Bidder must acknowledge receipt of this Addendum in the Bid Proposal (Section 2. Addenda) that is submitted to the City of Morgan Hill.



COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

GENERAL: (408) 779-7271
FAX: (408) 779-3117

WWW.MORGANHILL.CA.GOV

ADDENDUM NO. 3

DATE: March 7, 2022

TO: ALL RESPONDING PARTIES TO THE BID FOR THE
2022 PARKING LOT SEAL COAT PROJECT

FROM: Dale Dapp, Maintenance Manager
Keri Russell, Maintenance Coordinator
Cynthia Iwanaga, Management Analyst

SUBJECT: Clarification-Supplemental Work Line Item

1. The Supplemental Work line item includes any new or unforeseen work not specified in the specifications. The lump sum \$5,000 amount listed in each location's bid schedule for Supplemental Work shall be included in each bidder's proposal.
Supplemental scope of work and price shall be agreed to prior to authorization and shall be paid out of this bid item. Supplemental work shall be performed only upon direct written authorization from the City's Project Manager.
2. The due date and time for this bid remain the same, Tuesday, March 8, 2022 at 11:00 a.m. via e-mail to cynthia.iwanaga@morganhill.ca.gov Late proposals will not be accepted.

THIS DOCUMENT AND THE ATTACHMENTS SHALL BECOME PART OF THE PROJECTS SPECIFICATION

Bidder must acknowledge receipt of this Addendum in the Bid Proposal (Section 2. Addenda) that is submitted to the City of Morgan Hill.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Michelle Bigelow, Deputy City Clerk

APPROVED BY: City Manager

RECONSIDER ACTION TO ADOPT CITY COUNCIL DISTRICT MAP 103 - FROM MARCH 2, 2022 CITY COUNCIL ACTION

RECOMMENDATION(S)

1. Review and discuss whether an alternative map should be adopted in light of a demand to cure a violation of the FAIR MAPS Act; and
2. Determine whether to: a) affirm the adoption of Map 103, or 2) approve an amended resolution identifying an alternative City Council District map.

Estimated Time: 45 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Preserving our Community History

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Engagement, Outreach, and Messaging

REPORT NARRATIVE:

This item is being brought back on a request for reconsideration by Mayor Constantine.

On March 2, 2022, the Council adopted Map 103 as the new district map for City Council elections. Map 103 largely retains the existing districts, which were established in 2017. Following the 2017 ordinance establishing district elections, the state enacted the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions Act ("FAIR MAPS Act"). Among other things, the FAIR MAPS Act adds prioritized criteria for redistricting. The top priority for redistricting is that all districts must be contiguous. Current District D (as retained in Map 103) is not contiguous.

On March 23, 2022, the City Council received a letter from the Nielsen Merksamer law

firm demanding that the City cure its violation of the FAIR MAPS Act. The purpose of this hearing is to give the Council the opportunity to reconsider the adoption of Map 103 and consider adopting a map that conforms to the legal requirements.

Redistricting Background

Every ten years, cities with by-district election systems must use new census data to review and, if needed, redraw district lines to reflect how local populations have changed. This process, called redistricting, ensures all districts have a nearly equal population. The redistricting process for the City of Morgan Hill must be completed by April 17, 2022.

The City adopted its current district boundaries on September 6, 2017, based on 2010 census data as required by law. The districts must now be redrawn using the 2020 census data and in compliance with the FAIR MAPS Act, adopted by the California legislature as AB 849, which took effect January 1, 2020.

Under the Act, the City Council shall draw and adopt boundaries using the following criteria in the listed order of priority (Elections Code 21601(c)):

1. Comply with the US Constitution, the California Constitution, and the federal Voting Rights Act of 1965, including the federal requirement that districts maintain equal populations.
2. Geographically contiguous
3. Undivided neighborhoods and “communities of interest” (socio-economic geographic areas that should be kept together)
4. Easily identifiable boundaries
5. Compact (do not bypass one group of people to get to a more distant group of people)
6. Shall not favor or discriminate against a political party

Once the prioritized criteria are met, other traditional districting principles can be considered, such as:

1. Minimize the number of voters delayed from voting in 2022 to 2024
2. Respect voters’ choices/continuity in office
3. Future population growth

Elections Code Section 21607.1 directs that the City must conduct at least four (4) public hearings throughout the redistricting process; one (1) Public Hearing before maps are drawn, at least two (2) Public Hearings after draft maps are drawn, and one (1) public hearing scheduled on an evening or weekend, at which time the public is invited to provide input regarding the composition of the districts.

The purpose of this public hearing is to reconsider the prior adoption of Map 103 and

determine whether to 1) affirm the adoption of Map 103, or 2) approve an amended resolution identifying a different district map.

COMMUNITY ENGAGEMENT:

Consult.

The City Clerk's Office and Communications Team have implemented the following community outreach plan:

Public Messaging via Social Media, City's Website, Press Releases, newsletters, and other public communications, in English and Spanish, including:

- At least four City Council Public Hearings
- Social media engagement on Facebook, Instagram, Twitter, and NextDoor
- Updated webpage on City's website for redistricting updates and information
- Information provided via website newsflashes, eblasts, "Morgan Hill Weekly 411," and print
- Press releases sent to various outlets and groups, including individuals and churches who have connections to our Spanish-speaking community
- Public notices posted at City facilities
- Display advertisements on local public access network by using Channel 17
- Informational tables at the Farmer's Market, Friday Night Music Series, local coffee shops, St Catherine's Church following the English and Spanish mass, and other public spaces
- Virtual Town Halls
- Online Interactive Tools:
 - Updated online interactive mapping tools were available to allow residents to draw their district boundary lines. The City's consulting demographer provided training for the public on how to use the new online mapping tools.

ALTERNATIVE ACTIONS:

The City Council can determine whether to 1) affirm the adoption of Map 103, or 2) approve an amended resolution identifying a different district map.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- January 29, 2021, Annual Goal Setting Workshop - City Council received a presentation outlining the requirements and process for redistricting.
- [May 5, 2021](#), City Council Meeting - the City Council voted to move forward with a staff-led redistricting process.
- August 6, 2021, Mid-Year Goal Review Workshop - City Council received an update on the redistricting process.

- [August 18, 2021](#), City Council Meeting- The City Council held the first of four required public hearings in the redistricting process to receive an update on the process and request feedback on Communities of Interest.
- [October 20, 2021](#), City Council Meeting- The City Council held the second of four required public hearings in the redistricting process to receive an update on the state-adjusted Census data, and receive a demonstration on available mapping tools.
- [December 15, 2021](#), City Council Meeting - The City Council held the third of four required public hearings in the redistricting process to review the draft maps submitted to date.
- [February 16, 2022](#), City Council Redistricting Workshop - The City Council and community reviewed and discussed the draft maps and Council directed staff to bring maps 103, 104, 106, 108, and NDC green to the March 2, 2022 Public Hearing for discussion and possible adoption.
- March 2, 2022, the City Council held a public hearing and adopted Map 103.

FISCAL AND RESOURCE IMPACT:

For the FY 2021-2022 redistricting process, staff estimates that the currently budgeted funds will be sufficient. If legal action is brought against the City based on the adoption of Map 103, legal costs could be between \$100,000 to \$500,000 and have not been included in the adopted budget.

CEQA (California Environmental Quality Act):

Not a Project

The reformatting of electoral districts is not a project as defined in Section 15060(c) of the State CEQA Guidelines.

March 23, 2022

VIA PDF E-MAIL

Richard Constantine, Mayor
Members of the City Council
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, California 95037

rich.constantine@morganhill.ca.gov
gino.borgioli@morganhill.ca.gov
yvonne.martinezbeltran@morganhill.ca.gov
rene.spring@morganhill.ca.gov
john.mckay@morganhill.ca.gov

**Re: Demand to Reconsider Resolution No. 22-013
(Adoption of Redistricting Map 103) to Comply with
the FAIR MAPS Act**

Dear Mayor Constantine & Members of the City Council:

I write on behalf of Steve Tate, Swanee Edwards, Brian Sullivan, and Kathy Sullivan, residents and registered voters of Morgan Hill, to demand that you comply with California's FAIR MAPS Act, Elec. Code §§ 21601-21609, by reconsidering the illegal map that the Council adopted on March 2, 2022, before the deadline to complete the redistricting process, April 17, 2022.

The illegality of Map 103 could not be more patently obvious—indeed, both the City's consultants, National Demographics Corporation, and the City Attorney advised the Council as much. The FAIR MAPS Act specifies a particular list of criteria to be followed in municipal redistricting and the "order of priority" in which those criteria should be considered. The top criteria, of course—based as they are on supreme federal law—are compliance with the equal population requirements of the Fourteenth Amendment and with the federal Voting Rights Act, 52 U.S.C. § 10301. *See* Elec. Code § 21601(a)-(b).

Assuming those two criteria are met, however, the foremost criterion specified by the Act is that "[t]o the extent practicable, council districts shall be geographically contiguous." Elec. Code § 21601(c)(1). Map 103 fails this basic requirement. Indisputably—as the City's demographic consultants explicitly advised the Council—District D is geographically non-contiguous.

We understand that the Council was acting under an apparent threat of litigation and, further, that it was advised that it could adopt Map 103 because the requirement of contiguity is qualified by the phrase “to the extent practicable.” However, neither argument remotely justifies the adoption of that illegal map.

As to the threat of litigation, the City would have faced no risk of liability under the equal population requirements if it had adopted any of the other proposed maps, nor would it have faced any threat of litigation under the Voting Rights Act. As to the latter point, the United States Supreme Court has held that liability under the VRA is not triggered unless it is possible to draw a district in which members of a given minority group constitute of at least 50% of the citizen voting age population (*i.e.*, eligible voters). *See Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009). Obviously, such a district cannot be drawn in Morgan Hill, as evidenced by the fact that no district in Map 103 exceeds 30% Latino citizen voting age population.¹ Thus, any claim that the Voting Rights Act justifies the non-contiguity of District D is wholly without merit.

We recognize that members of the public supporting Map 103 urged that District D should be drawn in its current configuration to unify a purported “community of interest.” Initially, this community of interest was identified as Latino voters, but drawing a district based “predominantly” on this racial consideration, when not required by the Voting Rights Act, constitutes unconstitutional gerrymandering. *See, e.g., Abbott v. Perez*, 138 S. Ct. 2305, 2334 (2018).

The supporters thereafter shifted gears to try to identify the purported community of interest in less explicitly racial terms, such as “renters.” Factually-speaking, this recharacterization is highly dubious,

¹ Even if such a district could be drawn, that would not be the end of the inquiry—the Voting Rights Act still might not require the drawing of such a district. However, the failure to meet this basic criterion is would be fatal to any claim under the act. *See, e.g., Romero v. Pomona*, 883 F.2d 1418, 1422 (9th Cir. 1989); *Overtton v. Austin*, 871 F.2d 529, 538 (5th Cir. 1989).

suggesting that it is pretextual. For one thing, the members of the public suggesting this community of interest did not identify any geographic location for this community of renters other than simply the District they sought. Moreover, District D has the lowest proportion of renters of any District in Map 103.

But, ultimately, the plausibility of this or any other so-called community of interest is beside the point. Even if were actually bona fide, it would not justify the City's violation of the contiguity requirement of the FAIR MAPS Act. In the "order of priority" specified in the Act, contiguity ranks above minimizing the division of communities of interest.

We also recognize that Map 103's supporters have latched onto the fact that contiguity is required only "to the extent practicable" to argue that it is not an absolute requirement. And, of course, it isn't. It is conceivable (though hard to imagine, realistically) that the contiguity requirement might have to be violated to a limited extent to comply with a *higher-ranked* criterion—*i.e.*, the equal population requirement or the Voting Rights Act. But that is not the case in Morgan Hill, as reflected in the fact that there were five other focus maps presented for the Council's consideration on March 2 that complied with those federal requirements *and* the contiguity requirement.

The phrase "to the extent practicable" does not, however, permit the Council to ignore contiguity in favor of a *lower-ranked* criterion; to conclude otherwise entirely defeats the purpose of prescribing the order of priority in the first instance. (We would note, moreover, that the directive to minimize the division of communities of interest is also to be followed only "to the extent practicable," *see* Elec. Code § 21601(c)(2), in recognition of the fact that it, too, must sometimes yield to higher-ranked criteria, such as the contiguity requirement.)

The illegality of Map 103 is transparent and indisputable. We therefore urge the Council to reconsider the adoption of that map before the deadline for the Council to adopt a final redistricting map on

Mayor & City Council
City of Morgan Hill
March 23, 2022
Page 4

April 17. After that date, the Council loses jurisdiction to make changes without a court order, and my client will have to consider alternative legal avenues.

Should you have any questions, please do not hesitate to contact me at 415/389-6800 or by e-mail at cskinnell@nmgovlaw.com.

Sincerely,



Christopher E. Skinnell

Cc: Donald Larkin, City Attorney
Donald.Larkin@morganhill.ca.gov

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A REVISED ELECTORAL DISTRICT MAP FOLLOWING THE 2020 FEDERAL CENSUS

WHEREAS, the City Council must review and if needed adjust city council district boundaries every ten years using decennial census data so that the districts remain substantially equal in population as required by federal law—a process commonly known as redistricting; and

WHEREAS, the 2020 Census data shows that Morgan Hill's current districts are population balanced, with a deviation between District A (the least populated district) and District D (the most populated district) of nearly 6%. However, District D as drawn does not meet the FAIR MAPS Act requirement of contiguity and as such, the City must adjust its district boundary lines by adopting a final district map before the statutory deadline of April 17, 2022; and

WHEREAS, between August 18, 2021, and February 16, 2022, the City Council held three public hearings, and a workshop to review 11 map submissions from members of the public. The City Council considered input from workshops, town halls, public comments, and communities of interest submission on the draft map; and

WHEREAS, on February 16, 2022, the City Council held a workshop to review eleven maps. After considering public input, they recommended five maps be brought to the March 2, 2022 public hearing for consideration; and

WHEREAS, on February 23, 2022, the City published the maps recommended by the Council on its redistricting website and made the maps available to the public; and

WHEREAS, on March 2, 2022, the City Council held a public hearing Pursuant to Elections Code Section 10010(a)(2) to receive public comment on the recommended maps; and

WHEREAS, on March 2, 2022, the City Council adopted the map identified as Map 103; and

WHEREAS, on April 6, 2022, the City Council reconsidered its March 2, 2022 action adopting Map 103; and

WHEREAS, after considering the draft maps and public input, the City Council desires to adopt updated city council electoral district maps to ensure that the City's districts comply with the law; and

WHEREAS, the resolution rescinds and replaces City Council resolution 2022-013 adopted on March 2, 2022.

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

1. The City Council electoral district map attached as Exhibit A is hereby approved and adopted.
2. The City Council districts specified in Exhibit A shall remain in effect until modified.
3. This Resolution and its Exhibit shall be published and available on the City website for as long as the City Council districts approved by this resolution are in effect.
4. The City Clerk or designee, in conjunction with the Demographer, is hereby authorized and directed to provide a copy of this resolution to and work with the Santa Clara County Registrar of Voters to conduct any additional acts necessary to complete the redistricting process in a timely fashion to permit implementation of this district map in connection with the election to be held on November 8, 2022, including, without limitation, minor adjustments to the adopted map as may be necessary for its implementation.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the April 6, 2022

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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. 22-XX, adopted by the City Council at a regular meeting held on April 6, 2022.

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

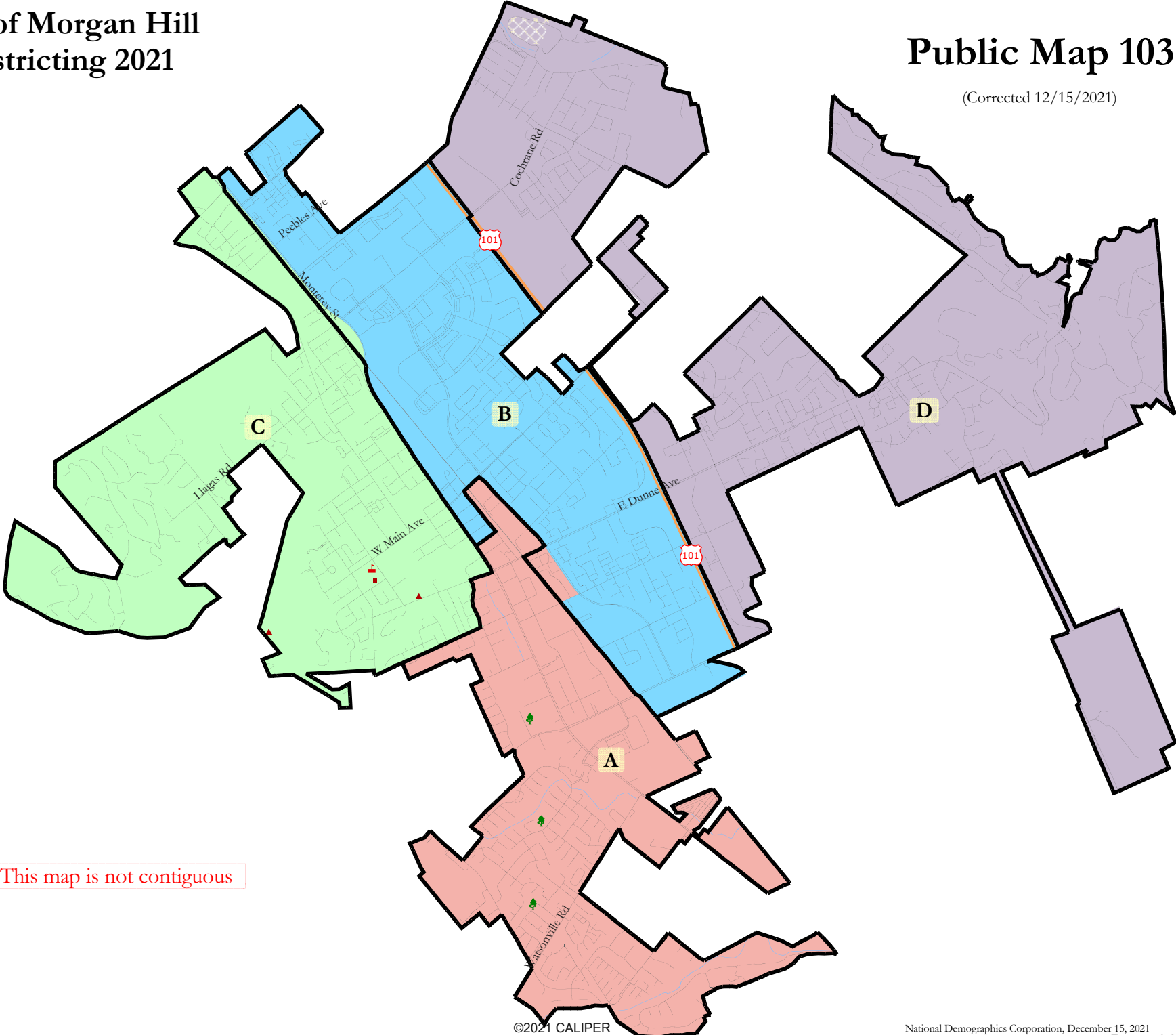
DATE: _____

MICHELLE BIGELOW, City Clerk

City of Morgan Hill
Redistricting 2021

Public Map 103

(Corrected 12/15/2021)

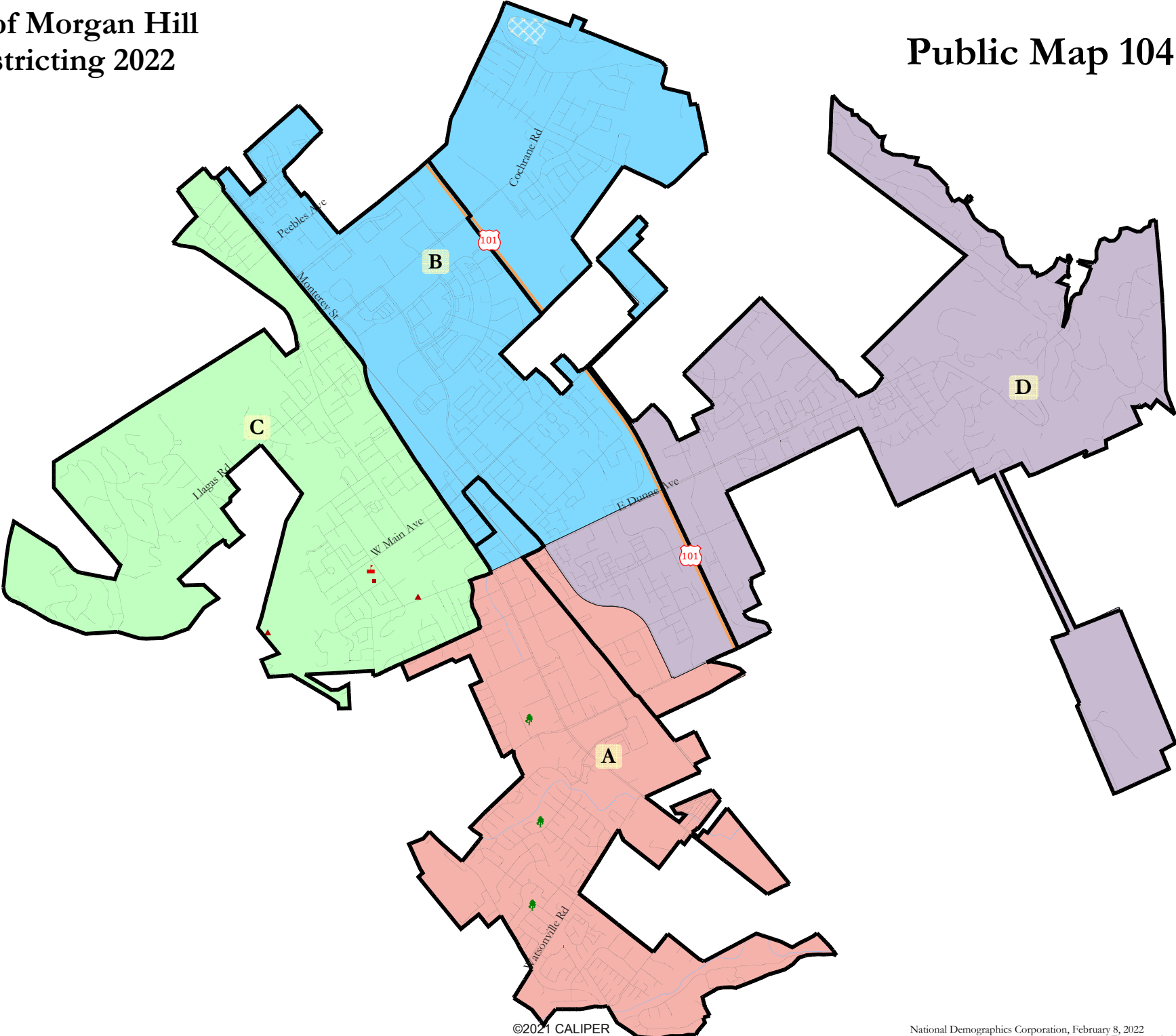


This map is not contiguous

City of Morgan Hill - Public Map 103						
District		A	B	C	D	Total
2020	2020 Census (Raw)	11,509	11,174	11,117	11,766	45,566
	Deviation from ideal	118	-218	-275	375	649
	% Deviation	1.03%	-1.91%	-2.41%	3.29%	5.70%
2020 Total Pop	% Hisp	39%	35%	39%	21%	33%
	% NH White	43%	40%	40%	52%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	12%	19%	16%	21%	17%
	Total	7,020	7,628	7,083	8,175	29,905
Citizen Voting Age Pop	% Hisp	25%	26%	28%	18%	24%
	% NH White	56%	52%	53%	62%	56%
	% NH Black	3%	3%	2%	2%	2%
	% Asian/Pac.Isl.	14%	18%	16%	16%	16%
	Total	6,807	6,829	6,468	8,015	28,119
Voter Registration (Nov 2020)	% Latino est.	25%	27%	27%	17%	24%
	% Spanish-Surnamed	23%	25%	24%	16%	22%
	% Asian-Surnamed	5%	10%	9%	11%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	66%	59%	62%	69%	64%
	% NH Black	3%	2%	2%	2%	2%
	Total	4,151	3,784	3,900	5,184	17,019
Voter Turnout (Nov 2018)	% Latino est.	20%	23%	22%	15%	20%
	% Spanish-Surnamed	19%	21%	21%	14%	18%
	% Asian-Surnamed	4%	8%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	72%	65%	68%	74%	70%
	% NH Black	3%	2%	2%	2%	2%
	Total	5,806	5,770	5,428	7,114	24,118
Voter Turnout (Nov 2020)	% Latino est.	24%	26%	25%	16%	22%
	% Spanish-Surnamed	22%	24%	23%	15%	21%
	% Asian-Surnamed	6%	10%	9%	11%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	67%	60%	64%	70%	66%
	% NH Black est.	3%	2%	2%	2%	2%
	Total	10,604	11,285	11,219	11,412	44,520
ACS Pop. Est.	Total	10,604	11,285	11,219	11,412	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	54%	53%	52%	52%
	age60plus	22%	18%	20%	21%	20%
Immigration	immigrants	17%	21%	22%	14%	18%
	naturalized	54%	63%	52%	71%	59%
Language spoken at home	english	74%	65%	66%	77%	70%
	spanish	18%	22%	20%	8%	17%
	asian-lang	6%	8%	8%	9%	8%
	other lang	2%	5%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	12%	16%	6%	11%
Education (among those age 25+)	hs-grad	36%	42%	43%	35%	39%
	bachelor	34%	25%	21%	32%	28%
	graduatedegree	12%	12%	14%	20%	15%
Child in Household	child-under18	35%	40%	36%	43%	39%
Pct of Pop. Age 16+	employed	65%	68%	67%	67%	67%
Household Income	income 0-25k	8%	12%	6%	4%	7%
	income 25-50k	12%	16%	15%	6%	12%
	income 50-75k	11%	10%	15%	7%	11%
	income 75-200k	44%	41%	45%	43%	43%
	income 200k-plus	25%	21%	19%	40%	26%
Housing Stats	single family	82%	81%	79%	98%	85%
	multi-family	18%	19%	21%	2%	15%
	rented	28%	31%	36%	11%	27%
	owned	72%	69%	64%	89%	73%
Total population data from the California adjustment to the 2020 Decennial Census. Surname-based Voter Registration and Turnout data from the California Statewide Database. Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

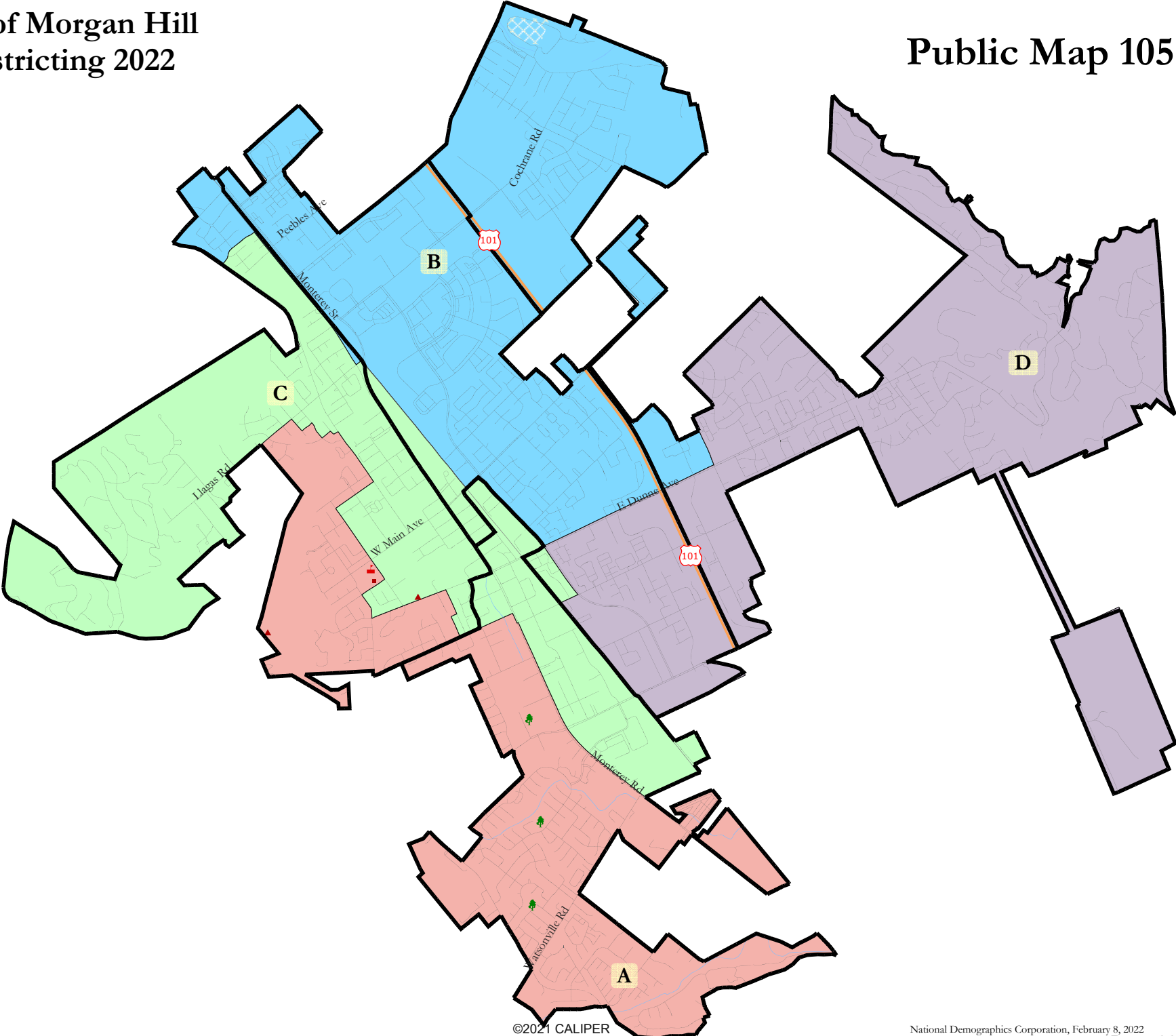
Public Map 104



Public Map 104						
District		A	B	C	D	Total
	Total Pop	11,174	11,801	11,117	11,474	45,566
	Deviation from ideal	-218	409	-275	82	684
	% Deviation	-1.91%	3.59%	-2.41%	0.72%	6.00%
Total Pop	% Hisp	38.8%	30%	39%	26%	33%
	% NH White	43%	42%	40%	50%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	11%	21%	16%	18%	17%
Citizen Voting Age Pop	Total	6,992	7,187	7,083	8,643	29,905
	% Hisp	25%	25%	28%	19%	24%
	% NH White	57%	53%	53%	60%	56%
	% NH Black	4%	2%	2%	2%	2%
	% Asian/Pac.Isl.	14%	17%	16%	17%	16%
Voter Registration (Nov 2020)	Total	6,657	7,376	6,468	7,618	28,119
	% Latino est.	25%	24%	27%	20%	24%
	% Spanish-Surnamed	23%	22%	24%	18%	22%
	% Asian-Surnamed	5%	12%	9%	10%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	66%	61%	62%	68%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,663	6,333	5,428	6,694	24,118
	% Latino est.	24%	23%	25%	19%	22%
	% Spanish-Surnamed	22%	21%	23%	17%	21%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	68%	62%	64%	69%	66%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,058	4,044	3,900	5,017	17,019
	% Latino est.	19%	20%	22%	18%	20%
	% Spanish-Surnamed	18%	18%	21%	16%	18%
	% Asian-Surnamed	4%	9%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	73%	67%	68%	72%	70%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,413	10,715	11,219	12,172	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	54%	53%	53%	52%
	age60plus	21%	18%	20%	21%	20%
Immigration	immigrants	18%	20%	21%	16%	18%
	naturalized	55%	61%	52%	71%	59%
Language spoken at home	english	73%	68%	66%	74%	70%
	spanish	19%	18%	20%	12%	17%
	asian-lang	6%	9%	8%	8%	8%
	other lang	2%	4%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	9%	10%	16%	8%	11%
Education (among those age 25+)	hs-grad	37%	38%	43%	39%	39%
	bachelor	35%	26%	21%	31%	28%
	graduatedegree	12%	17%	14%	16%	15%
Child in Household	child-under18	36%	44%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	65%	67%	69%	67%
Household Income	income 0-25k	8%	10%	6%	7%	7%
	income 25-50k	13%	9%	15%	11%	12%
	income 50-75k	12%	9%	15%	8%	11%
	income 75-200k	43%	39%	45%	46%	43%
	income 200k-plus	24%	33%	19%	29%	26%
Housing Stats	single family	81%	89%	79%	90%	85%
	multi-family	19%	11%	21%	10%	15%
	rented	30%	17%	36%	23%	27%
	owned	70%	83%	64%	77%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

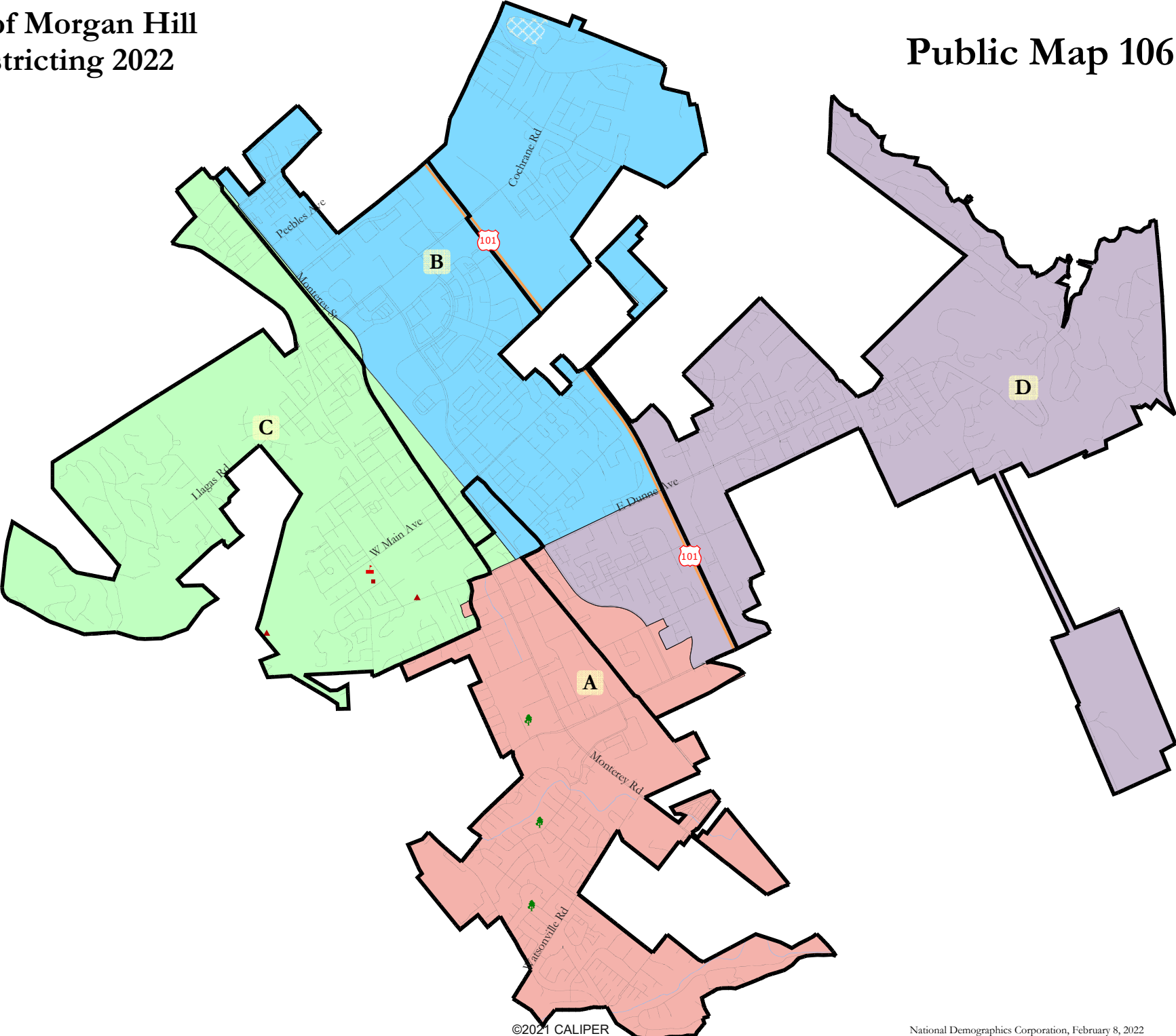
Public Map 105



Public Map 105						
District		A	B	C	D	Total
	Total Pop	11,213	11,445	11,337	11,571	45,566
	Deviation from ideal	-179	53	-55	179	358
	% Deviation	-1.57%	0.47%	-0.48%	1.57%	3.14%
Total Pop	% Hisp	31.7%	29%	46%	26%	33%
	% NH White	50%	42%	34%	50%	44%
	% NH Black	2%	2%	3%	3%	3%
	% Asian-American	12%	24%	14%	18%	17%
Citizen Voting Age Pop	Total	7,443	7,088	6,538	8,836	29,905
	% Hisp	21%	26%	33%	19%	24%
	% NH White	63%	50%	48%	61%	56%
	% NH Black	2%	2%	3%	3%	2%
	% Asian/Pac.Isl.	13%	20%	14%	16%	16%
Voter Registration (Nov 2020)	Total	7,190	7,172	6,033	7,724	28,119
	% Latino est.	21%	23%	33%	20%	24%
	% Spanish-Surnamed	19%	21%	31%	18%	22%
	% Asian-Surnamed	5%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	71%	60%	56%	68%	64%
	% NH Black	2%	2%	3%	2%	2%
Voter Turnout (Nov 2020)	Total	6,283	6,194	4,882	6,759	24,118
	% Latino est.	19%	22%	31%	19%	22%
	% Spanish-Surnamed	18%	20%	29%	17%	21%
	% Asian-Surnamed	6%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	73%	62%	57%	69%	66%
	% NH Black	2%	2%	3%	2%	2%
Voter Turnout (Nov 2018)	Total	4,696	3,996	3,244	5,083	17,019
	% Latino est.	16%	19%	28%	17%	20%
	% Spanish-Surnamed	15%	18%	26%	16%	18%
	% Asian-Surnamed	4%	10%	6%	7%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	76%	67%	62%	72%	70%
	% NH Black est.	2%	2%	2%	2%	2%
ACS Pop. Est.	Total	11,079	10,617	10,537	12,286	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	48%	53%	55%	53%	52%
	age60plus	23%	18%	18%	21%	20%
Immigration	immigrants	16%	20%	23%	16%	18%
	naturalized	50%	64%	53%	71%	59%
Language spoken at home	english	76%	68%	63%	74%	70%
	spanish	17%	17%	23%	12%	17%
	asian-lang	4%	10%	9%	8%	8%
	other lang	3%	5%	4%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	7%	10%	17%	8%	11%
Education (among those age 25+)	hs-grad	37%	38%	42%	39%	39%
	bachelor	33%	27%	22%	31%	28%
	graduatedegree	14%	17%	12%	15%	15%
Child in Household	child-under18	35%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	63%	64%	70%	69%	67%
Household Income	income 0-25k	8%	9%	6%	7%	7%
	income 25-50k	10%	8%	19%	12%	12%
	income 50-75k	12%	8%	15%	9%	11%
	income 75-200k	46%	39%	43%	45%	43%
	income 200k-plus	25%	36%	18%	28%	26%
Housing Stats	single family	85%	92%	74%	88%	85%
	multi-family	15%	8%	26%	12%	15%
	rented	26%	14%	41%	25%	27%
	owned	74%	86%	59%	75%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

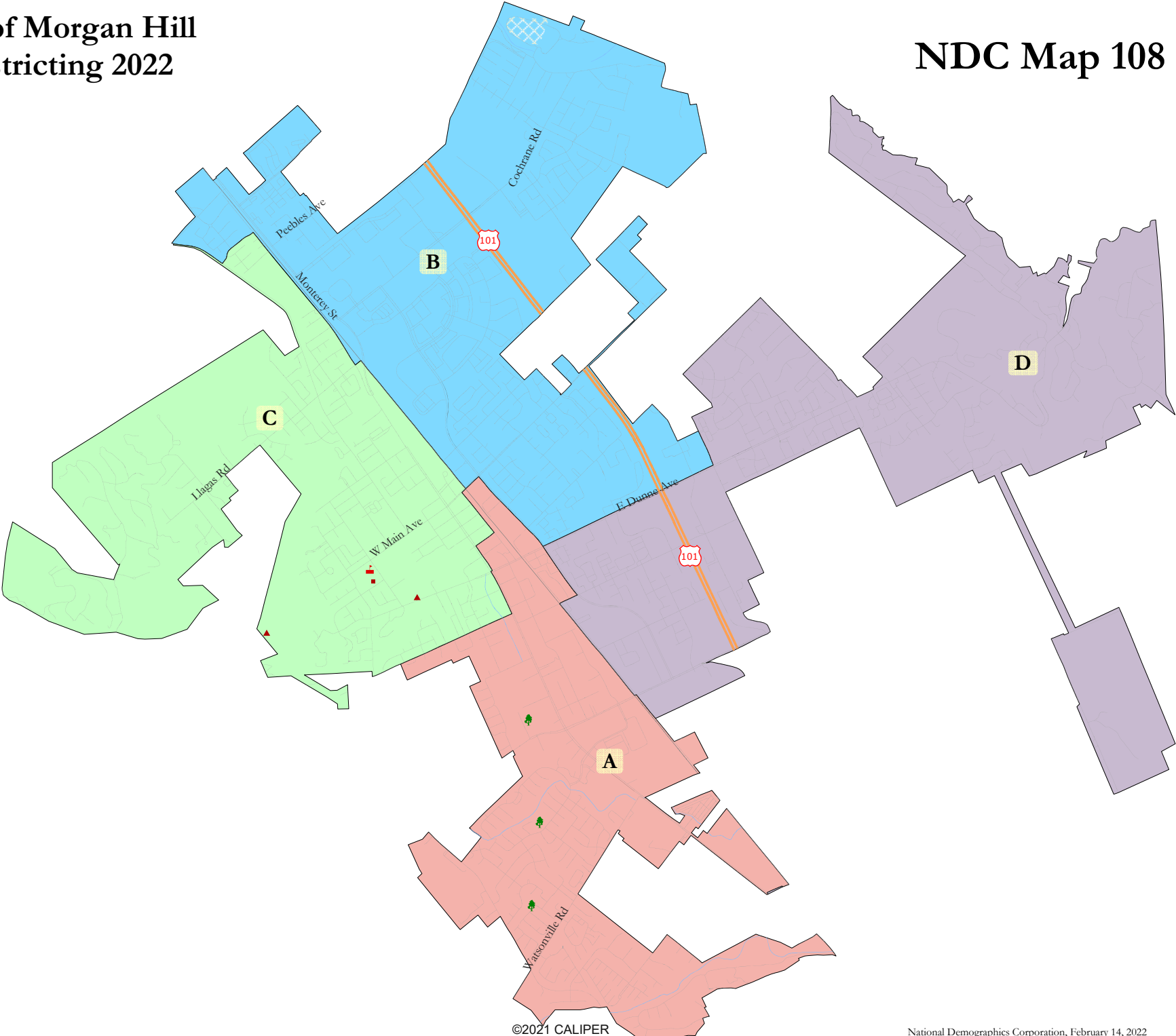
Public Map 106



Public Map 106						
District		A	B	C	D	Total
	Total Pop	11,340	11,030	11,761	11,435	45,566
	Deviation from ideal	-52	-362	369	43	731
	% Deviation	-0.46%	-3.18%	3.24%	0.38%	6.42%
Total Pop	% Hisp	38.8%	29%	39%	26%	33%
	% NH White	43%	43%	40%	50%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	11%	22%	16%	18%	17%
Citizen Voting Age Pop	Total	7,084	6,769	7,416	8,637	29,905
	% Hisp	25%	26%	28%	19%	24%
	% NH White	57%	52%	54%	60%	56%
	% NH Black	4%	2%	2%	2%	2%
	% Asian/Pac.Isl.	14%	17%	15%	17%	16%
Voter Registration (Nov 2020)	Total	6,739	6,928	6,861	7,591	28,119
	% Latino est.	26%	23%	27%	20%	24%
	% Spanish-Surnamed	23%	21%	25%	18%	22%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	66%	61%	62%	68%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,722	5,983	5,743	6,670	24,118
	% Latino est.	24%	22%	25%	19%	22%
	% Spanish-Surnamed	22%	20%	23%	17%	21%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	67%	63%	63%	69%	66%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,094	3,896	4,026	5,003	17,019
	% Latino est.	20%	19%	22%	17%	20%
	% Spanish-Surnamed	18%	18%	21%	16%	18%
	% Asian-Surnamed	4%	9%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	72%	68%	68%	72%	70%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,586	10,114	11,673	12,147	44,520
Age	age0-19	29%	29%	27%	27%	28%
	age20-60	50%	53%	53%	53%	52%
	age60plus	21%	18%	20%	21%	20%
Immigration	immigrants	18%	20%	21%	15%	18%
	naturalized	55%	62%	52%	71%	59%
Language spoken at home	english	73%	69%	65%	74%	70%
	spanish	19%	17%	21%	12%	17%
	asian-lang	6%	9%	8%	8%	8%
	other lang	2%	5%	5%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	9%	9%	16%	8%	11%
Education (among those age 25+)	hs-grad	37%	38%	43%	39%	39%
	bachelor	34%	27%	21%	31%	28%
	graduatedegree	12%	17%	14%	16%	15%
Child in Household	child-under18	36%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	64%	68%	69%	67%
Household Income	income 0-25k	8%	10%	6%	7%	7%
	income 25-50k	13%	8%	16%	11%	12%
	income 50-75k	12%	8%	15%	8%	11%
	income 75-200k	43%	39%	44%	46%	43%
	income 200k-plus	24%	35%	19%	29%	26%
Housing Stats	single family	80%	91%	79%	90%	85%
	multi-family	20%	9%	21%	10%	15%
	rented	31%	14%	36%	23%	27%
	owned	69%	86%	64%	77%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

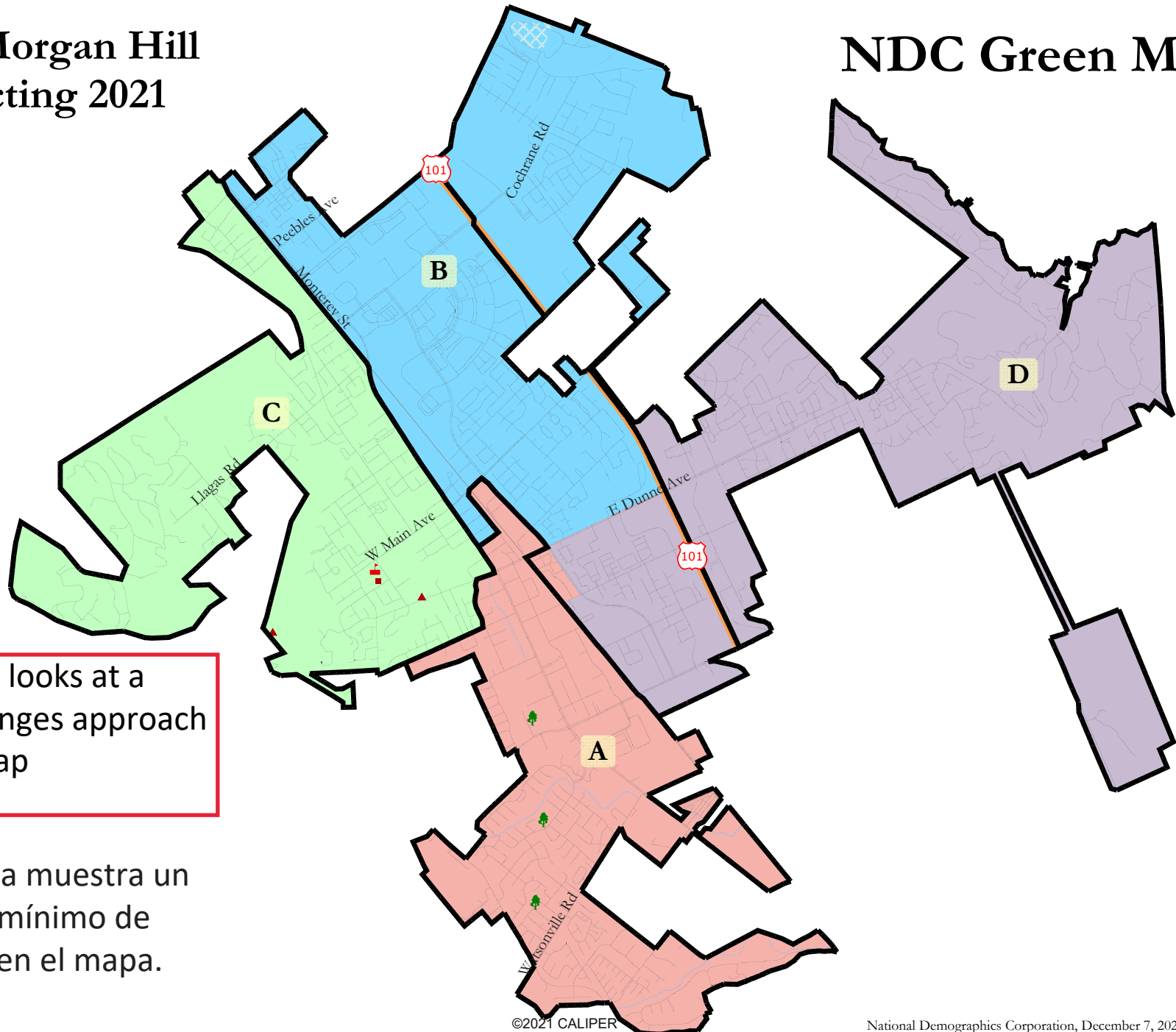
NDC Map 108



NDC 108						
District		A	B	C	D	Total
	Total Pop	11,167	11,445	11,383	11,571	45,566
	Deviation from ideal	-225	53	-9	179	404
	% Deviation	-1.98%	0.47%	-0.08%	1.57%	3.55%
Total Pop	% Hisp	38.0%	29%	40%	26%	33%
	% NH White	43%	42%	41%	50%	44%
	% NH Black	3%	2%	2%	3%	3%
	% Asian-American	12%	24%	14%	18%	17%
Citizen Voting Age Pop	Total	6,804	7,088	7,177	8,836	29,905
	% Hisp	24%	26%	29%	19%	24%
	% NH White	57%	50%	55%	61%	56%
	% NH Black	3%	2%	2%	3%	2%
	% Asian/Pac.Isl.	14%	20%	13%	16%	16%
Voter Registration (Nov 2020)	Total	6,669	7,172	6,554	7,724	28,119
	% Latino est.	25%	23%	28%	20%	24%
	% Spanish-Surnamed	23%	21%	26%	18%	22%
	% Asian-Surnamed	5%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	66%	60%	62%	68%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,695	6,194	5,470	6,759	24,118
	% Latino est.	23%	22%	26%	19%	22%
	% Spanish-Surnamed	22%	20%	24%	17%	21%
	% Asian-Surnamed	6%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	68%	62%	64%	69%	66%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,092	3,996	3,848	5,083	17,019
	% Latino est.	19%	19%	23%	17%	20%
	% Spanish-Surnamed	18%	18%	21%	16%	18%
	% Asian-Surnamed	4%	10%	6%	7%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	73%	67%	69%	72%	70%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,206	10,617	11,411	12,286	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	53%	53%	53%	52%
	age60plus	22%	18%	19%	21%	20%
Immigration	immigrants	18%	20%	21%	16%	18%
	naturalized	55%	64%	50%	71%	59%
Language spoken at home	english	75%	68%	65%	74%	70%
	spanish	18%	17%	22%	12%	17%
	asian-lang	6%	10%	8%	8%	8%
	other lang	2%	5%	5%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	10%	16%	8%	11%
Education (among those age 25+)	hs-grad	36%	38%	43%	39%	39%
	bachelor	35%	27%	21%	31%	28%
	graduatedegree	13%	17%	13%	15%	15%
Child in Household	child-under18	35%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	64%	68%	69%	67%
Household Income	income 0-25k	8%	9%	6%	7%	7%
	income 25-50k	11%	8%	16%	12%	12%
	income 50-75k	11%	8%	15%	9%	11%
	income 75-200k	44%	39%	44%	45%	43%
	income 200k-plus	25%	36%	18%	28%	26%
Housing Stats	single family	83%	92%	76%	88%	85%
	multi-family	17%	8%	24%	12%	15%
	rented	27%	14%	39%	25%	27%
	owned	73%	86%	61%	75%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill Redistricting 2021

NDC Green Map



<i>City of Morgan Hill - NDC Green Map</i>						
District		A	B	C	D	Total
2020	2020 Census (Raw)	11,509	11,093	11,117	11,847	45,566
	Deviation from ideal	118	-299	-275	456	754
	% Deviation	1.03%	-2.62%	-2.41%	4.00%	6.62%
2020 Total Pop	% Hisp	39%	30%	39%	26%	33%
	% NH White	43%	43%	40%	50%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	12%	22%	16%	18%	17%
	Total	7,020	6,784	7,083	9,019	29,905
Citizen Voting Age Pop	% Hisp	25%	26%	28%	19%	24%
	% NH White	56%	54%	53%	60%	56%
	% NH Black	3%	2%	2%	3%	2%
	% Asian/Pac.Isl.	14%	17%	16%	17%	16%
	Total	6,807	6,989	6,468	7,855	28,119
Voter Registration (Nov 2020)	% Latino est.	25%	24%	27%	20%	24%
	% Spanish-Surnamed	23%	22%	24%	18%	22%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	66%	61%	62%	67%	64%
	% NH Black	3%	2%	2%	2%	2%
	Total	4,151	3,840	3,900	5,128	17,019
Voter Turnout (Nov 2018)	% Latino est.	20%	20%	22%	17%	20%
	% Spanish-Surnamed	19%	18%	21%	16%	18%
	% Asian-Surnamed	4%	9%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	72%	68%	68%	72%	70%
	% NH Black	3%	1%	2%	2%	2%
	Total	5,806	6,004	5,428	6,880	24,118
Voter Turnout (Nov 2020)	% Latino est.	24%	23%	25%	19%	22%
	% Spanish-Surnamed	22%	21%	23%	17%	21%
	% Asian-Surnamed	6%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	67%	62%	64%	68%	66%
	% NH Black est.	3%	2%	2%	2%	2%
	Total	10,604	10,116	11,219	12,581	44,520
ACS Pop. Est.	Total	10,604	10,116	11,219	12,581	44,520
Age	age0-19	29%	29%	27%	27%	28%
	age20-60	50%	53%	53%	53%	52%
	age60plus	22%	18%	20%	21%	20%
Immigration	immigrants	17%	18%	22%	17%	18%
	naturalized	54%	62%	52%	71%	59%
Language spoken at home	english	74%	68%	66%	74%	70%
	spanish	18%	18%	20%	12%	17%
	asian-lang	6%	9%	8%	8%	8%
	other lang	2%	4%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	10%	16%	8%	11%
Education (among those age 25+)	hs-grad	36%	38%	43%	39%	39%
	bachelor	34%	26%	21%	31%	28%
	graduatedegree	12%	17%	14%	15%	15%
Child in Household	child-under18	35%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	65%	67%	69%	67%
Household Income	income 0-25k	8%	9%	6%	7%	7%
	income 25-50k	12%	9%	15%	12%	12%
	income 50-75k	11%	9%	15%	9%	11%
	income 75-200k	44%	39%	45%	45%	43%
	income 200k-plus	25%	34%	19%	28%	26%
Housing Stats	single family	82%	90%	79%	89%	85%
	multi-family	18%	10%	21%	11%	15%
	rented	28%	17%	36%	25%	27%
	owned	72%	83%	64%	75%	73%
Total population data from the California adjustment to the 2020 Decennial Census. Surname-based Voter Registration and Turnout data from the California Statewide Database. Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Mario Ramirez, Police Captain

APPROVED BY: City Manager

INTRODUCE ORDINANCE APPROVING MILITARY EQUIPMENT POLICIES AS REQUIRED BY AB 481

RECOMMENDATION(S)

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance approving Morgan Hill Police Department Policies 708--Armored Rescue Vehicle (ARV MedEvac) and 709--Military Equipment.

Estimated Time: 20 minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Public Safety Master Plan

REPORT NARRATIVE:

Background:

The City Council has a long-standing commitment to ensuring the Morgan Hill Police Department has the equipment necessary to safeguard the lives of the community members in Morgan Hill. Recent state legislation requires governing bodies of agencies to adopt policies for use of the equipment.

Assembly Bill 481 (AB 481 or the Bill), codified at Government Code sections 7070 through 7075 requires a law enforcement agency (LEA) to obtain approval from the applicable governing body via adoption of a "military equipment" use policy (the Policy) by ordinance (the Ordinance), prior to the LEA funding, acquiring, or using military equipment.

The Morgan Hill Police Department (MHPD) seeks City Council adoption of the attached Policy 709 - Military Equipment Use Policy and Policy 708 - Armored Rescue Vehicle (ARV) MedEvac Policy -- in order to allow MHPD to continue to use the necessary equipment specified therein, as well as acquire new pieces of essential equipment.

Items deemed to be “military equipment” by AB 481 are used as a component of overall best practices for Law Enforcement Agencies (LEAs) throughout the country. These tools have been tested in the field, and are used by LEAs to enhance community member safety as well as officer safety. Loss of these items would jeopardize the welfare of community members and peace officers within the MHPD.

The term “military equipment,” as used in AB 481, in fact, does not necessarily indicate equipment that has been used by the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long-range acoustic devices, and flashbangs. Many of these items deemed to be “military equipment” by AB 481 are, in fact, owned and deployed by MHPD and LEAs across the country, in order to specifically reduce risk to community members. These items provide peace officers with the ability to safely resolve volatile situations which otherwise might rise to the level of a lethal force encounter. To that end, the items listed in this report and accompanying Military Equipment Use Policy also provide MHPD’s peace officers with necessary tools that facilitate compliance with its stringent use of force policy.

Other items deemed to be “military equipment” via AB 481 include foundational equipment such as rifles. These rifles allow peace officers to address lethal threats from a greater distance and with greater precision. Along with seeking authorization to use preexisting equipment, the MHPD also seeks authorization to acquire, fund, and use new pieces of equipment: Armored Rescue Vehicle (ARV), Rook and a Long Range Acoustic Device (LRAD).

The Armored Rescue Vehicle (ARV) MedEvac vehicle is an armored rescue vehicle that seats 10-12 personnel with an open floor plan to rescue personnel and community members. It can stop various projectiles, which provides greater safety for citizens and officers beyond the protection level of shield and personal body armor. Morgan Hill Police Officers perform high-risk warrant services on armed suspects, respond to active shooters, hostage rescues, and other calls involving weapons and violence. The protective ballistic equipment allows for more time and opportunity to deescalate situations and provide safer tactics to resolve life-threatening events in the safest way possible. ARV has become a standard for many tactical teams in the nation, offering opportunities to resolve critical incidents safely for all involved parties. Currently, MHPD has been calling the Santa Clara County Sheriff’s Department to respond with their ARV on many occasions to help resolve critical incidents which is no longer readily available. MHPD authored a 2021 grant to fund an ARV as a regional asset for South County.

The Rook is an armored vehicle on a tracked platform that allows officers the ability to gain a better view of suspects from a safe position and introduce less than lethal options when dealing with violent offenders. The Rook has become a standard alternative for many tactical teams in the nation, offering more opportunities to resolve critical incidents

most safely for all involved parties. MHPD would like to seek future grant opportunities for the purchase of a Rook. The MHPD would have to call for mutual aid in the event a Rook was needed from outside Santa Clara County, which would prolong the incident and place our officers and community at risk.

The Long Range Acoustic Device, or LRAD, is a speaker system. It renders sound in directional focus and at extreme volumes, allowing the user to make sound audible over greater distances, and with more geographical precision, than an ordinary loudspeaker. LRADs have a microphone for speech, inputs for playback of recording. The LRAD will be used to make public addresses during emergency situations, such as the evacuation orders given during the 2020 fires.

There is significant interest in ensuring that law enforcement continues to have access to equipment that will provide peace officers as many options as possible to safeguard lives, ensure safety, and protect civil liberties. The use of the tools identified are necessary to MHPD's mission and will continue to be strictly regulated through internal processes and oversight.

The proposed Ordinance seeks to approve the MHPD's Policies 708 and 709. Policy 709.4 outlines each item identified in Government Code section 7070 currently owned by the City. The Policy also includes the current use and cost of each item. These particular items, and their stated uses, were in place prior to the implementation of AB 481. Future acquisitions of any item deemed to be "military equipment" will require a further public meeting, policy update, and City Council approval.

The proposed policies safeguard the public's welfare, safety, civil rights, and civil liberties by ensuring there are safeguards, transparency, oversight, and accountability measures in place. The Policies require that MHPD ensures that MHPD complies with Policy 708 and Policy 709 and conducts an annual audit of military equipment.

Violations of Policy 709 will be corrected when discovered. Members of the public are provided direction per the Policy on how to register complaints for violations. All items which result in the use of force will be investigated, as is already required by existing MHPD policy.

COMMUNITY ENGAGEMENT:

This report serves to inform the community of the Armored Rescue Vehicle-MedEvac and Military Equipment Policies. Information about the proposed policies is on our [website](#).

ALTERNATIVE ACTIONS:

Council could direct staff to add additional requirements to each policy.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This is the initial report to City Council for compliance with the state legislation.

FISCAL AND RESOURCE IMPACT:

There is no current Fiscal impact to the City at this time. Any future fiscal impact will be addressed in a coinciding Staff Report requesting permission to add additional equipment to the designated policies.

CEQA (California Environmental Quality Act):

Not a Project.

This entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

Armored Rescue Vehicle (ARV)- MedEvac

708.1 PURPOSE AND SCOPE

The purpose and scope of this policy is to set guidelines for the proper use, training, care and storage of the Morgan Hill Police Department's armored rescue vehicle. In this policy, this vehicle will be referred to as Armored Rescue Vehicle (ARV).

The ARV is an asset that was acquired by the Morgan Hill Police Department. The purpose and intent of the acquisition and deployment of this vehicle is to enhance and sustain local and regional preparedness for first responders in major urban areas by allowing for delivery of emergency medical services into on-going hazardous situations. This will allow law enforcement, fire service staff, and medical personnel the ability to safely enter unsecured and unstable areas (warm or hot zone). This vehicle will assist with providing immediate medical assistance, enhancing the ability of first responders to rescue persons in need and help protect first responders at the scene of an emergency situation. The vehicle is also designed to meet tactical needs of law enforcement agencies tasked with responding to acts of violence and/ or terrorism. The purpose is to enhance law enforcement's ability to serve and protect the community.

708.2 USE OF THE LENCO MEDEVAC

The use of an Armored Rescue Vehicle (ARV) is to preserve life and enhance the safety of citizens and officers. The ARV should be deployed in situations where its use would enhance the tactical advantage of officers, aid in the rescue of injured persons, protect life and property, or improve the likelihood that an incident would be resolved without the use of deadly force or other force options.

The ARV is primarily used for Special Weapons and Tactics Team (SWAT) incidents, safe transport of SWAT personnel to and from critical incidents, high risk warrant service operations, dangerous high risk tactical operations, high risk rescue operations, training, providing emergency medical staff and/or Tactical Emergency Medicine (TEMS) personnel, delivering equipment, and other rescue capabilities. It may also be used for community engagement efforts and other applications deemed appropriate and approved by the Special Operations Captain.

708.3 DEPLOYMENT

Approval to deploy an ARV will be the responsibility of the Special Operations Captain. A Watch Commander may authorize the deployment of an ARV if there is an immediate need to prevent loss of life or great bodily injury. Upon deployment, the Watch Commander shall notify the Special Operations Captain as soon as practical. In most cases where the Watch Commander authorized the deployment of an ARV, the SWAT Commander (Special Operations Captain) will assign two (2) SWAT Officers to relieve the patrol officers in charge of the ARV at the scene of an ARV deployment.

Nothing in this policy is meant to preclude the immediate deployment of the ARV to perform an officer or citizen rescue, to save lives that are in immediate danger of great bodily injury or death or to deliver the ARV to the scene of a callout.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Armored Rescue Vehicle (ARV)- MedEvac

The Special Operations Captain should be notified of all deployments of the ARV as soon as possible after a deployment.

708.3.1 TACTICAL OPERATIONS, INVESTIGATIONS, AND ENFORCEMENT

Deployment of an ARV should be considered in the following circumstances;

- During incidents involving violent felonies;
- Responding to persons with a history of extreme violence involving firearms, explosives or other dangerous weapons;
- When information is present that the suspect has used, intends to use or is likely to use extreme violence against citizens or law enforcement personnel; and
- At a scene of an incident where a suspected or actual explosive device is located.

With full consideration for the safety of the occupants, an ARV may be used to breach a structure with the vehicle's ram attachment. Using an ARV for this purpose is appropriate only after a clear articulated need exist and only when; (1) a search warrant is obtained and the issuing judge authorized the use of the ARV to breach a structure; and (2) when the ram was utilized, officers reasonably believed that evidence inside the premises was presently being destroyed, or (3) there was an immediate threat of resistance from the occupants which posed a serious danger to officers or community member. Nothing in this section is intended to prevent the use of an ARV to conduct rescue operations to prevent loss of life or great bodily injury.

An ARV will not be deployed at incidents that do not involve actual, threatened or suspected violence or investigations of misdemeanor crimes, unless the crime involves a firearm or equivalent deadly weapon.. In the absence of actual, threatened or suspected violence, an ARV may be deployed during natural disasters, rescue/emergency operations that necessitate the deployment of the ARV's equipment and capabilities. Examples include but are not limited to the following;

- The ARV's ground clearance and 4-wheel drive capabilities.
- Use of night vision/search equipment to locate missing and/or at risk persons.
- Use of onboard oxygen system during an operation.

Generally, an ARV will not be utilized in crowd control situations or during times of civil unrest, protest or demonstrations unless clear articulable facts dictate the need to deploy the ARV (shots fired, suspected violence involving firearms, actual or suspected presence of explosives, etc.).

708.3.2 RESCUE OPERATIONS

An ARV may be utilized to perform rescue operations of citizens or officers. The ARV may be deployed to the scene of an incident involving hazardous chemicals or materials and may utilize onboard equipment to assist with the response and successful mitigation of the situation. The ARV has the capability to deliver law enforcement personnel specially trained in hazardous material operations to the scene of emergencies requiring this level of expertise.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Armored Rescue Vehicle (ARV)- MedEvac

In certain rescue operations, such as an Active Shooter or Criminal Mass Casualty Incident, the ARV may be used to deploy Fire and/or EMS resources into potential Warm Zones as a Rescue Task Force. The integration of Fire and/or EMS into a Rescue Task Force is strictly meant to expedite life-saving efforts. The use of the ARV is meant to provide protection and a safe environment for the Rescue Task Force personnel as well as for victims requiring evacuation or treatment. The Rescue Task Force will be deployed in compliance with the Santa Clara County Active Shooter Protocol.

708.3.3 PRE-PLANNED OPERATIONS

Any sworn member of the Morgan Hill Police Department may request to deploy an ARV in a preplanned operation by making the request to the Special Operations Captain. The request should include, but is not limited to; the date and time frame of the operation; the location(s) of the operation; and the reason why the ARV is necessary for the success of the operation. The Special Operations Captain will be responsible for approving/denying the request.

708.3.4 PRE-PLANNED SPECIAL EVENTS

With the approval of the Special Operations Captain, an ARV may be staged at the location of a pre-planned special event for the purpose of providing a rapid response to acts of extreme violence. The vehicle should be parked and staged in a manner appropriate for the circumstances. Each event Incident Commander is responsible for communicating the intended use of the ARV to the Special Operations Captain prior to deployment. If approval is granted, a trained ARV driver will be assigned to deliver and provide security for the vehicle.

708.3.5 PUBLIC RELATIONS

An ARV may be deployed for public relations purposes, such as charity events, law enforcement demonstrations and other special events, with the approval of the Special Operations Captain. If approval is granted, a trained ARV driver will be assigned to deliver and provide security for the vehicle.

708.4 ALLIED AGENCY REQUEST

Non-Emergency request for deployment of the ARV by an allied agency will be made through the on-duty Watch Commander who will then contact the Special Operations Captain for authorization. If there is an allied agency request for an immediate ARV deployment to an emergency to assist in life-saving operations, the Watch Commander may authorize the deployment of the vehicle pursuant to Section 707.3 of this policy.

Upon approving an allied agency's request, two officers trained in ARV deployment will be assigned to deliver the ARV to the requesting agency. It is recommended that one officer drive the ARV and one officer assist with escorting the ARV in a marked patrol vehicle. The officer(s) will respond to the incident and deploy the ARV per the orders of the Incident Commander of the allied agency. Morgan Hill Officers will not deploy an ARV if the deployment conflicts with Morgan Hill Police Department's policies, procedures, practices or established law. Officers arriving on scene with the ARV will act as operators of the vehicle and security for the vehicle.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Armored Rescue Vehicle (ARV)- MedEvac

MHPD officers deployed with an ARV should not be directly involved in the tactical operations of the allied agency unless specifically requested to do so by the requesting agency. If the MHPD officers are asked to participate in any part of the Allied Agency's operation other than the operation of the ARV, the officer(s) shall contact the Special Operations Captain as soon as practical and brief the Special Operations Captain on the intended actions of the officers and allied agency. This policy is not intended to restrict officers from taking action if necessary to prevent loss of life or great bodily injury.

If the allied agency's request for an ARV develops into an extended operation, the officers deploying the vehicle will contact the Special Operations Division Captain and advise him/her of the situation. The Special Operations Captain will be responsible for ensuring relief officers are deployed as necessary.

If multiple simultaneous requests are made for the ARV, the Special Operations Captain will evaluate the situation and determine which request takes priority based on the nature of the incidents. The Special Operations Captain shall be notified when the ARV is deployed outside of city limits.

708.5 TRAINING

Officers are to be trained in the operation of the ARV prior to use. Training requirements will be set by the Special Operations Captain in cooperation with the Emergency Vehicle Operations (EVOC) Training Manager. Training will include knowledge of this policy, rules of the road and basic knowledge of electronic/mechanical functions on the vehicle. The training will also include a driving exercise. SWAT personnel will receive advanced training and are expected to maintain a higher level of operational knowledge and expertise.

Only MHPD personnel who have completed training and possess a valid California Driver's License will be authorized to drive/operate the ARV, unless a delayed deployment of an ARV would result in serious bodily injury or death.

The Special Operations Captain or his/her designee is responsible for training officers on proper use, driving techniques and ensuring the vehicle is properly serviced and maintained.

708.6 DOCUMENTATION

Each deployment of an ARV shall be documented in a police report, a SWAT After Action Report or on the ARV Deployment Log. Training shall be documented and forwarded to the MHPD Training Unit.

708.7 OPERATING/ STORAGE/MAINTENANCE GUIDELINES

Backing

(a) When operating the ARV in reverse and when persons, equipment or other property is within the immediate area of the ARV, a ground guide or spotter should be used unless officer safety would be jeopardized.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Armored Rescue Vehicle (ARV)- MedEvac

Inventory

(a) The MHPD officer operating the ARV during the deployment shall ensure that all of the vehicle's equipment has been returned to the ARV once the deployment is completed. The SWAT Sergeant shall ensure quarterly inventories/inspections are completed and a list of the equipment is stored inside the of the ARV.

Fueling

(a) Prior to securing the ARV after deployment, the MHPD officer operating the ARV during the deployment shall ensure that the vehicle has sufficient fuel and is ready for re-deployment.–

Diesel Fuel

Storage

(a) The ARV will be stored in designated parking locations on the Morgan Hill Police Department campus unless authorization for an alternative storage location is granted by the Special Operations Captain.

Damage

(a) If the ARV is damaged, the MHPD officer operating the ARV during the deployment shall report the damage to the SWAT Commander (Special Operations Captain) as soon as possible and complete a Vehicle Damage Control Report.

Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue handguns.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

709.2 POLICY

It is the policy of the Morgan Hill Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Morgan Hill Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the: ÷

1. **Unmanned Aircraft System (UAS):** An unmanned aircraft along with the associated equipment necessary to control it remotely.
 - (a) Description, quantity, capabilities, and purchase cost of current UAS:
 1. Skydio 2+, cost: \$1,000 each, quantity: 1. Skydio 2+ UAS that weighs approximately 800 grams and is able to record video and audio with approximately 27 minutes of flight time
 - (b) Purpose: To be deployed when its view would assist officers or incident commanders with the following situations, which include but are not limited to:
 1. Major collision investigations
 2. Search for missing persons.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

3. [Natural disaster management.](#)
 4. [Crime scene photography.](#)
 5. [SWAT, tactical, or other public safety and life preservation missions.](#)
 6. [In response to specific requests from local, state, or federal fire authorities for fire response and/or prevention.](#)
 - (c) [Authorized Use: Only assigned operators who have completed the required training shall be permitted to operate any UAS during approved missions.](#)
 - (d) [Expected Life Span: All UAS equipment, 3-5 years.](#)
 - (e) [Fiscal Impact: There is no annual fiscal impact.](#)
 - (f) [Training: All Department UAS operators are licensed by the Federal Aviation Administration for UAS operation.](#)
 - (g) [Legal and Procedural Rules: Use is established under Policy 613, FAA Regulation 14 CFR Part 107. It is the policy of the Morgan Hill Police Department to utilize UAS only for official law enforcement purposes and in a manner that respects the privacy of our community, pursuant to State and Federal law.](#)
2. [Armored Rescue Vehicles: Commercially produced wheeled armored personnel vehicle utilized for law enforcement purposes.](#)
- (a) [Description, quantity, capabilities, and purchase cost:](#)
 1. [LENCO BEARCAT, G3, cost: approximately \\$375,000, quantity: 0. The Lenco Bearcat, G3, is an armored rescue vehicle that seats 10-12 personnel with an open floor plan to rescue down personnel. It can stop various projectiles, which provides greater safety to citizens and officers beyond the protection level of shield and personal body armor.](#)
 - (b) [Purpose: To be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, and assist in resolving critical incidents.](#)
 - (c) [Authorized Use: The use of armored rescue vehicles shall only be authorized by a watch commander or Special Operations Captain, based on the specific circumstances of a given critical incident. The armored rescue vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training.](#)
 - (d) [Lifespan: Lenco Bearcat models G3, 25 years.](#)
 - (e) [Fiscal Impact: Annual maintenance cost of approximately \\$10,000.](#)
 - (f) [Training: All drivers/operators shall attend formalized instruction and be trained in vehicle operations and practical driving instruction.](#)
 - (g) [Legal and Procedural Rules: Use is established under Policy 708. It is the policy of the Department to utilize the armored rescue vehicles only for official law enforcement purposes and pursuant to State and Federal law.](#)

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (h) Grant Proposal: The armored rescue vehicle is currently being considered via a State Homeland Security Grant Program (SHSGP) Grant. The grant will be documented to show the armored rescue vehicle's need, price, and capabilities. If the armored rescue vehicle is obtained, it will be the responsibility of the Department to maintain the training of personnel for the operation of the vehicle. It will also be the responsibility of the Department to handle all maintenance of the vehicle once it is acquired.
- 3. **NIJ Level IV Armored Caterpillar (CAT) Multi-Terrain Loader (The ROOK):** The ROOK is a custom "armored critical incident vehicle" built on the chassis of a CAT Bulldozer, manufactured by Ring Power. The ROOK is built to increase job safety, versatility, and mission-specific response. The ROOK is equipped with powerful mission-specific attachments. The ROOK is capable of being used in tight areas both inside and outside, where traditional armored vehicles may not be able to enter.
 - (a) Description, quantity, capabilities, and purchase cost:
 - 1. ROOK- Modified CAT compact Track Loader chassis, cost: \$400,000, quantity: 0. The ROOK can be utilized by authorized SWAT personnel to identify, discover and locate threats or hazards, including explosives and ballistic threats. The ROOK may be used to stabilize critical infrastructure and functions to minimize health and safety threats during a terrorist attack. During a terrorist attack, the ROOK will allow for a protected law enforcement response.
 - (b) Purpose: To provide a capability for defensive ballistic protection in indoor and outdoor environments, rescue platforms for elevated structure rescue, and rough terrain environments where certain equipment would be limited.
 - (c) Authorized Use: The ROOK shall be used by SWAT team members in a manner consistent with Department policy and training. Furthermore, only SWAT team members who have completed the appropriate training will operate the ROOK.
 - (d) Lifespan: 25 years
 - (e) Fiscal Impact: The annual maintenance cost is approximately \$8,000.
 - (f) Training: All drivers/operators shall attend formalized instruction and be trained in vehicle operations and practical driving instruction.
 - (g) Legal and Procedural Rules: It is the policy of the Department to utilize armored vehicles only for official law enforcement purposes and pursuant to State and Federal law.
 - (h) Grant Proposal: The department will be requesting grant funds in the future for the purchase of The ROOK. If the ROOK is obtained, it will be the responsibility of the Department to maintain the training of personnel for the operation of the vehicle. It will also be the responsibility of the Department to handle all maintenance of the vehicle once it is acquired.
- 4. **Mobile Command Vehicle (MCV):** A vehicle used mobile office that provides shelter, _ access to Department computer systems and restroom facilities during extended events.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (a) Description, quantity, capabilities, and purchase cost:
 - 1. Freightliner MT-55 Chassis (custom built) vehicle, cost: \$699,186, quantity: 1. The MCV can also be utilized for SWAT/CNT and other critical incidents, large preplanned events, searching for missing persons, natural disasters, and community events
 - (b) Purpose: To be used based on the specific circumstances of a given critical incident, large event, natural disaster, or community event that is taking place.
 - (c) Authorized Use: Only officers trained in their deployment and operations in a manner consistent with Department policy and training are authorized to operate the MVC. Situations in which the MCV is authorized for use would include but not be limited to critical incidents, emergencies, and natural disasters.
 - (d) Lifespan: The MCV, 20-year lifespan on chassis and vehicle structure. Upgrades needed in 7 years to maintain IT systems.
 - (e) Fiscal Impact: The annual maintenance cost is approximately \$25,000, which is split 50/50 with the Gilroy Police Department.
 - (f) Training: The driver/operator shall receive training in the safe handling of the vehicle on a closed training course. Once the operator has shown competence in vehicle handling, the driver/operator will drive the vehicle with an experienced driver throughout the city.
 - (g) Legal and Procedural Rules: It is the policy of the Department to use the MCV only for official law enforcement purposes and in accordance with California State law regarding the operation of motor vehicles.
5. **Long Range Acoustic Device (LRAD)** Long Range Acoustical Device (LRAD) is a high-intensity directional acoustical array for long-range, crystal clear hailing, notification, and an unmistakable warning tone. The LRAD is primarily used as a communication device.
- (a) Description, quantity, capabilities, and purchase cost:
 - 1. LRAD 100x Mag- HS Wireless Kit, cost: \$17,558 each, quantity: 0. Self-contained, portable, and featuring an extended voice broadcast range out to 600 meters, the LRAD 100X ensures voice messages are clearly heard and understood. LRAD's optimized driver, waveguide, and power efficiency technologies enable the LRAD 100X to provide several hours of clear, continuous communication from a single battery charge.
 - (b) Purpose: To be used to issue dispersal orders during crowd and riot control situations or to address the public in the event of civil emergencies, natural disasters, evacuations, and police incidents (e.g., missing persons, perimeters for wanted suspects/ K9 deployments, etc.). The LRAD may also be used to issue a warning tone.
 - (c) Authorized Use: The LRAD shall only be used by officers trained in its deployment and used in a manner consistent with Department policy and training.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (d) Lifespan: All Department LRADS, 25 years.
 - (e) Fiscal Impact: The annual maintenance cost for the LRAD is approximately \$400 annually.
 - (f) Training: All operators receive training prior to operating any of the LRAD's in the field.
 - (g) Legal and Procedural Rules: It is the policy of the Morgan Hill Police Department to utilize the LRAD only for official law enforcement purposes and pursuant to State and Federal law.
 - (h) Grant Proposal: The LRAD is currently being considered via a State Homeland Security Grant Program (SHSGP) Grant. The grant will be documented to show the need, price, and capabilities of the LRAD. If the armored rescue vehicle is obtained, it will be the responsibility of the Department to maintain the training of personnel for operation.
6. **40 MM Launchers and Rounds:** 40MM Launchers are utilized by department personnel as a less-lethal tool to launch impact rounds.
- (a) Description, quantity, capabilities, and purchase cost:
 - 1. DEFENSE TECHNOLOGY, 40MM SINGLE SHOT LAUNCHER, #1425, cost: \$1000, quantity: 5. The 40MM Single Launcher is a tactical single-shot launcher that features a collapsible stock and adjustable vertical front grip with a light rail. It will fire standard 40MM less-lethal ammunition, up to 4.8 inches in cartridge length. It will launch a 40MM less-lethal round up to 131 feet. Additionally, it will launch a signaling munition with OC. Only authorized to be used by SWAT personnel may use the 40MM launcher for the deployment of OC munition.
 - (b) Purpose: To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.
 - (c) Authorized Use: Situations for the use of the less-lethal weapon systems may include, but are not limited to:
 - 1. Self-destructive, dangerous and/or combative individuals.
 - 2. Riot/crowd control and civil unrest incidents.
 - 3. Circumstances where a tactical advantage can be obtained.
 - 4. Potentially vicious animals.
 - 5. Training exercises or approved demonstrations.
 - (d) Training: Sworn members utilizing 40MM less-lethal chemical agents or impact rounds are trained in the use by a POST-certified less lethal and chemical agents instructors.
 - (e) Lifespan: DEFENSE TECHNOLOGY, 40MM SINGLE SHOT LAUNCHER, #1425- 10 years.
 - (f) Fiscal Impact: Annual maintenance is approximately \$50 for each launcher.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (g) Legal and Procedural Rules: Use is established under Policy 308.9. It is the policy of the Morgan Hill Police Department to utilize the 40mm only for official law enforcement purposes and pursuant to State and Federal law, including those regarding the use of force.
- 7. **Less Lethal Shotgun:** Less Lethal Shotgun is used to deploy the less-lethal 12-gauge Super-Sock Beanbag Round.
 - (a) Description, quantity, capabilities, and purchase cost:
 - 1. Mossberg 500 LESS LETHAL SHOTGUN, cost: \$553.00, quantity: 10. The Mossberg 500 Less Lethal Shotgun is used to deploy the less-lethal 12-gauge Super-Sock Beanbag Round up to a distance of 75 feet. The range of the weapon system helps to maintain space between officers and a suspect reducing the immediacy of the threat, which is a principle of De-escalation.
 - (b) Purpose: To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.
 - (c) Authorized Use Situations for the use of the less-lethal weapon systems may include, but are not limited to:
 - 1. Self-destructive, dangerous and/or combative individuals.
 - 2. Riot/crowd control and civil unrest incidents.
 - 3. Circumstances where a tactical advantage can be obtained.
 - 4. Potentially vicious animals.
 - 5. Training exercises or approved demonstrations.
 - (d) Lifespan: Mossberg 500 870 Less Lethal Shotgun- 10 years.
 - (e) Fiscal Impact: Annual maintenance is approximately \$50 for each shotgun.
 - (f) Training: Through in-service training, all officers are trained in the 12 gauge less lethal shotgun as a less lethal option. SWAT personnel receive additional training internally when they transfer to the unit. SWAT operators who utilize these munitions have been through and successfully completed a POST-approved gas school and/or trained in-house by POST certified chemical agent instructors for muzzle blast training.
 - (g) Legal and Procedural Rules: Use is established under Poly 308.9. It is the policy of the Morgan Hill Police Department to utilize the less-lethal shotgun only for official law enforcement purposes and pursuant to State and Federal law, including those regarding the use of force.
- 8. **Distraction Devices:** A device used to distract dangerous persons.
 - (a) Description, quantity, capabilities, and purchase cost:
 - 1. COMBINED TACTICAL SYSTEMS, 7290M MINI FLASH-BANG, cost: \$38, quantity: 31. The 7290M Flash-Bang exhibits all the same attributes of its larger counterpart but in a smaller and lighter package. Weighing in

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

at just 15 ounces, the new 7290M is approximately 30% lighter than the 7290 but still has the same 175db output of the 7290 and produces 6-8 million candelas of light.

- (b) Purpose: A distraction device is ideal for distracting dangerous suspects during assaults, hostage rescue, room entry, or other high-risk arrest situations. To produce atmospheric overpressure and brilliant white light and, as a result, can cause short-term (6 - 8 seconds) physiological/psychological, sensory deprivation to give officers a tactical advantage.
 - (c) Authorized Use: Diversionary Devices shall only be used:
 - 1. By officers who have been trained in their proper use.
 - 2. In hostage and barricaded subject situations.
 - 3. In high-risk warrant (search/arrest) services where there may be extreme hazards to officers.
 - 4. During other high-risk situations where their use would enhance officer safety.
 - 5. During training exercises.
 - (d) Lifespan: Until used.
 - (e) Fiscal Impact: There is no fiscal impact.
 - (f) Training: Prior to use, officers must attend diversionary device training that is conducted by Post certified instructors.
 - (g) Legal and Procedural Rules: Use is established under Policy 308. It is the policy of the Morgan Hill Police Department to utilize diversion devices only for official law enforcement purposes and pursuant to State and Federal law regarding the use of force.
9. **Rifles:** Guns fired from shoulder level have a long spirally grooved barrel intended to make bullets spin and thereby have greater accuracy over a long distance.
- (a) Description, quantity, capabilities, and purchase cost:
 - 1. COLT CARBINE AR 15 RIFLE,.223 CALIBER RIFLE, Semi-Automatic, cost: \$1,099, quantity: 44. The Colt AR 1 with 16.1" Barrel is a secondary weapon platform to the officer's sidearm. The Cold AR 15 rifle is utilized during high-risk situations where the use of a handgun is not feasible. This firearm is chambered in.223 Remington/ 5.56 NATO Rifle and 16.1" barrel. The magazine holds 10 or 30 rounds of ammunition. All sworn officers use this rifle within the police department.
 - 2. COLT CARBINE M4 RIFLE,.223 CALIBER RIFLE, cost: \$2,027, quantity: 8. The Colt M4 with a 10.5" Barrel is a secondary weapon platform to the officer's sidearm. The Colt M4 rifle is utilized during high-risk situations where the use of a handgun is not feasible. This firearm is chambered in.223 Remington/ 5.56 NATO Rifle and has a 10.5" barrel. The magazine

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

holds 10 or 30 rounds of ammunition. This rifle is used by all SWAT operators only.

3. REMINGTON 700 RIFLE,.308 CALIBER RIFLE, cost: \$1099, quantity: 1. The Remington 700 rifle is to provide SWAT team snipers with a weapon platform capable of being utilized during high-risk incidents where the SWAT M4 rifle would not be ideal. The Remington 700 allows the operator to be at a further distance than the recommended ideal operating distance of their M4 rifle. This firearms chambered in a.308 Hornady and has a 20" barrel.
4. SPEER GOLD DOT.223 CALIBER 55 GRAIN RIFLE ROUND, cost: \$260 per case of 500, quantity: 88 cases. Remington ammo made by Speer is reloadable, features nickel-plated brass cases and Boxer primers, and this is a non-corrosive round. The Gold Dot LE ammunition goes through a process of joining the jacket and core one molecule at a time; thanks to this, Speer eradicates the potential for the leading cause of bullet failure (jacket/core separation). This process will guarantee extraordinary weight retention through barriers as strong as auto-glass. In addition to its remarkable strength, Gold Dot rifle ammunition asserts remarkable accuracy. With exact tolerances and unparalleled bullet uniformity of jacket thickness.
5. SPEER GOLD DOT.223 CALIBER 62 GRAIN RIFLE ROUND, cost: \$260 per case of 500, quantity: 25 cases. Remington ammo made by Speer is reloadable, features nickel-plated brass cases and Boxer primers, and this is a non-corrosive round. The Gold Dot LE ammunition goes through a process of joining the jacket and core one molecule at a time; thanks to this, Speer eradicates the potential for the leading cause of bullet failure (jacket/core separation). This process will guarantee extraordinary weight retention through barriers as strong as auto-glass. In addition to its remarkable strength, Gold Dot rifle ammunition asserts remarkable accuracy. With exact tolerances and unparalleled bullet uniformity of jacket thickness.
6. FEDERAL 9MM LUGER AUTO 147 Grain FULL METAL JACKET FLAT POINT PRACTICE AMMUNITION, cost: \$6,300, quantity: 4000 rounds. This Federal American Eagle 9mm Luger ammunition is loaded with a 147-grain Full Metal Jacket bullet. The Full Metal Jacket bullet is for range practice and reducing fouling in the barrel. The jacket extends from the nose to the base, preventing bullet expansion and barrel leading. This ammunition is non-corrosive ammo, featuring brass cases, boxer primed, and reloadable.
7. HORNADY,.308 168GR RIFLE ROUND, cost: \$433 per case of 200, quantity: 4 cases. The Federal Gold Medal.308 Winchester ammunition is new production ammo that features a 168 Grain Sierra MatchKing Hollow Point Boat Tail bullet, a non-corrosive boxer primer. The Hornady.308 Winchester ammo offers a muzzle speed of 2650 feet per second and muzzle energy of 2619 foot-pounds.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (b) Purpose: To be used as precision weapons to address a threat with more precision and/or greater distances than a handgun, if present and feasible.
 - (c) Authorized Use: Only members that are POST certified are authorized to use a rifle.
 - (d) Lifespan:
 - 1. Colt Carbine AR 15 Rifle- 10 years.
 - 2. Colt Carbine M4 Rifle- 10 years.
 - 3. Remington 700 Rifle - 10 years.
 - (e) Fiscal Impact: Annual maintenance is approximately \$50 for each rifle.
 - (f) Training: Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members who operate any rifle must pass a range qualification two times a year.
 - (g) Legal and Procedural Rules: Use is established under Policy 312.3.3. It is the policy of the Morgan Hill Police Department to utilize rifles only for official law enforcement purposes and pursuant to State and Federal law regarding the use of force.
10. **Chemical Agent and Smoke Canisters:** Canisters containing chemical agents are released when deployed.
- (a) Description, quantity, capabilities, and purchase cost:
 - 1. COMBINED SYSTEMS, CS, #8230, cost: \$24.85, quantity: 150. CTS 8230 (outdoor)-8230 is the smallest diameter burning grenade that discharges a high volume of smoke and chemical agent through multiple emission ports. Specifically for outdoor use, it should not be deployed on rooftops, in crawl spaces, or indoors due to fire-producing capability. It can be hand thrown or launched. The canister is 1.41 in. by 4.90 in and holds approximately 1.4 grams of the active agent. It has an approximate burn time of 20-40 seconds.
 - 2. COMBINED SYSTEMS, CS, #85230B, cost: \$32.95, quantity: 0. CTS 5230B (indoor/baffled)-5230B –Pyrotechnic grenade designed for indoor use delivers a maximum amount of irritant smoke throughout multiple rooms with minimal fire risk. It can be hand thrown. The canister is 2.60 in. by 6.20 in. and holds approximately 1.4 grams of the active agent. It has an approximate burn time of 20-40 seconds.
 - 3. COMBINED SYSTEMS, CS, #4350, cost: \$25.00, quantity: 75. CTS 4530 (40mm frangible impact)- 4530- 40MM multi-effect munition delivering greater energy on the target with extreme accuracy and simultaneously dispersing a cloud of irritant or marking powder. The CS 4530 is deployed through a 40mm launcher and can be deployed up to 50 yards. The CS 4530 is 4.0 in. and holds approximately 1.4 grams of the active agent.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (b) Purpose: To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include, but are not limited to:
 - 1. Self-destructive, dangerous and/or combative individuals.
 - 2. Riot/crowd control and civil unrest incidents.
 - 3. Circumstances where a tactical advantage can be obtained.
 - 4. Potentially vicious animals.
 - 5. Training exercises or approved demonstrations.
 - (c) Authorized Use: Only officers who have received POST certification in the use of chemical agents are authorized to use chemical agents.
 - (d) Training: Sworn members utilizing chemical agent canisters are certified by POST less lethal and chemical agents instructors.
 - (e) Lifespan: Five years from manufacturing date.
 - (f) Fiscal Impact: No annual maintenance.
 - (g) Legal and Procedural Rules: Use is established under Policy 308.6. It is the policy of the Morgan Hill Police Department to utilize chemical agents only for official law enforcement purposes and pursuant to State and Federal law, including those regarding the use of force.
11. **PepperBall Launcher: A device that discharges irritant projectiles.**
- (a) Description, quantity, capabilities, and purchase cost:
 - 1. PepperBall DEFENSE INNOVATION, cost: \$350, quantity 2. The Defense Innovation is a compressed-air powered launcher designed to fire non-lethal PepperBall projectiles. The PepperBall Defense Innovation is a single feed system with the use of a Hooper.
 - 2. PepperBall DEFENSE INNOVATION PROJECTILE, cost: \$75.00 per case, quantity 3. The basic PepperBall projectile contains 2% PAVA pepper powder and is designed for direct impact and area saturation, especially in confined, interior spaces. The projectile contains 0.5% PAVA Powder. Discharged from a PepperBall Launcher, the projectile has a 200-500 FPS velocity.
 - (b) Purpose: To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for the use of the less-lethal weapon systems may include but are not limited to:
 - (a) Self-destructive, dangerous and/or combative individuals.
 - (b) Riot/crowd control and civil unrest incidents.
 - (c) Circumstances where a tactical advantage can be obtained.
 - (d) Potentially vicious animals.
 - (e) Training exercises or approved demonstrations.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

- (c) Authorized Use: Only those officers who have been trained in the use of PepperBall launchers are authorized to use the PepperBall launchers.
- (d) Training: Sworn members utilizing PepperBall launchers and projectiles are trained in the use by a POST-certified less-lethal and chemical agents instructors.
- (e) Lifespan:
 - (a) PepperBall VKS Carbine- 20 years
 - (b) PepperBall Live Projectile- 3 years
- (f) Fiscal impact: Annual maintenance is approximately \$50 for each PepperBall launcher.
- (g) Legal and Procedural Rules: Use is established under Policy 308.7.2. It is the policy of the Morgan Hill Police Department to utilize PepperBall only for official law enforcement purposes and pursuant to State and Federal law, including those regarding the use of force.

[Insert attachment here]

709.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

Morgan Hill Police Department

Morgan Hill PD Policy Manual

Military Equipment

709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

709.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

709.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

ORDINANCE NO. , NEW SERIES

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORGAN HILL APPROVING POLICE
DEPARTMENT POLICIES 708 (ARMORED RESCUE
VEHICLE) AND 709 (MILITARY EQUIPMENT)**

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

Section 1. Police Department Policy 708—Armored Rescue Vehicle (ARV MedEvac) is approved by the City Council in accordance with the requirements of AB 481.

Section 2. Police Department Policy 709—Military Equipment is approved by the City Council in accordance with the requirements of AB 481.

Section 3. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. **Effective Date; Posting.** This Ordinance shall take effect on _____, 2022. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 2022, and adopted at a meeting held on the _____ day of _____, 2022, 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:

ATTEST:

APPROVED:

MICHELLE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Anthony Eulo, Program Administrator

APPROVED BY: City Manager

INTRODUCE ORDINANCE UPDATING WATER WASTE ORDINANCE, ADOPT WATER SHORTAGE RESOLUTION, AND ACCEPT REPORT ON WATER OFFSET PROGRAM

RECOMMENDATION(S)

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance updating the City's water waste provisions to reflect the actions and stages identified in the City's Urban Water Management Plan (UWMP);
3. Adopt resolution declaring a Level 4 Water Supply Shortage; and
4. Accept report on the development of a "water offset" program for new development.

Estimated Time: 30 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

REPORT NARRATIVE:

POLICY CONSIDERATIONS:

Should the City establish some form of "water offset" program that would require owners and developers of new residential and nonresidential developments to "find" the water needed for their development by implementing or funding conservation programs that would reduce existing water consumption?

WATER WASTE ORDINANCE:

The City has long had a water waste ordinance that it relies upon to guide City activities during droughts and other water shortages. This ordinance specifically mimics the "Water Shortage Contingency Plan" required to be prepared with the Urban Water Management Plan (UWMP) that is submitted to the State every five years. When the 2020 UWMP was prepared, the City fine tuned the Water Shortage Contingency Plan to

better reflect the tools and opportunities that the City has to respond to water shortages. The previous three large stages of water shortage were expanded to six smaller stages that offer more flexibility and responsiveness. The proposed ordinance (Attachment 1) merely codifies the six stage response plan that the Council approved last October when considering the UWMP and staff recommends adoption of the ordinance to ensure that the Municipal Code reflects the UWMP submitted to the State.

With the addition of the smaller more-nuanced stages, the actions associated with what used to be a Level 2 water shortage now constitute a Level 4 water shortage. Since California remains in a drought and the City was already in a declared Level 2 water shortage, staff recommends that the Council adopt the resolution (Attachment 2) updating the water shortage declaration from a Level 2 shortage to a Level 4 shortage. Importantly, the increased number does not cause or represent additional use restrictions - it is merely updating the number to reflect the new numbering system. Irrigation will remain limited to twice per week.

WATER OFFSET PROGRAM:

As climate change introduces more water uncertainty to California, it is advisable to consider new approaches to meeting each community's water needs. In Morgan Hill, the City is dependent on imported Sacramento - San Joaquin River Delta water to be purchased and piped to South County for groundwater recharge by Valleywater. As the likelihood of interruptions in these imported water supplies increases, so do the chances of declining groundwater levels and water shortages in South County. Any shortages potentially facing the community, could be more severe as the community grows.

While some have suggested that the City issue moratoriums on building during drought periods, moratoriums have two fatal flaws that make them untenable. First, the State would likely strike down any moratorium that impacted residential development (due to the housing crisis) so a moratorium would only restrict the nonresidential development that typically offers positive economic benefits to the community. Second, a moratorium does nothing to address the long-term water needs generated by development; it just stalls building.

An alternative to a moratorium is a water offset program that would require developers of new projects to "find" the water for the project by implementing or funding conservation programs that reduce water consumption. For example, a developer needing 100 units of water a day to support a new project would need to fund the conservation of 100 units of water a day by existing customers or, alternately, contribute to a project that would recycle 100 units of water a day. Several other communities, primarily coastal communities, have implemented similar programs after recognizing that their water supplies were limited.

To begin this work, staff proposes that the City hire a conservation consultant to prepare a policy options report for the City Council to consider later this year. The report would highlight the lessons learned in other communities, the options available for proceeding, and the fiscal impacts of such a program.

COMMUNITY ENGAGEMENT:

Inform and Consult

Community engagement relating to the City's water waste rules was completed with the community engagement for the UWMP. Per the staff report presented to the Council for UWMP adoption: "The UWMPA requires that the adopted UWMP demonstrate the water agency solicited public participation. Per the stated law, the City held a public hearing so community members could provide comments, learn about existing and future water supplies of the City, and raise any concerns towards the plan. A notice of the public hearing was published in the local newspaper on August 13 and 20, 2021, notifying interested parties that the draft 2020 UWMP was available at various City facilities and on the City's web page (www.morganhill.ca.gov) for review two successive weeks before the anticipated adoption scheduled for October 6. In addition to the public hearing held for this item, the City hosted a workshop/town hall meeting for the public on September 9, in anticipation of the 2020 UWMP being adopted by the Council on October 6.

In addition, tonight's public hearing was properly noticed in the Morgan Hill Times.

The development of the water offset program will involve additional community engagement in the future before the program and any implementing actions are brought back to the City Council. The details of the program are not yet developed enough to do community engagement prior to tonight's meeting. City staff have received many public comments reflecting a concern about growth and water consumption that have demonstrated the need to consider this program.

ALTERNATIVE ACTIONS:

The Council could amend the recommended ordinance prior to adoption tonight or decline to adopt the ordinance at this time while providing staff with amendments to incorporate into the ordinance.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Urban Water Management Plan was adopted by the Council on October 6, 2021. The City's water waste ordinance was last amended by the Council in 2017. The current Level 2 water shortage was declared in June, 2021.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts associated with adopting the new ordinance as it does not change the fiscal impacts (namely reduced water sales revenues and increased conservation program costs) associated with droughts and other water shortages that already exist under the current ordinance.

The water offset program will have short term costs and, if implemented, will necessitate a recalculation of the City's water impact fee and potentially require other amendments to the City's water conservation program budget. In the short term, consultant costs of approximately \$50,000 will be required to engage in the study. Funding for this contract will be incorporated into the Water Operations budget (650.5710) and no budget adjustment is required. The long-term impacts cannot be determined until the program is more fully developed.

Administering the City's water waste and drought response programs are activities

included in the work program of the Public Services Department. Coordinating the evaluation of a water offset program and the associated need for community engagement is not a planned activity, but will not result in salary cost increases.

CEQA (California Environmental Quality Act):

Categorical Exemption

This Ordinance and actions taken hereafter pursuant to this Ordinance are exempt from the California Environmental Quality Act as actions intended to preserve and protect natural resources (CEQA Guidelines section 15307).

ORDINANCE NO. XXX, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTIONS, 13.04.330 (WASTING OF WATER AND DROUGHT EMERGENCIES) AND 13.04.390 (ENFORCEMENT) AND 13.04.400 (VIOLATION- PENALTY) OF CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES), AMENDING REGULATIONS PROHIBITING NONESSENTIAL USE OF POTABLE WATER

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

Section 1. Findings.

- a. A reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of City of Morgan Hill.
- b. The City of Morgan Hill is located in a semi-arid region and is dependent upon local groundwater, and imported water supplies. A growing population, climate change, environmental concerns, and other factors in other parts of the State and western United States, make the region highly susceptible to water supply reliability issues.
- c. There is a need for water conservation program and regulations because there is a limited supply of water available to serve the residents and businesses of Morgan Hill and demand for water has, at times, exceeded groundwater replenishment, threatening a water shortage.
- d. Careful water management that includes active water conservation measures not only in times of drought, but at all times, is essential to ensure a reliable minimum supply of water to meet current and future water supply needs.
- e. Article X, Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use, waste or unreasonable use or unreasonable method of use of water be prevented, and conservation of water be fully exercised with a view to the reasonable and beneficial use thereof.
- f. Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.
- g. California Water Code Section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.
- h. The City of Morgan Hill's water conservation and supply shortage program has functioned adequately since its adoption in 2009. Changes to the program are necessary in order to expand and establish the permanent water conservation practices needed to

best manage the City of Morgan Hill's potable water supply in the short and long-term and to avoid or minimize the effects of drought, climate change, and the unreliability of imported water infrastructure that serves the City of Morgan Hill.

Section 2. Declaration of Purpose and Intent.

a. The purpose of this Ordinance is to amend the City of Morgan Hill's water conservation and supply shortage program. The program's purposes are to reduce water consumption within the City of Morgan Hill through conservation, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, and maximize the efficient use of water within the City of Morgan Hill to avoid and minimize the effect and hardship of water shortage to the greatest extent possible.

b. This Ordinance amends permanent water conservation standards intended to alter behavior related to water use efficiency at all times and further establishes six levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

Section 3. CEQA Exemption

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are exempt from the California Environmental Quality Act per the California Environmental Quality Act Guidelines Section 15307 (protection and preservation of natural resources). The City Clerk is hereby authorized and directed to file a Notice of Exemption as soon as possible following adoption of this Ordinance.

Section 4. Section 13.04.330 (Wasting of Water) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

“13.04.330 Wasting of water and drought emergencies

A. Applicability

1. The provisions of this chapter apply to any person in the use of any potable water in the city.
2. The provisions of this chapter do not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.
3. The provisions of this chapter do not apply to the use of recycled water, with the exception of subsection B (1) of this section.
4. The provisions of this chapter do not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale, to the use of water in a community garden providing garden plots to the public, or to home fruit and vegetable gardens less than 200 square feet.
5. This chapter is intended solely to further the conservation of water. It is not intended to implement nor supersede any provision of federal, State, or local statutes,

ordinances, or regulations relating to protection of water quality or control of drainage or runoff.

B. Prohibition Against Waste: The following water conservation requirements are effective at all times and are permanent. Violations of this section will be considered waste and an unreasonable use of water.

1. Limits on Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 7:00 p.m. Pacific Standard/Daylight Savings Time on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system. Watering or irrigating within 48 hours after $\frac{1}{4}$ inch or more of precipitation is received is prohibited.

2. Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per day per station/valve/zone. This subsection does not apply to landscape irrigation stations/valves/zones that exclusively use drip type irrigation systems, soaker hoses, bubblers, or high efficiency sprinkler nozzles that have a precipitation rate of less than two (2) gallons per hour; to systems controlled by weather-based irrigation controllers; and systems having stream rotor sprinklers with a 70% or greater efficiency standard.

3. Limit on Watering Days: During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to three days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to the following uses of water:

a. To landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour;

b. To watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system;

c. To landscape irrigation zones that are controlled by an activated weather-based irrigation controller;

d. To watering or irrigating a newly installed or significantly rehabilitated landscape for the first sixty days after the first plant is placed in the ground. For the purposes of this section, a significantly rehabilitated landscape is a landscape in which 25% or more of a property's landscape is replaced.

4. No Excessive Water Flow or Runoff: Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.

5. No Washing Down Hard or Paved Surfaces: Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except when necessary to alleviate safety or

sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device, a low-volume, high-pressure cleaning machine equipped to recycle any water used, or a low-volume high-pressure water broom. Washing down structures, fences, and hard surfaces expressly for the purposes of preparing a surface for the application of a surface coating is not prohibited provided it does not occur more than one time in any twelve (12) month period.

6. **Obligation to Fix Leaks, Breaks or Malfunctions:** Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user's plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered and corrected and in no event more than ten (10) days of receiving written notice from the city, is prohibited.

7. **Recirculating Water Required for Water Fountains and Decorative Water Features:** Operating a water fountain or other decorative water feature that does not use recirculated water is prohibited.

8. **Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device. This subsection does not apply to any commercial car washing facility that incorporates a recycled or recirculating water system in its operation.

9. **Drinking Water Served Upon Request Only:** Eating or drinking establishments, including but not limited to a restaurant, hotel, cafe, cafeteria, bar, or other public place where food or drinks are sold, served, or offered for sale, are prohibited from providing drinking water to any person unless expressly requested.

10. **Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services:** Hotels, motels and other commercial lodging establishments must provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.

11. **No Installation of Single Pass Cooling Systems:** Installation of single pass cooling systems is prohibited in buildings requesting new water service.

12. **No Installation of Nonrecirculating in Commercial Car Wash and Laundry Systems:** Installation of nonrecirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems.

13. **Restaurants Required to Use Water Conserving Dish Wash Spray Valves:** Food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

14. **Commercial Car Wash Systems:** All commercial conveyor car wash systems must have installed operational recirculating water systems or must have a waiver of this requirement from the city.

15. **Construction Activities:** Use of potable water for construction site dust control, compaction, and other site activities suitable for nonpotable water is prohibited if recycled water is available within five miles of the construction site.

16. **Plumbing System Testing:** Use of potable water for plumbing system testing is prohibited unless required by law or alternative testing procedures are determined to be unsuitable by City inspection staff.

17. Pool Covers: Constructing a pool without the inclusion of a pool cover is prohibited. All contracts for the construction of a new pool entered into after September 2, 2015 shall include the provision of a pool cover.

C. Level 1 Water Supply Shortage (1% - 10% reduction): A Level 1 Water Supply Shortage ("Alert" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 1% - 10% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 1 Water Supply Shortage condition, the City will implement an active communication campaign asking the community to conserve water in compliance with the City's permanent water use restrictions.

D. Level 2 Water Supply Shortage (11% - 20% reduction): A Level 2 Water Supply Shortage ("Severe" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 11% - 20% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 2 Water Supply Shortage condition, the City will:

1. Evaluate the water use of individual water utility customers and distribute targeted communications to those water utility customers that are high users or appear to be violating the City's water use rules; and
2. Continue implementing all Level 1 response activities.

E. Level 3 Water Supply Shortage (21% - 30% reduction): A Level 3 Water Supply Shortage ("Critical 1" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 21% - 30% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 3 Water Supply Shortage condition, the City will:

1. Actively enforce the City's current restrictions regarding the limits on watering days contained in Section 13.04.330 B (3);
2. Suspend exemptions 13.04.330 B (3)(c) and 13.04.330 B (3)(d) to Section 13.04.330 B (3);
3. Prohibit the use of potable water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, bus, boat or trailer, whether motorized or not, except at a commercial car washing facility that utilizes a recirculating water system to capture or reuse water. This provision does not apply to bicycles and motorcycles. The use of potable water to clean the windshield, windows, or mirrors of a vehicle by use of a hand-held bucket or similar container is not prohibited;

4. Impose an alternative rate schedule designed for water supply shortage events if such a rate schedule has been adopted by the City Council; and
5. Continue implementing all other Level 2 response activities.

F. Level 4 Water Supply Shortage (31% - 40% reduction): A Level 4 Water Supply Shortage ("Critical 2" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 31% - 40% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 4 Water Supply Shortage condition, the City will:

1. Actively enforce the following limited irrigation schedule: During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system; and
2. Continue implementing all other Level 3 response activities.

G. Level 5 Water Supply Shortage (41% - 50% reduction): A Level 5 Water Supply Shortage ("Emergency 1" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 41% - 50% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 5 Water Supply Shortage condition, the City will:

1. Actively enforce the following limited irrigation schedule:
 - a. The watering or irrigating of lawns and turf is prohibited except for turf utilized for active recreation at a school, park, or public facility. Turf used for active recreation at a school, park, or public facility may be irrigated in accordance with all other irrigation restrictions up to two times per week from March – October and one time per week from November – February;
 - b. Trees, shrubs, and dedicated landscapes that do not contain turf may be watered one time per week in accordance with all other irrigation restrictions; and

2. Consider limits on the issuance of building permits, new potable water services, temporary meters and/or statements of immediate ability to serve or provide potable water service (such as, will-serve letters, certificates, or letters of availability). The City may consider exemptions to the limitation that include, but are not limited to the following circumstances:
 - a. A valid, unexpired building permit has been issued for the project;
 - b. The project is necessary to protect the public health, safety, and welfare; or
 - c. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or the restoration of service that has been interrupted for a period of one year or less; and
3. Continue implementing all other Level 4 response activities.

H. Level 6 Water Supply Shortage (greater than 50% reduction): A Level 6 Water Supply Shortage ("Emergency 2" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a greater than 50% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 6 Water Supply Shortage condition, the City will:

1. Prohibit all irrigation; and
2. Continue implementing all other Level 5 response activities.

I. Procedures for Determination/Notification of Water Supply Shortage

The existence of Water Supply Shortage conditions may be declared by resolution of the city council adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation requirements relating to each level of Water Supply Shortage conditions will take effect on the tenth day after the date the shortage level is declared. Within five (5) days following the declaration of the shortage level, the city must publish a copy of the resolution in a newspaper used for publication of official notices.

J. Hardship Waiver. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water users, then the person may apply for a waiver to the requirement as provided in this Section.

1. Application: Application for a waiver must be on a form prescribed by the City Manager and accompanied by a nonrefundable processing fee in an amount set by city council resolution.
2. Supporting Documentation: The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.

3. Required Findings for Waiver: The waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the user's property. An application for a waiver will be denied unless the City Manager finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the city or its agent, all of the following:
 - a. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
 - b. That because of special circumstances applicable to the property or its use, the strict application of this chapter would have a disproportionate impact on the property or use that exceeds the impacts to residents and businesses generally;
 - c. That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest; and
 - d. That the condition or situation of the subject property or the intended use of the property for which the waiver is sought is not common, recurrent or general in nature.
4. Approval Authority: The City Manager must act upon any completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the waiver. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise at the time a waiver is approved, the waiver will apply to the subject property during the period of the mandatory water supply shortage condition. The decision of the City Manager shall be final."

Section 5. Section 13.04.390 (Enforcement) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

"13.04.390 - Enforcement.

It shall be the duty of the employees of the police, fire, community development, community services, and engineering and utilities departments to give vigilant aid to the city manager in the enforcement of the provisions of this chapter, and to this end they shall report all violations thereof which shall come to their knowledge, to the office of the city manager and it shall be the duty of the chief of the fire department to report immediately to the city manager in case of fire in premises, having metered service for fire protection purposes that fire has occurred there."

Section 6. Section 13.04.400 (Violation-Penalty) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

"13.04.400 - Violation—Penalty.

A. Penalty. Any person violating or causing or permitting to be violated, any of the provisions of this chapter, is deemed guilty of a misdemeanor. Upon conviction thereof, such person shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for not more than 30 days. Every such person shall be deemed to be guilty of a separate offense for every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punishable therefor as provided in this section.

B. Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.

C. Violation of [Section 13.04.330](#). In addition to all other available remedies, including penalties available pursuant to subsection A or B of this section, any person violating or causing or permitting to be violated any provision of [Section 13.04.330](#) shall be subject to the following penalties and fines pursuant to the authorities and procedures set forth in [Chapter 1.19](#):

1. First Violation: The City of Morgan Hill will issue a written warning and deliver a copy of the ordinance codified in this section by mail.

2. Second Violation: A second violation within any consecutive twelve-month period is punishable by a fine not to exceed one hundred dollars. The fine for a second violation shall be three hundred dollars if the violation occurred during a City Council declared Water Supply Shortage condition.

3. Third Violation: A third violation within any consecutive twelve-month period is punishable by a fine not to exceed two hundred dollars. The fine for a third violation shall be six hundred dollars if the violation occurred during a City Council declared Water Supply Shortage condition.

4. Subsequent Violations: Any subsequent violations within any consecutive twelve-month period are punishable by a fine not to exceed one thousand five hundred dollars and subject to installation of a water flow restrictor device of approximately one gallon per minute capacity for services up to one and one-half inch size and comparatively sized restrictors for larger services after written notice of intent to install a flow restrictor for a minimum of forty-eight hours.

a. In addition to any other fines or penalties, a person who violates provisions of [Section 13.04.330](#) is responsible for payment of the City of Morgan Hill's charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service per the city's schedule of charges then in effect. The charge for installing and/or removing any flow restricting device must be paid to the city before the device is

removed. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

b. The first installation of a flow-restricting device shall remain in place for a minimum of three days and shall be removed by the city not more than ten days after installation. The second installation of a flow-restricting device, for continued violation of this chapter, shall remain in place for a minimum period of ten days before being removed by the city no later than thirty days thereafter. Normal water service shall not be restored until all installation and removal costs of flow-restricting devices have been paid.

5. Separate Offenses: Each day that a person violated provisions of [Section 13.04.330](#) shall constitute a separate violation or offense.

D. All remedies provided for herein shall be cumulative and not exclusive.”

Section 7. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

Section 8. Effective Date; Posting.

Pursuant to California Water Code Section 376, this Ordinance shall constitute a water conservation program and shall be effective upon adoption. Within ten (10) days of its adoption, this ordinance shall be published in full once in a newspaper of general circulation which is printed, published, and circulated in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF APRIL 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20TH DAY OF APRIL 2022, 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:

RICHARD CONSTANTINE, Mayor

ATTEST:

MICHELLE BIGELOW, City Clerk

DATE: _____

APPROVED:

RICHARD CONSTANTINE, Mayor

ATTEST:

MICHELLE BIGELOW, City Clerk

DATE: _____

Effective xxx

⌘ 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 Ordinance No. xxxx, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 20th day of April 2022.

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

DATE: _____

Clerk

MICHELLE BIGELOW, City

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING A LEVEL 4 WATER SHORTAGE CONDITION REQUIRING THE IMPLEMENTATION OF LEVEL 4 CONSERVATION MEASURES

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Adopt ordinance updating water waste ordinance, adopt water shortage resolution, and accept report on water offset program” submitted for City Council consideration at its meeting of April 6, 2022, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, on June 9, 2021, the Valley Water Board of Directors called for a 33% reduction in water use compared to 2013; and

WHEREAS, the underground water aquifers that the City relies on for 100% of its water supply are recharged by the District using water supplies imported into the District; and

WHEREAS, the District’s imported water supply allocations have been significantly reduced for 2022 by the State and Federal government water systems; and

WHEREAS, historical evidence indicates that the State of California has experienced prolonged periods of drought in the past; and

WHEREAS, the long-term health, safety, and prosperity of the community depends upon having a reliable supply of potable water; and

WHEREAS, the City declared a Level 2 Water Shortage, in response to Valley Water’s request in June 2021. With the adoption of an updated water waste ordinance by the City Council, the previous Level 2 response measures now comprise a Level 4 Water Shortage so a resolution changing the City’s declared level from Level 2 to Level 4 is necessary in order to maintain the City’s drought response activities.

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

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

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

- a. That the City Council of the City of Morgan Hill declares a Level 4 Water Shortage

- b. That the following limitations are now instituted in accordance with the City's Municipal Code's determined response to a Level 4 Water Shortage:
 1. Watering Days. During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system. Exemptions 13.04.330 B (3)(c) and 13.04.330 B (3)(d) in Section 13.04.330 B (3) are suspended.
 2. Limits on Washing Vehicles. Using potable water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, bus, boat or trailer, whether motorized or not, is prohibited except at a commercial car washing facility that utilizes a recirculating water system to capture or reuse water. This provision does not apply to bicycles and motorcycles. The use of potable water to clean the windshield, windows, or mirrors of a vehicle by use of a hand-held bucket or similar container is not prohibited.

For the sake of clarity, the above limitations are now instituted in addition to the permanent ongoing limitations on water use contained in the Section 13.04.330 B of the Morgan Hill Municipal Code.

- c. That the City Council hereby finds based upon the facts and information in the record for this Resolution that the declaration of a Level 4 Water Supply Shortage and its related regulatory effects are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15307 (actions by regulatory agencies for protection of natural resources)

PASSED, APPROVED, AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of April 2022 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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. 22-XXX adopted by the City Council at the meeting held on the 6th day of April 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Rebecca Garcia, Housing Director

APPROVED BY: City Manager

CONDUCT TAX AND EQUITY FISCAL RESPONSIBILITY ACT (TEFRA) HEARING APPROVING ISSUANCE OF BONDS FOR VILLAGE AT MADRONE AFFORDABLE HOUSING APARTMENTS AT 18960 MONTEREY STREET WITHIN THE CITY OF MORGAN HILL

RECOMMENDATION(S)

1. Open/close public hearing consistent with the requirements of the Federal Tax and Equity Fiscal Responsibility Act ("TEFRA") and Section 147 (f) of the Internal Revenue Code of 1986, as amended (the "Code"); and
2. Adopt resolution approving the issuance of bonds by the California Municipal Finance Authority (CMFA), for the acquisition, construction, improvement and equipping of a multifamily rental housing project located at 18960 Monterey Street, Morgan Hill, California (the "Project").

Estimated Time: 15 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

POLICY CONSIDERATIONS:

JEMCOR Development Partners, LLC ("JEMCOR" or the "Borrower"), is approved to build a 100 percent affordable housing development project, Village at Madrone,

comprised of 249 multi-family units, ranging from 30% of the Area Median Income (AMI) to 60% AMI. These apartments will serve as workforce housing, and are located at the northeast corner of Monterey Road and Madrone Parkway.

The City is required to hold this public hearing allowing community members to speak in favor of or against the use of tax-exempt bonds for the financing of the Project. The City Council's only role is to listen to public testimony regarding the appropriateness of bond financing. Following the close of the hearing, the City must approve the issuance of the bonds for the financing of the Project. The City has no financial obligation or legal risk with the bond issuance.

To finance this new construction Project of Village at Madrone, JEMCOR Development Partners have applied and received a very competitive award for Federal Low Income Housing Tax Credits ("LIHTC") from the California Tax Credit Allocation Committee and a tax-exempt bond allocation from the California Debt Limit Allocation Committee ("CDLAC").

The Borrower, JEMCOR, requested that the California Municipal Finance Authority ("CMFA"), a joint exercise of powers authority and public entity of the State of California, serve as the municipal issuer of the tax-exempt revenue bonds in an aggregate principal amount not to exceed \$85,000,000. The tax-exempt bond financing is a "conduit" financing in which the City has no exposure for the debt. Rather, JEMCOR, the sponsor, asks the CMFA to issue the bonds upon CDLAC's authorization and then solicits a lender who purchases all of the bonds in a private sale. CMFA is a public entity that is authorized and experienced in the issuance of such bonds.

As the nature of the financing vehicle is tax-exempt, the Tax and Equity Fiscal Responsibility Act ("TEFRA") requires the local jurisdiction to support the transaction. This requirement is fulfilled through the public hearing approving the conduit financing after public notice is published seven days prior, allowing the community members an opportunity to speak in favor of or against the use of tax-exempt bonds for the financing of the Project. Following the close of the TEFRA Hearing, the City must approve the issuance of the bonds for the financing of the Project through a resolution.

CALIFORNIA MUNICIPAL FINANCE AUTHORITY:

The CMFA was created on January 1, 2004, pursuant to a joint exercise of powers agreement to promote economic, cultural, and community development through the financing of economic development and charitable activities throughout California. The bonds to be issued by the CMFA for the Project will be the sole responsibility of the Borrower, and the City will have no financial, legal, moral obligation, liability, or responsibility for the Project or the repayment of the bonds for the financing of the Project. All financing documents with respect to the issuance of the bonds will contain clear disclaimers that the bonds are not obligations of the City or the State but are to be paid for solely from funds provided by the Borrower. Outside of holding the TEFRA Hearing and adopting the required resolution, no other participation or activity of the City or the City Council with respect to the issuance of the bonds will be required.

COMMUNITY ENGAGEMENT:

The community was informed by a notice published in the Morgan Hill Times on March 25, 2022.

ALTERNATIVE ACTIONS:

There are no alternative actions as the City must approve the resolution after the public hearing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Government Code Section 65915(f)(3)(D)(i) and 65915(d)(2)(D) required the City to grant an 80 percent Density Bonus and three concessions. The resolution was adopted by the City Council on April 21, 2021.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact to the City. The Bonds will be issued as limited obligations of CMFA, payable solely from revenues and receipts derived from a loan to be made by CMFA to the Borrower with the Bond proceeds. The City bears no liability with respect to the issuance of the Bonds. Further, the City is not a party to any of the financing documents related to the Bond issuance and is not named in any of the disclosure documents describing the Bonds or the proposed financing.

CEQA (California Environmental Quality Act):

This is not a project but rather an administrative activity that will not result in direct or indirect physical changes in the environment. Thus, the administrative activity of the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3).

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE ISSUANCE BY THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY MULTIFAMILY HOUSING REVENUE BONDS FOR VILLAGE AT MADRONE

WHEREAS, Village at Madrone, LP (the "Borrower") a partnership of which JEMCOR Development Partners, LLC (the "Developer") or a related person to the Developer is the general partner, has requested that the California Municipal Finance Authority (the "Authority") adopt a plan of financing providing for the issuance of exempt facility bonds for a qualified residential rental project pursuant to Section 142(a)(7) of the Internal Revenue Code of 1986 (the "Code") in one or more series issued from time to time, including bonds issued to refund such exempt facility bonds in one or more series from time to time, and at no time to exceed \$85,000,000 in aggregate principal amount (the "Bonds"), to finance or refinance the acquisition, construction, improvement and equipping of a multifamily rental housing project located at 18960 Monterey Street, Morgan Hill, California (the "Project"); and

WHEREAS, pursuant to Section 147(f) of the Code, the issuance of the Bonds by the Authority must be approved by the City of Morgan Hill (the "City") because the Project is located within the territorial limits of the City; and

WHEREAS, the City Council of the City (the "City Council") is the elected legislative body of the City and is one of the "applicable elected representatives" required to approve the issuance of the Bonds under Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code and the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the "Agreement"), among certain local agencies, including the City; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority;

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

Section 1. The above recitals are true and correct.

Section 2. The City Council hereby approves the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Bonds by the Authority, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area

in which the Project is located, in accordance with said Section 147(f) and (b) Section 4 of the Agreement.

Section 3. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents that they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing approved hereby.

Section 4. This resolution shall take effect immediately upon its passage.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the April 6, 2022.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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. 22-xxx, adopted by the City Council at a regular meeting held on April 6, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

ACCEPT INITIATIVE PETITION IMPACT REPORT AND ADOPT RESOLUTION PLACING THE CITIZENS' INITIATIVE AMENDING THE GENERAL PLAN TO REQUIRE VOTER APPROVAL OF ANY FUTURE MONTEREY ROAD LANE REDUCTION ON THE NOVEMBER 2022 BALLOT

RECOMMENDATION(S)

1. Accept the Initiative Petition Impact Report; and
2. Adopt Resolution placing Initiative Petition Titled: The Citizens' Initiative Amending The General Plan To Require Voter Approval of Any Future Monterey Road Lane Reduction on the November 2022 ballot.

Estimated Time: 45 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

On March 2, 2022, the City Council adopted the resolution accepting the City Clerk's Certificate of sufficiency for the Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction. The Council also directed staff to prepare an impact report under Elections Code section 9212.

Per Elections Code section 9212, staff compiled an impact report addressing how the Citizens' Initiative affects the City, including consistency with the City's general and specific plans, its impact on funding for infrastructure and vacant parcels of land as well as its impact on the City's ability to retain and attract business and employment (Attached).

COMMUNITY ENGAGEMENT:

Involve

As a General Law City, Morgan Hill is governed by Government and Election Codes to elect municipal officers (e.g., mayor, council members, and city treasurer), for ballot measures, and for initiative and referendum processes.

ALTERNATIVE ACTIONS:

The City Council could choose to adopt the Citizens' Initiative in lieu of placing it on the November 2022 ballot.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 2, 2022, the City Council adopted the resolution accepting the City Clerk's Certificate of sufficiency for the Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction. The Council also directed staff to prepare an impact report under Elections Code section 9212.

On January 19, 2022, as part of the Downtown Traffic Calming and Monterey Road Lane Reduction and Place-Branding Program, the City Council approved the proposed Traffic Mitigation Plan Implementation Schedule to support the Monterey Road Lane Reduction Program, and approved the re-design of traffic lanes for Monterey Road from Dunne Avenue to Main Avenue to be implemented in the Implementation Schedule.

On August 18, 2021, the City Council authorized staff and the City Manager to apply for and negotiate Transportation Development Act Grant Funds for bicycle lane improvements.

On May 19, 2021, due to the COVID-19 pandemic and requests from local business owners, the City Council provided direction for staff to return with the design of an Improved Lane Reduction Program and associated Place Branding Design for the Downtown.

On June 3, 2020, the City Council provided direction on the Monterey Road Complete Streets/Lane Reduction Program and business use of Downtown spaces. The Council did not elect to move forward with the Complete Streets/Lane Reduction Program.

The Council previously acted on the Monterey Road Complete Streets/Lane Reduction Program on August 5, 2015. The City Council directed the re-establishment of two travel lanes in each direction following the trial of the Program. The Council did request the item be revisited at a later date, should circumstances change. Prior to August 2015, the Council made several actions leading to the Pilot.

FISCAL AND RESOURCE IMPACT:

Election Cost: If the Council elects to place the initiative on the ballot, it will be placed on the ballot at the next regular municipal election scheduled for November 8, 2022. The estimated cost to place a measure on the ballot for the November 8, 2022 election is \$61,502.

Resource Impact: Thus far, staff has been able to accommodate the additional work due to the initiative petition within its existing workplan.

Ordinance Impact: See attached Election Code 9212 Initiative Petition Impact Report

CEQA (California Environmental Quality Act):

Categorical Exemption

Certification of an initiative petition is not a project under CEQA.



**Citizens' Initiative Amending The General Plan To
Require Voter Approval Of Any Future Monterey Road
Lane Reduction**

Initiative Petition Impact Report

Pursuant to Election Code 9212

THE INITIATIVE

The Citizens' Initiative intends to amend the City of Morgan Hill 2035 General Plan's Transportation Element Policy TR1.5 Monterey Road Four Lanes with an Option.

This Transportation Element also provides that Monterey Road shall be a four-lane thoroughfare with an option for the City of Morgan Hill to narrow the road to two-lanes through Downtown. The option to reduce Monterey Road to two lanes through the Downtown shall be decided solely by the voters through an election. Until the voters exercise the option, Monterey Road shall be a four-lane thoroughfare. The requirement of voter approval to reduce Monterey Road to two lanes shall apply to any mention of the option in the General Plan.

BACKGROUND & INTRODUCTION

On June 9, 2021, proponents submitted a Notice of Intention, written text of the initiative, and reasons for the proposed initiative.

On December 22, 2021, the City of Morgan Hill (City) requested that the Santa Clara County Registrar of Voters Office (ROV) conduct a random sampling of the signatures on the referendum petitions.

On January 20, 2022, the City was notified by the ROV that the random sampling results fell between 95% and 110%, necessitating a full count.

On February 23, 2022, the City was notified by the ROV that 2,814 signatures were found to be sufficient.

On March 2, 2022, the City Council 1) Adopted the resolution accepting the City Clerk's Certificate of sufficiency for the Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction; and 2) Directed staff to prepare an impact report under Elections Code section 9212 within 30 days and no later than April 1, 2022, for City Council consideration at the April 6, 2022 City Council meeting.

Per the Elections Code, the report should analyze:

1. The fiscal impact of the measure;
2. The effect of the measure on consistency with the City's general and specific plans;
3. Its impact on funding for infrastructure;
4. Its impact on the community's ability to attract and retain business and employment;
5. Its impact on vacant parcels of land;
6. Its impact on traffic congestion, existing business districts, and developed areas;
7. Any other matters the City Council would like to be in the report.

This report aims to provide the City Council with information to assist in deciding to adopt the Initiative or adopt a resolution calling for an election on the measure.

FISCAL IMPACT

If the Council elects to place the initiative on the ballot, it will be placed on the ballot at the next regular municipal election scheduled for November 8, 2022. The estimated cost to place a measure on the ballot for the November 8, 2022 election is \$61,502.

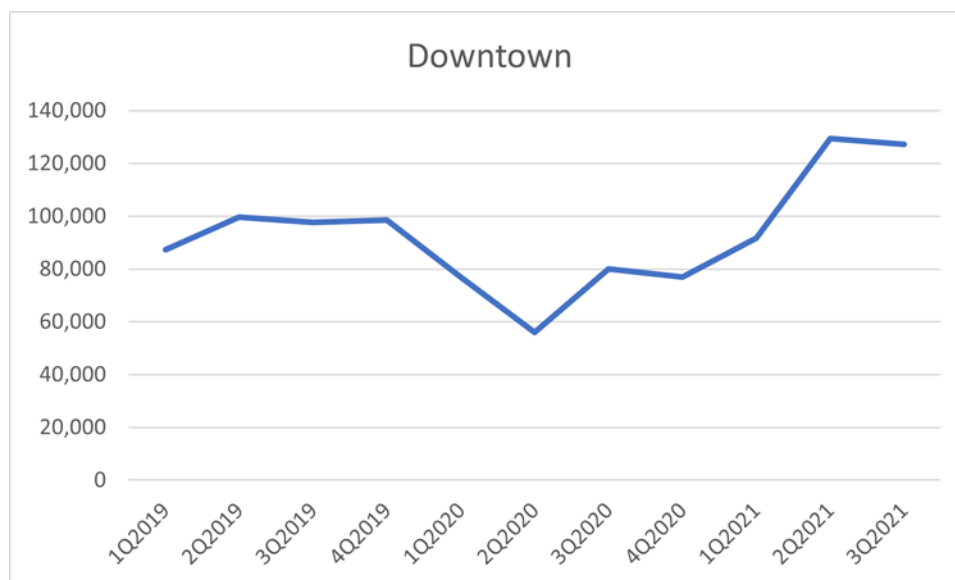
If the Council elects to adopt the initiative, there are no election costs.

If the lane reduction project is not implemented, the cost of the project not being implemented would be saved. The project cost is \$95,000 and is grant funded. If the grant funds are not used for the lane reduction, the funds can be reallocated for a different purpose.

If the Monterey Lane Reduction is not implemented, there are potential future liability costs associated with increasing traffic and vehicle congestion in the Downtown core that continues to erode pedestrian and bicyclist safety. Historically, the City has incurred fiscal impacts due to litigation over pedestrian and bicycle related accidents. However, the City is protected from liability for many accidents based on design immunity. With increased pedestrian activity downtown, the City could potentially lose its immunity based on the inability to create a “complete street.”

Other potential increased costs in the Downtown could include overtime costs for officers conducting directed traffic enforcements to mitigate speeding, especially during the busy summer months. Without lane reduction project implementation, it is anticipated the number of traffic collisions would remain the same. From 2017 to 2021 there were 62 traffic collisions along the Monterey corridor averaging just over 12 per year. Collisions require officer response and may incur overtime costs for investigation and court. In addition, noise complaints would also remain at the same levels. These too require officer response, which pulls officers away from patrolling the entire city.

Sales tax in the Downtown district has been increasing over the last few years. The intent of the Monterey Road Lane Reduction program and associated place branding beautification program has been to support the Downtown as a growing, vibrant, pedestrian friendly business district. The graphic below shows the increasing sales tax collection trend in the Downtown district.



CONSISTENCY WITH GENERAL PLAN, SPECIFIC PLANS, AND ECONOMIC DEVELOPMENT

The Monterey Road Lane Reduction Plan is supported by numerous General Plan policies and goals, the Morgan Hill Downtown Specific Plan, the 2017 Economic Blueprint and Vision Zero.

General Plan Policies:

Policy CNF-8.2: Comfortable pedestrian facilities that promote a high level of pedestrian activity.

Policy CNF-11.8: Multi-Modal Transportation System. Require new subdivisions to contain a network of streets, sidewalks, trails, and transit facilities that accommodate all modes of transportation.

Methods to achieve this may include:

- Incorporating complete streets designed for low vehicle speeds.
- Planting trees along both sides of streets.
- Installing bus stops, shelters, and benches in or adjacent to the project.
- Providing safe walking and bicycling routes to schools, parks, and other youth destinations.

Policy CNF-14.7: Pedestrian-Oriented Downtown. Enhance the positive, friendly atmosphere of the Downtown by encouraging proposed development to expand pedestrian-oriented design and amenities east of Monterey Road to Butterfield Boulevard.

Policy CNF-14.8: Downtown Streetscape. Continue the Downtown streetscape and pedestrian-oriented design theme along Monterey Road for at least one block north of Main Avenue and at least one block south of Dunne Avenue, and from Monterey Road east to Butterfield Boulevard between Main and Dunne Avenues, to provide a transition from downtown adjoining commercial areas.

Policy CNF-14.12: Downtown Transportation Improvements. Ensure that Transportation Element and road improvement programs provide efficient access to the Downtown at a level of service not intended to accommodate regional pass-through traffic.

Policy TR-21: Multi-Modal System for All Users. A balanced multi-modal system offers viable choices for residents, employees, customers, visitors, and recreational users. Use smart growth and Sustainable Communities principles throughout the city to provide a balanced transportation system which assures access to all, and which integrates all appropriate modes of transportation into an effectively functioning system, including modes such as auto, ride sharing, public rail and bus transit, paratransit, bicycling, and walking. (South County Joint Area Plan 11.00 & 11.01)

Policy TR-3.19: Monterey Road Functionality. Give special consideration to the design of Monterey Road, balancing its functions as an arterial street, a “main street” accommodating downtown activities, and as an access road to the downtown and the major commercial areas of the city.

2017 Economic Blueprint Goal:

GOAL ED-6 A mix of uses along Monterey Corridor that supports the Downtown and encourages walking and biking.

Vision Zero Strategy:

Morgan Hill is a Vision Zero city, the goal of which is to create a culture that prioritizes safety, creates livable streets, and seeks to eliminate traffic fatalities. The Vision Zero Morgan Hill program states that “human life takes priority over mobility and other objectives of the road system. The street system should be safe for all users, for all modes of transportation, in all communities, and for people of all ages and abilities.”

On January 17, 2018, the Morgan Hill City Council committed to implementing our own Vision Zero safety strategies which build upon previously adopted planning documents and provides direction for future planning, design, and development of the community.

IMPACT ON INFRASTRUCTURE

There are no assumed impacts on infrastructure beyond the stated goals of the initiative which would maintain Monterey Road as a four-lane thoroughfare.

IMPACT OF BUSINESS & EMPLOYMENT RETENTION & ATTRACTION

Having a thriving, vibrant and walkable Downtown district is a critical asset to most every community’s ability to attract and retain top-tier employers and their employees. Historically, Morgan Hill has used its General Plan, Economic Blueprint and Downtown Specific Plan to support Downtown’s continued growth, development, and evolution. Each of these guiding documents point to a strategy of making downtown more walkable, and more pedestrian and family friendly.

IMPACT ON VACANT PARCELS OF LAND

There are currently two (2) vacant properties and two (2) properties under development on Monterey Road between Main Street and E. Dunne Ave.

The vacant properties are:

1. 17205 Monterey – Vacant.
2. 17520 Monterey – Previous site of pop-up Putt-Putt Park and current tree storage.

There are no assumed impacts whether the lane reduction is implemented or not.

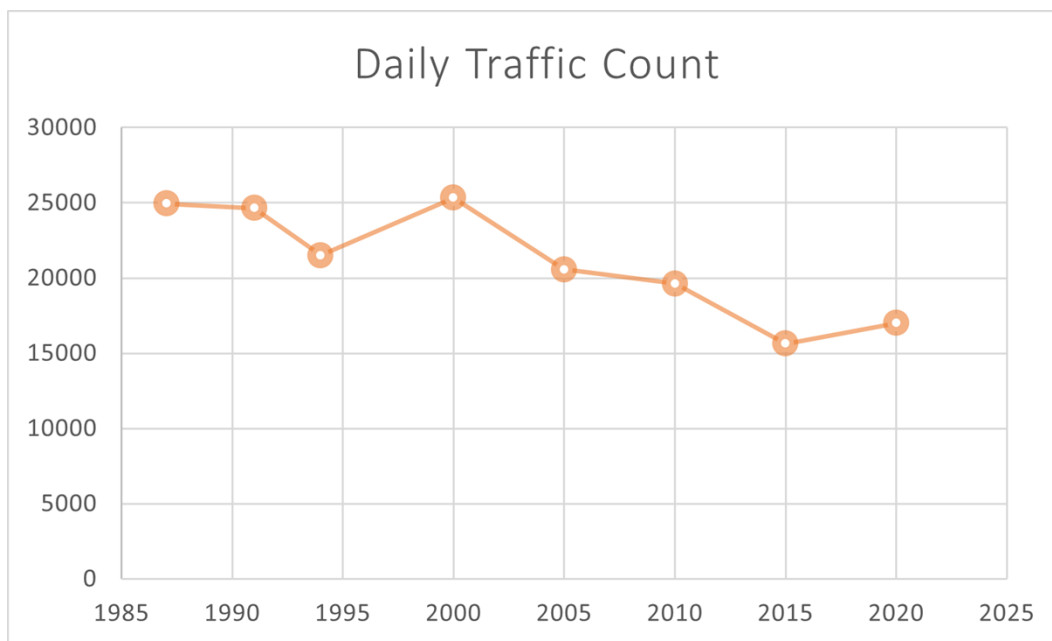
The two properties under development are:

1. 17490 Monterey – Granada Hotel development site.
2. 17395 Monterey – Currently the Pop-up Park but will soon be an active construction site for the Edes Art Gallery.

It would be expected that both of these projects would benefit from slower traffic speeds, and a more walkable business district should the lane reduction be implemented.

IMPACT TO TRAFFIC CONGESTION, EXISTING BUSINESS DISTRICTS, AND DEVELOPED AREA

Monterey Road has a long history as a traffic corridor dating back to its original use as a State Highway. Over the last several decades the number of cars using Monterey Road has decreased significantly. Data provided from City speed survey for years 1987 through 2015. Overall traffic in Morgan Hill continues to be impacted by regional overflow of those bypassing Highway 101. Through Monterey Road during commute hours, approximately 1 in 5 vehicles is driving through without stopping anywhere within the City.



Data provided from City speed survey for years 1987 through 2015. 2020 data provided by Morgan Hill Police Department traffic counts.

In the future, traffic congestion in Morgan Hill is likely to increase due to the continued development of new homes and businesses both within the City limits, but especially in the communities south of Morgan Hill. In addition, until the expansion of Highway 101 through Morgan Hill is completed, residents living south of Morgan Hill are highly likely to continue to use alternative routes that travel through Morgan Hill along Monterey Rd, Butterfield Blvd and Hale Avenues.

The COVID-19 pandemic increased demand for more outdoor dining. It is expected that this demand will not diminish even after indoor dining is allowed without any restrictions. The goals of the Lane Reduction and Place Branding Project included improving accessibility, increasing safety, making it more walkable, more family friendly, and creating additional space for community and businesses. Additionally, it was envisioned that this effort would address the interface between parklets, and public spaces located directly adjacent to Monterey Road. This would include solving for the areas that could be converted to semi-permanent parklet spaces, creating new community space, and other furniture and features through the Downtown. If the lane reduction is not implemented, these goals and benefits would not be realized.

During the 2015 Pilot Program traffic counts demonstrated a decrease in vehicles using Monterey Road with the greatest increase to Butterfield Blvd. Neither Peak Avenue nor Dewitt Avenue showed an increase in traffic volumes during the Pilot, which demonstrates the West side of the community was not a major alternative used to bypass Monterey. Depot Street traffic counts also did not increase during the Pilot. The largest vehicle impact was on Wright Avenue, where it appears more traffic began using Wright versus Main Avenue to head West.

According to traffic studies, the construction of Hale Avenue will significantly reduce the number of vehicles using Monterey Road through the Downtown. The Hale Avenue Extension is currently under construction, but it is not estimated to be completed until late 2023. Prior to the completion of the Hale Avenue extension, significant amounts of traffic could be moved from Monterey Road to Butterfield Boulevard by implementing certain traffic control improvements, thus supporting reduced traffic through the Downtown and facilitating better traffic movement throughout the City.

The San Jose/Willow Glen Lane Reduction

“Lessons Learned from San Jose’s Lincoln Avenue Road Diet”, a study published in 2017¹, measured traffic volume and speed data collected at 45 different locations on and around Lincoln Avenue, including impacts on both the road diet location itself and on surrounding streets potentially impacted by traffic diverted off the road diet segment. The study found that the daily number of speeders traveling 10 mph+ over the speed limit fell by 60%. “Traffic volumes fell [on other road types] or, in a few cases, remained essentially flat, suggesting that the road diet did not divert traffic to other neighborhood streets. Of more concern, the number of speeders outside the road diet area rose, with the percentage increases being fairly large, in the double digits. Fortunately, the change was less pronounced on the neighborhood streets. On these streets, the numbers of new speeders were low, even if the percentage increases were high.”

OTHER MATTERS

No other matters were requested by the City Council at the time this report was requested.

¹ <https://transweb.sjsu.edu/research/Designing-Road-Diet-Evaluations-Lessons-Learned-San-Jose%E2%80%99s-Lincoln-Avenue-Road-Diet>

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL, CALIFORNIA SUBMITTING TO THE
VOTERS OF THE CITY AN INITIATIVE ORDINANCE
AMENDING THE GENERAL PLAN TO REQUIRE VOTER
APPROVAL OF ANY FUTURE MONTEREY ROAD LANE
REDUCTION**

WHEREAS, pursuant to authority provided by Division 9, Chapter 3, Article 1 (commencing at S 9200) of the Elections Code of the State of California, a petition has been filed with the City Council of the City of Morgan Hill signed by more than ten percent (10%) of the registered voters of the City, according to the Santa Clara County Registrar of Voters last official report of registration to the Secretary of State, to submit a proposed ordinance to the voters amending the City's General Plan to require voter approval of any future Monterey Road lane reduction; and

WHEREAS, the City Clerk, though the Santa Clara County Registrar of Voters, has examined the records of voter registration and ascertained that, pursuant to California Elections Code section 9215, the petition was signed by the requisite number of voters, and has so certified; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MORGAN HILL AS FOLLOWS:**

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Election. The City Council hereby orders, pursuant to Section 9222 of the Elections Code, that the Initiative Petition ordinance amending the General Plan to require voter approval of any future Monterey Road Lane reduction be submitted to the voters at the November 8, 2022 General Municipal Election.

Section 3. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

Shall the measure, amending the City's General Plan to require voter approval of any future Monterey Road lane reduction be adopted?	YES	
	NO	

Section 4. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 5. Filing with County. The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors.

Section 6. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 3 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ballot measure may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 7. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California Amending the General Plan to Require Voter Approval of Any Future Lane Reduction on Monterey Road. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

Section 8. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 16, 2022 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

Section 9. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

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

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

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

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

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

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 23, 2022 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

Section 10, Effective Date. This Resolution shall be effective immediately upon adoption.

Section 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this ____ day of ____ 2022 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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. _____ adopted by the City Council at the meeting held on the ____ day of ____ 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE WATER RATE STUDY REPORT, ADOPT RESOLUTION DECLARING INTENT TO IMPLEMENT NEW WATER RATES, COMMENCING PROPOSITION 218 NOTICES, AND SETTING JUNE 1, 2022 AS DATE FOR A PUBLIC HEARING

RECOMMENDATION(S)

1. Receive Water Rate Study report;
2. Adopt resolution declaring intent to adjust water rates and authorizing the commencement of Proposition 218 noticing; and
3. Set June 1, 2022 as the date for Public Hearing and new water rates adoption.

Estimated Time: 30 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

REPORT NARRATIVE:

The City owns and operates the Water Distribution System within the Engineering and Utilities Department. The system consists of 16 active groundwater wells, a total of 10.5 million gallons in storage, distribution mains, and fire hydrants. One of Morgan Hill's key elements of the City's highest priority for public safety, is to ensure that the City's water system infrastructure is adequate at supplying its residents with safe clean drinking water needs, as a core service for its residents.

On December 15, 2021, the City Council approved a Water System Master Plan for future repairs and improvements to the City's water system. The Master Plan identified \$108 million in total capital improvement and expansion projects, with 55% of that amount to be paid for by future users through development impact fees, and \$49 million or 45% of the total of \$108 million to be paid by the ratepayers. The costs identified in the Master Plan are heavily impacted by inflationary costs, which have been seen across the country but are especially prevalent in the Bay Area. Additionally, operational costs have seen large inflationary cost increases in supplies and services, high increases in electricity costs, and continued increases in groundwater charges assessed by Valley Water. Without a rate adjustment, there would be a significant shortage in funding to make the necessary repairs and improvements to the existing system, which was the primary factor in moving forward with a rate study.

Updated Zonal Elevation Surcharge

While most of the City's water customers are located within normal elevation zones, some customers are in higher elevation zones that cost more to pump water to them. These elevation surcharges are part of the current rate structure and this Water Rate Study evaluated the annual costs of power in providing the water service for these customers.

Updated Rates

On March 11, 2022, the 2022 Water Rate Study (Attachment No. 1), prepared by NBS Government Finance Group, was released to the community via eblast along with the posting on City's website.

The proposed adjustment to the rates and zonal elevation surcharge per water unit in hundred cubic feet (hcf) are as follows:

	7/1/22	7/1/23	7/1/24	7/1/25	7/1/26
Water rates percent increase	9%	9%	7%	7%	3%
Water zonal elevation surcharge per hcf	\$0.36	\$0.37	\$0.39	\$0.41	\$0.43

In addition, the proposed low income subsidy adjustment is as follows:

	Current	7/1/22	7/1/23	7/1/24	7/1/25	7/1/26
Subsidy amount	\$5.85	\$6.44	\$7.08	\$7.57	\$8.10	\$8.35
Percentage		10%	10%	7%	7%	3%

Water Revenue Stabilization Rate

As California enters its third consecutive dry year and water conservation is becoming more vital, it is important for the City to have the means necessary to respond to revenue losses related to various drought stages to ensure the safety of the City's water system as well as its ability to continue to supply residents with safe, and clean drinking water needs. Revenue stabilization rates are the necessary tools needed to offset such revenue losses.

The table below shows the proposed revenue-stabilization rate for each water unit at various water consumption levels below forecast:

Water Consumption Level Below Forecast	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27
10%	\$3.21	\$3.50	\$3.82	\$4.09	\$4.38
15%	\$3.40	\$3.71	\$4.04	\$4.32	\$4.62
20%	\$3.61	\$3.93	\$4.28	\$4.58	\$4.90
25%	\$3.85	\$4.20	\$4.58	\$4.90	\$5.24
30%	\$4.12	\$4.49	\$4.89	\$5.23	\$5.60

Water Revenue Stabilization Rate Trigger and Implementation Process

If staff determines that annual water sales revenue to date is more than 10% below expected year-to-date levels (based on monthly averages over the previous three-years) and expense reduction measures have been reviewed and considered, staff will implement the revenue-stabilization rates. Staff will inform the City Council of the revenue-stabilization rates implementation at the earliest financial update. Staff will also update the Council on current reserve levels and provide an analysis of why the revenue losses are occurring, along with a six-month projection of anticipated water sales.

Once staff has informed the City Council of implementation, the Council may:

- Act to implement less than 100% of the revenue stabilization rates at the earliest billing cycle.
- Utilize reserves to meet all or part of the revenue gap.
- Take no action, which results in implementation of revenue stabilization rates from the revenue-stabilization rate schedule

Once the volumetric water sales revenue has returned to expected levels, staff will rescind the revenue-stabilization rates and previously adopted uniform volumetric rates are (again) in effect. In addition, City staff will inform the Council of such action at the earliest financial update.

Next Steps

Proposition 218 Noticing - In order to implement the rate adjustments, the City is required to follow Proposition 218 majority protest proceedings. Proposition 218 requires specific procedures be followed with regard to property-related fee increases. The California Constitution requires local governments to give mailed notice of any property-related proposed fee changes at least 45 days before holding a public hearing where the City Council may adopt or reject the changes. Those opposed to the proposed rate adjustments can submit written protests to the City. If a majority (50% plus 1) of customers oppose the proposed rate adjustments, City Council cannot implement the proposed increases.

Staff recommends City Council adopt a resolution declaring intent to adjust the water

rates, authorizing staff to begin the Proposition 218 noticing process, and setting June 1, 2022 as the date of public hearing where Council will consider the adoption of the rates.

COMMUNITY ENGAGEMENT:

A virtual townhall meeting for community members was held on March 24, 2022.

ALTERNATIVE ACTIONS:

City Council could elect not to adopt the resolution of intent or approve a lower rate adjustment than presented.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 15, 2021, the City Council adopted the Water System Master Plan.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of preparing this report is included in the staff's annual workplan. The cost for the water rate study, was budgeted in the Water Operations Fund (650) in the current fiscal year.

If the Proposition 218 majority protest process is concluded without majority protest, and the water rate adjustments are adopted as presented, the new rate increases could generate an average of \$4.3 million annually, for the next five years, to assist in recovery of costs to provide and maintain infrastructure and services. In addition, the cost of Proposition 218 mailing will be borne by the Water Operations Fund (650). Those costs are projected to be \$10,000.

CEQA (California Environmental Quality Act):

Not a Project.

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

View of City of Morgan Hill
via Google Earth



City of Morgan Hill

FINAL REPORT

WATER RATE STUDY

March 2022

OFFICE LOCATIONS:

San Francisco - Regional Office
870 Market Street, Suite 1223
San Francisco, CA 94102

Temecula – Corporate Headquarters
32605 Temecula Parkway, Suite 100
Temecula, CA 92592

Phone: 800.676.7516
www.nbsgov.com

TABLE OF CONTENTS

SECTION 1. PURPOSE AND OVERVIEW OF THE STUDY	1
PURPOSE	1
CITY OF MORGAN HILL BACKGROUND	1
OVERVIEW OF THE STUDY	2
RATE STUDY METHODOLOGY	3
SECTION 2. WATER RATE STUDY	6
KEY WATER RATE STUDY ISSUES	6
WATER UTILITY REVENUE REQUIREMENTS	6
CHARACTERISTICS OF WATER CUSTOMERS BY CLASS	8
COST OF SERVICE ANALYSIS.....	9
CURRENT VS. PROPOSED WATER RATE STRUCTURES	12
SECTION 3. REVENUE STABILIZATION RATE ANALYSIS	18
CALCULATION OF REVENUE STABILIZATION RATES.....	18
REVENUE-STABILIZATION RATE TRIGGER AND COUNCIL NOTIFICATION	19
SECTION 4. ZONAL ELEVATION SURCHARGES	20
OVERVIEW OF ZONAL ELEVATION SURCHARGES	20
SECTION 5. RECOMMENDATIONS AND NEXT STEPS.....	21
CONSULTANT RECOMMENDATIONS	21
NEXT STEPS.....	21
PRINCIPAL ASSUMPTIONS AND CONSIDERATIONS	22
APPENDIX - WATER RATE ANALYSIS.....	23

TABLE OF FIGURES

Figure 1. Primary Components of a Rate Study	3
Figure 2. Summary of Water Revenue Requirements	8
Figure 3. Summary of Water Reserve Funds	8
Figure 4. Water Consumption by Customer Class	9
Figure 5. Peaking Factors by Customer Class	9
Figure 6. Number of Meters by Customer Class	9
Figure 7. Allocated Net Revenue Requirements	11
Figure 8. Distribution of Costs to Each Customer Class	11
Figure 9. Calculation of FY 2022/23 Residential Fixed Meter Charges	13
Figure 10. Calculation of FY 2022/23 Non-Residential Fixed Meter Charges	13
Figure 11. Calculation of FY 2022/23 Private Fire Protection Fixed Meter Charges	13
Figure 12. Calculation of FY 2022/23 Uniform Volumetric Rates	14
Figure 13. Current and Proposed Water Rates for FY 2022/23 through 2026/27	14
Figure 14. Comparison of Monthly Water Bills for Single-Family Residential Customers	15
Figure 15. Comparison of Monthly Water Bills for Multi-Family Residential Customers	16
Figure 16. Comparison of Monthly Water Bills for Commercial Customers	17
Figure 17. Average Monthly Consumption at Various Levels of Conservation	18
Figure 18. Proposed Revenue Stabilization Rates for FY 2022/23	18
Figure 19. Proposed Revenue Stabilization Rates FY 2022/23 through FY 2026/27	19
Figure 20. Water Zonal Elevation Surcharges	20
Figure 21. Five-Year Schedule of Water Zonal Elevation Surcharges	20

SECTION 1. PURPOSE AND OVERVIEW OF THE STUDY

PURPOSE

The City of Morgan Hill ("City") retained NBS in May 2021 to conduct an updated comprehensive water rate study for a number of reasons, including meeting long-term revenue requirements, ensuring revenue stability in water rates, providing adequate funding for capital improvements, and ensuring rates comply with applicable laws, including Proposition 218. The rates developed in this study meet Proposition 218 (Prop 218) requirements and were developed based on industry standards. This report is provided with the intent of assisting the City in maintaining the financial health of its water utility, transparently communicating with the residents and businesses it serves, and documenting the rate study analysis.

CITY OF MORGAN HILL BACKGROUND

The City of Morgan Hill is a general law city with a council-manager form of government, located in southern Santa Clara Valley, approximately 12 miles south of San Jose, 10 miles north of Gilroy, and 15 miles inland from the Pacific Coast. The Valley is approximately 4 miles wide and is surrounded by the Santa Cruz mountain range to the west, and the Diablo mountain range to the east.

The City of Morgan Hill provides water service to approximately 15,000 metered customers, including about 308 customers outside the city limits. The majority (about 87%) of the water utility's customers are single and multi-family residential users. Most recent records indicate these residential households use approximately 70% of total water sold; businesses, commercial, industrial, government, institutional, and landscape customers use the remaining 30%.

The City's municipal water source is 100% from ground water and sustaining the groundwater supply is dependent upon the overall groundwater management program administered by the Santa Clara Valley Water District (SCVWD). SCVWD imports water from the Sacramento/San Joaquin Delta through a series of channels, reservoirs, pipes and pumps and re-charges the groundwater table by pumping water into strategically located re-charge basins.

OVERVIEW OF THE STUDY

Key Issues Addressed – In addition to ensuring that water rates collect revenue sufficient to meet the annual operating and capital improvement plans, there are a number of key issues that were specifically addressed in this study, including:

- **Statewide Conservation** – The State of California has experienced drought-related cutbacks over the past several years and the City of Morgan Hill was mandated to reduce water consumption. Because of this, current and projected future consumption levels were closely evaluated in this study.
- **Long-Term Conservation** – The assumptions and recommendations contained in this study are not a short-term response to the drought. They assume that water supplies will continue to be limited in the future.
- **Rate Design** – The current rate design includes a fixed monthly charge that collects about 46% of the rate revenue and a uniform volumetric rate based on monthly water consumption that collect the remainder of the rate revenue. Because the current rate design is covering all the City's expenses, NBS is recommending keeping the current rate design and updating the cost of service.
- **Financial Planning** – Long-range financial plans for the water utility were closely examined to ensure they meet annual operating expenses, debt covenants, capital improvement costs and broader financial management concerns.

Recommendations – NBS recommends the City take the following actions:

- Adopt the long-range financial plan that NBS developed, including the projected revenues, expenditures, and annual net revenue requirements.
- Based on this plan, annual increases in total rate revenue of 9% for fiscal years 2022/23-2023/24, 7% for 2024/25-2025/26, and 3% in 2026/27 are needed over the next five years to fund the majority of the capital improvement program proposed in the Water Systems Master Plan of 2021.
- Continue to use a rate design that collects approximately 46% of rate revenue from fixed charges and 54% from volumetric charges.
- Adopt the water rates proposed in this report that follows this rate design with updates to the cost of service.
- Adopt the updated zonal surcharges, which allocate the additional costs that customers in the three elevation zones that incur additional costs to provide service to these customers.
- Adopt the revenue stabilization rates that would implement small, temporary rate increases whenever rate revenues drop by 10 percent or more in any given month.
- Retain recommended reserve fund targets.
- Provide the normal legal review of the recommended rates by a qualified attorney.
- Proceed with Proposition 218 noticing requirements necessary for legal adoption and implementation of the proposed rates, zonal surcharges, and revenue stabilization mechanism.

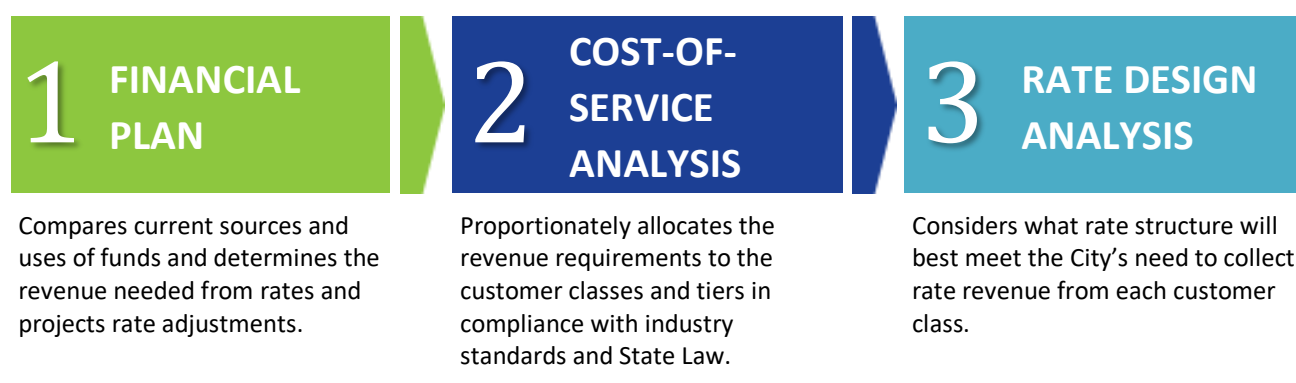
RATE STUDY METHODOLOGY

Components of the Rate Study Methodology – A comprehensive utility rate study typically encompasses three major components: (1) preparation of a financial plan which identifies the net revenue requirements for the utility; (2) analysis of the cost to serve each customer class, and; (3) the rate structure design.

These three steps, which are shown in **Figure 1**, are intended to follow industry standards and reflect the fundamental principles of cost-of-service rate making embodied in the American Water Works Association (AWWA) Principles of Water Rates, Fees, and Charges¹, also referred to as the Manual M1. These steps address general requirements for equity and fairness. They also address requirements under California Constitution article XIII D, Section 6 (commonly referred to as Proposition 218) that rates not exceed the cost of providing the service and be proportionate to the cost of service for all customers. In terms of the chronology of the study, these three steps represent the order they were performed in this study.

As a part of this rate study, NBS projected revenues, expenditures, developed net revenue requirements, performed cost-of-service rate analyses, and prepared new water rates. The following sections in this report present an overview of the methodologies, assumptions, and data used along with the financial plans and rates developed during this study.

Figure 1. Primary Components of a Rate Study



Rate Design Criteria – Several criteria are typically considered in setting rates and developing sound rate structures. The fundamentals of this process have been documented in a number of rate-setting manuals, such as the AWWA Manual M1. The foundation for evaluating rate structures is generally credited to James C. Bonbright in the *Principles of Public Utility Rates*² which outlines pricing policies, theories, and economic concepts along with various rate designs. The following is a simplified list of the attributes of a sound rate structure:

- Rates should be easy to understand from the customer's perspective.
- Rates should be easy to administer from the utility's perspective.

¹ *Principles of Water Rates, Fees, and Charges, Manual of Water Supply Practices, M1*, AWWA, seventh edition, 2017.

² James C. Bonbright; Albert L. Danielsen and David R. Kamerschen, *Principles of Public Utility Rates*, (Arlington, VA: Public Utilities Report, Inc., Second Edition, 1988), p. 383-384.

- Rates should promote the efficient allocation of the resource.
- Rates should be equitable and non-discriminating (i.e., cost based).
- There should be continuity in the rate making philosophy over time.
- Addressing other utility policies (e.g., encouraging conservation & economic development).
- Rates should provide month-to-month and year-to-year revenue stability.

The following section covers basic rate design criteria that NBS and City staff considered as a part of their review of the rate structure.

Rate Structure Considerations – The fundamental starting point in considering rate structures is the relationship between fixed costs and variable costs. Fixed costs typically do not vary with the amount of water consumed. Debt service and City personnel are examples of a fixed cost. In contrast, variable costs such as the cost of purchased water, chemicals and electricity tend to change with the quantity of water sold. The vast majority of rate structures contain a fixed or minimum charge in combination with a volumetric charge.

Key Financial Assumptions – Following are the key assumptions used in the water rate analyses:

- **Funding of Capital Projects** – After the City’s extensive review of the planned capital improvement projects (CIP) and funding requirements, the City has decided that the water utility will fund the currently planned CIP, as shown in detail in the Appendix to this report. The capital improvement projects included in the rate program are designed to keep existing infrastructure in good repair and maintain current service levels. There is about a \$2 million deficiency in fiscal years 2024-2027 in which the proposed rates in this report are not expected to fund.
- **Reserve Targets** – Target reserves for operations and maintenance (O&M) and capital system replacement, which essentially follow industry standards for utility fund management, are set at the following levels for the water utilities:
 - ✓ Operating Reserve (Fund 650) – 90-days of O&M expenses.
 - ✓ System Replacement Reserve (Fund 653) – approximately 6.0% of net assets value (i.e., net of depreciation).
 - ✓ Rate Stabilization Reserve (Fund 652) – equal to 20% of current level of rate revenue.
- **Inflation and Growth Projections:**
 - ✓ Customer growth is estimated at 2.1% annually based on historical growth.
 - ✓ General costs (such as professional and contractual services, fuel, vehicle maintenance, etc.) are estimated at 3% annually.
 - ✓ Ground water production costs are estimated at 6.6% annually based on average annual increases.
 - ✓ Labor costs are estimated at 5% annually and include health and retirement benefits for both utilities.
 - ✓ Energy expenses are estimated to increase at a rate of 20% in FY 2022/23 and 5% annually thereafter.

- ✓ No inflation is added to other budget items, such as late fee revenue, lease income, and miscellaneous fees.
- **Revenue Stabilization Rates** – New revenue stabilization rates were developed as part of the study with the intent of stabilizing the City’s variable rate revenue that may be affected by low water sales due to conservation or unusual weather patterns (i.e., not just declared drought stages).
 - ✓ Once adopted through Prop 218, these rates can be implemented when volumetric revenue drop by 10%, 15%, 20%, 25% and 30%.
 - ✓ Revenue Stabilization rates are revocable; when volumetric revenue losses subside, revenue stabilization rates would be rescinded and the current proposed volumetric rate would be used. Commodity or volumetric rates are charged per unit of water, or hundred cubic feet (hcf), or 748 gallons.
 - ✓ The City will provide adequate notice prior to implementation and rescission.
 - ✓ Although details are yet to be finalized, a key qualification for revenue stabilization rates to be implemented is the period and level of volumetric rate revenue losses (i.e., revenues below the expected revenue level³). Higher volumetric rates, beginning with 10 percent increase would be implemented and, depending on the level of revenue losses, can be increased by additional increments of five percent but capped at 30 percent.

³ Expected volumetric rate revenue could be based on the average month-to-month consumption (calculated as a percentage of the annual consumption over the prior three years, times the projected annual consumption).

SECTION 2. WATER RATE STUDY

KEY WATER RATE STUDY ISSUES

The water rate analysis was undertaken with a few specific objectives, including:

- Generating sufficient revenue to meet projected funding requirements.
- Analyzing the impacts from drought levels and COVID-19 impacts to customer consumption.
- Meeting target reserve fund levels and minimizing customer bill impact on rate payers.

The fixed and volume-based charges calculated were based on the net revenue requirements, number of customer accounts, water consumption, and other City-provided information. The following are the basic components included in this analysis:

- **Developing Unit Costs:** The water revenue requirements were “functionalized” into five categories: (1) customer service costs; (2) fixed capacity costs; (3) commodity (or volume-based) costs; (4) fire protection costs; and (5) zonal-specific costs. Unit costs for each of these functions were determined based on allocations to functional areas, which reflect water consumption, peaking factors, number of accounts by meter size, and customer class.
- **Determining Revenue Requirements by Customer Class:** The total revenue that should be collected from each customer class was determined using the unit costs and the total units belonging to each class. For example, customer costs are allocated based on number of meters, while volume-related costs are allocated based on the water consumption for each class. Once the costs are allocated and the revenue requirement for each customer class is determined, collecting these revenue requirements from each customer class is addressed in the rate design task.
- **Rate Design and Fixed vs. Variable Costs:** The revenue requirements for each customer class are collected from both fixed service charges and volumetric (commodity) charges. The cost-of-service analysis indicated that approximately 46% of the City’s costs are fixed and 54% are variable. Although state regulatory agencies, such as the California Water Efficiency Partnership (formerly the California Urban Water Conservation Council), has historically recommended that water utilities collect at least 70% of rate revenue from volumetric rates to encourage conservation, this has resulted in many water agencies collecting less than the necessary revenues during mandated conservation periods. Because of this, many utilities have chosen to collect less than 70% from volumetric rates. NBS recommends the City adopt the rates proposed in this report using approximately 46/54 fixed/volumetric rate design that better represents the utility’s true cost structure and provides greater revenue stability compared to one that collects more revenue from volumetric rates.

WATER UTILITY REVENUE REQUIREMENTS

It is important for municipal utilities to maintain reasonable reserves in order to handle minor emergencies, fund working capital, maintain a good credit rating, and generally follow sound financial management practices. Rate increases are governed by the need to meet operating and capital costs,

maintain adequate debt coverage, and maintain sufficient reserve funds. The current condition of the City's water utility, with regard to these objectives is as follows:

- **Meeting Net Revenue Requirements:** The City's water utility is currently running a structural surplus (i.e., for Fiscal Year 2021/22). For Fiscal Year 2022/23 through 2026/27, the projected annual net revenue requirement (i.e., total annual expenses plus rate-funded capital costs, less non-rate revenues) is approximately \$19.6 million. This average revenue requirement assumes that most of the planned capital improvement projects will be funded over the next five years with both reserve funds and rate revenue. During fiscal years 2023/24-2026/27, there is a \$2 million deficiency for the planned capital improvement program. NBS is recommending the following rate increases:
 - 9% in fiscal year 2022/23
 - 9% in fiscal year 2023/24
 - 7% in fiscal year 2024/25
 - 7% in fiscal year 2025/26
 - 3% in fiscal year 2026/27
- **Building and Maintaining Reserve Funds:** The City should maintain sufficient reserves for the Water Utility. NBS recommends that the City maintain reserve levels in order to meet the following reserve fund target balances:
 - ✓ **Operating Reserve (Fund 650)** should normally equal 90 days of the Utility's budgeted annual operating expenses, which is equal to a three-month (or 25%) cash reserve for normal operations. An Operating Reserve is intended to promote financial viability in the event of any short-term fluctuation in revenues and/or expenditures, such as those caused by weather patterns, the natural inflow and outflow of cash during billing cycles, natural variability in demand-based revenue streams (e.g., volumetric charges), and – particularly in periods of economic distress – changes or trends in age of receivables.
 - ✓ **Rate Stabilization Fund (Fund 652)** has a target ending balance of 20% of estimated rate revenue, as set by current City policy. This reserve is to further promote financial stability in the event of short-term reductions in rate revenues.
 - ✓ **Capital System Replacement Reserve (Fund 653)** should typically be equal to a minimum of 6% of net depreciable capital assets. This target serves simply as a starting point for addressing long-term capital system replacement needs.

No debt reserve is recommended in this study, due to the fact that the 2014 Water Refunding & CIP Revenue Bonds do not require funds to be held in reserve. If at some point the City issues additional debt, this policy should be revised to reflect the requirements at that time.

Figure 2 summarizes the sources and uses of funds and net revenue requirements for the next five years, assuming the City funds 100% of the planned CIP projects over this period.

Figure 2. Summary of Water Revenue Requirements

Summary of Sources and Uses of Funds and Net Revenue Requirements	Budget	5-Year Rate Adoption Period				
	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
Sources of Water Funds						
Rate Revenue Under Prevailing Rates	\$ 15,179,148	\$ 15,497,910	\$ 15,823,366	\$ 16,155,656	\$ 16,494,925	\$ 16,841,319
Non-Rate Revenues	1,098,954	1,106,147	1,113,492	1,120,991	1,128,647	1,136,465
Interest Earnings	180,121	176,388	164,908	110,214	94,864	79,547
Total Sources of Funds	\$ 16,458,222	\$ 16,780,445	\$ 17,101,766	\$ 17,386,862	\$ 17,718,436	\$ 18,057,331
Uses of Water Funds						
Operating Expenses	\$ 11,785,202	\$ 13,027,679	\$ 13,665,520	\$ 14,337,001	\$ 15,043,999	\$ 15,788,501
Rate-Funded Capital Expenses	-	890,787	6,412,621	7,432,357	8,616,828	9,023,266
Total Use of Funds	\$ 11,785,202	\$ 13,918,466	\$ 20,078,141	\$ 21,769,358	\$ 23,660,827	\$ 24,811,767
Surplus (Deficiency) before Rate Increase	\$ 4,673,020	\$ 2,861,978	\$ (2,976,375)	\$ (4,382,496)	\$ (5,942,391)	\$ (6,754,436)
Additional Revenue from Rate Increases	-	1,394,812	2,976,375	4,382,496	5,942,391	6,754,436
Surplus (Deficiency) after Rate Increase	\$ 4,673,020	\$ 4,256,790	\$ -	\$ -	\$ -	\$ -
Projected Annual Rate Increase	0.00%	9.00%	9.00%	7.00%	7.00%	3.00%
Net Revenue Requirement¹	\$ 10,506,128	\$ 12,635,931	\$ 18,799,741	\$ 20,538,153	\$ 22,437,316	\$ 23,595,754

1. Total Use of Funds less non-rate revenues and interest earnings. This is the annual amount needed from water rates.

Figure 3 summarizes the projected reserve fund balances and reserve targets for the next five years. Because of the capital projects needed over the next five fiscal years, the City will dip below target reserve levels until fiscal year 2030/31, when the water system replacement fund can catch up to target levels. Detail of the water utility's proposed 5-year financial plan are included in the Appendix of this report. These tables include revenue requirements, reserve funds, capital improvement detail, revenue sources and proposed rate increases for the 5-year period.

Figure 3. Summary of Water Reserve Funds

Beginning Reserve Fund Balances and Recommended Reserve Targets	Budget	5-Year Rate Adoption Period				
	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
Water Operations Fund (650)	\$ 2,946,301	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920
<i>Recommended Minimum Target</i>	<i>2,946,301</i>	<i>3,256,920</i>	<i>3,416,380</i>	<i>3,584,250</i>	<i>3,761,000</i>	<i>3,947,125</i>
Water System Replacement Fund (653)	\$ 8,288,597	\$ 7,246,771	\$ 3,763,100	\$ 2,785,359	\$ 1,809,794	\$ 834,340
<i>Recommended Minimum Target</i>	<i>2,953,600</i>	<i>3,300,600</i>	<i>3,763,100</i>	<i>4,236,000</i>	<i>4,757,700</i>	<i>5,194,200</i>
Rate Stabilization Fund (652)	\$ 3,035,830	\$ 3,083,492	\$ 3,131,903	\$ 3,181,074	\$ 3,231,017	\$ 3,281,744
<i>Recommended Minimum Target</i>	<i>3,035,830</i>	<i>3,099,582</i>	<i>3,164,673</i>	<i>3,231,131</i>	<i>3,298,985</i>	<i>3,368,264</i>
Total Ending Balance	\$ 14,270,727	\$ 13,587,183	\$ 10,151,923	\$ 9,223,353	\$ 8,297,731	\$ 7,373,003
<i>Total Recommended Minimum Target</i>	<i>\$ 8,935,730</i>	<i>\$ 9,657,102</i>	<i>\$ 10,344,153</i>	<i>\$ 11,051,382</i>	<i>\$ 11,817,685</i>	<i>\$ 12,509,589</i>

CHARACTERISTICS OF WATER CUSTOMERS BY CLASS

The amount of consumption, the peaking factors, and the number of meters by customer class are all used in allocating costs as a part of the cost-of-service analysis. The City's most recent consumption data is summarized in **Figure 4**, peaking factors by customer class are summarized in **Figure 5**, and **Figure 6** compares the total number of meters by customer class.

Figure 4. Water Consumption by Customer Class

Customer Class	FY 2020/21 Volume (hcf) ¹	Percent of Total Volume
Single Family - Inside	1,773,378	57.7%
Single Family - Outside	52,931	1.7%
Multi-Family	319,696	10.4%
Commercial	929,760	30.2%
Grand Total	3,075,765	100.0%
Fire	565	0.02%

1. Consumption data source: *Morgan Hill_2018-2021 Consumption Billing Data.xlsx*

Figure 5. Peaking Factors by Customer Class

Customer Class	Average Monthly Use (hcf)	Peak Monthly Use (hcf) ¹	Peak Month Factor	Max Month Capacity Factor
Single Family - Inside	147,782	217,683	1.47	58.2%
Single Family - Outside	4,411	6,725	1.52	1.8%
Multi-Family	26,641	31,378	1.18	8.4%
Commercial	77,480	118,489	1.53	31.7%
Grand Total	256,314	374,275	1.46	100.0%
Fire	47	261	5.54	0.1%

1. Based on peak monthly data (peak day data not available).

Figure 6. Number of Meters by Customer Class

Customer Class	Number of Meters ¹	Percent of Total
Single Family - Inside	10,502	69.9%
Single Family - Outside	308	2.1%
Multi-Family	2,284	15.2%
Commercial	1,663	11.1%
Fire	263	1.75%
Grand Total	15,020	100.0%

1. Number of meters is from source: *Morgan Hill_2018-2021 Consumption Billing Data.xlsx*

COST OF SERVICE ANALYSIS

Once the revenue requirements for the water utility are determined, the cost-of-service analysis distributes those revenue requirements to each of the customer classes. The cost-of-service analysis consists of two major components: (1) the functionalization and classification of expenses, and (2) the allocation of costs to customer classes. This process is described as follows:

Functionalization, Classification and Allocations

Most costs are not typically allocated 100% to fixed or variable categories and, therefore, are allocated to multiple functions of water service. The classification (i.e., functionalization) of costs provides the basis for allocating the classified costs to the following cost-causation components:

- **Commodity** related costs are those costs associated with the total consumption of water over a specified period of time (e.g., annual).
- **Capacity** related costs are those costs associated the maximum-month demand and the design capacity of facilities required to meet this demand.
- **Customer** related costs are costs associated with having a customer on the water system, such as meter reading, postage and billing.
- **Fire Protection** costs are associated with providing sufficient capacity in the system for fire meters and other operations and maintenance costs of providing water to properties for private fire service protection.
- **Zonal** related costs are costs that are directly allocated to the zonal elevation surcharges that include the cost of electricity needed to pump water to higher elevation zones. These surcharges are discussed in Section 4 of this report.

Once costs have been organized in the City's functional budget categories, they are allocated to these cost causation components that are used as the basis for establishing new water rates and translate to fixed and variable charges. The tables in the Appendix show how the City's expenses were classified and allocated to these cost causation components and then into fixed and variable costs in more detail.

Fixed costs generally consist of costs that a utility incurs to serve customers irrespective of the amount of water they use. These include (1) the infrastructure (capacity-related facilities) required to provide service to customers, (2) costs associated with the peaking requirements, or maximum demand which affects the maximum size of water supply, treatment and delivery system, and (3) administrative and billing costs associated with meter reading, postage and billing.

Variable costs are those that change as the volume of water produced and delivered changes. These commonly include the costs of chemicals used in the treatment process, energy related to pumping for transmission and distribution, and source of supply.

Ideally, utilities should recover all of their fixed costs from fixed charges and all of their variable costs from volumetric charges; when this is the case, fluctuations in water sales revenues would be directly offset by reductions or increases in variable expenses. Because of this, this rate design provides greater revenue stability. However, other factors are often considered when designing water rates such as community values, water conservation goals, ease of understanding, and ease of administration.

NBS allocated the functionalization of costs into categories that can be more generally grouped into the fixed and variable costs discussed above. This analysis resulted in a cost distribution that is about 50% fixed and 50% variable (volumetric). **Figure 7** summarizes how costs are allocated to each cost component and used to establish new water rates. As a result, 52.6% of revenue will be collected from commodity rates, 41.3% will be collected from fixed capacity-related charges, 3.7% from fixed customer-related charges, 0.94% will be collected from fire-protection fixed charges and 1.5% will be collected from zonal elevation surcharges.

Figure 7. Allocated Net Revenue Requirements

Classification Components	Proposed Rate Adjusted Net Revenue Requirements	
Commodity-Related Costs	\$ 8,879,127	52.6%
Capacity-Related Costs (Fixed)	6,978,331	41.3%
Customer-Related Costs	625,855	3.7%
Fire Protection-Related Costs	158,592	0.94%
Subtotal Revenue Requirement	\$ 16,641,905	98.5%
Zonal-Related Costs	\$ 250,817	1.5%
Net Total Revenue Requirement	\$ 16,892,721	100%

1. Zonal Related Costs are recovered via the zonal charge and are not included in this rate revenue calculation.

Costs Allocated to Customer Classes

Customer classes are typically determined by grouping customers with similar demand characteristics into categories that reflect the cost differentials to serve each type of customer. The new rates will remain in the same structure as current rates and will continue to be distinguished between residential and non-residential customer classes. These two groups of customers will have different fixed charges by meter size that reflects the different costs incurred to serve residential vs. non-residential classes of customers. **Figure 8** shows how costs are distributed to each customer class (except zonal related costs).

Figure 8. Distribution of Costs to Each Customer Class

Customer Class	Cost Classification Components				Cost of Service Net Revenue Req'ts	% of COS Net Revenue Req'ts
	Commodity	Capacity	Customer	Fire Protection		
Residential (Single & Multi-Family)	\$ 6,195,093	\$ 4,769,112	\$ 545,602	\$ -	\$ 11,509,807	69.2%
Non-Residential (Commercial)	\$ 2,684,034	\$ 2,209,219	\$ 69,294	\$ -	\$ 4,962,547	29.8%
Fire	\$ -	\$ -	\$ 10,959	\$ 158,592	\$ 169,550	1.0%
Grand Total	\$ 8,879,127	\$ 6,978,331	\$ 625,855	\$ 158,592	\$ 16,641,905	100%

Commodity related costs are distributed to each customer class based on the percentage of water consumed (previously shown in Figure 4). Capacity related costs are distributed to each customer class based on the peaking factors (previously shown in Figure 5). Customer related costs are distributed to each customer class based on the number of customers in each customer class (previously shown in Figure 6). A direct allocation is made in the functionalization and classification process to commercial fire which reflects their share of system-wide costs.

CURRENT VS. PROPOSED WATER RATE STRUCTURES

The process of evaluating the water rate structure provides the opportunity to incorporate a number of rate-design objectives and policies, including revenue stability, equity among customer classes, and water conservation. One of the City's main objectives in this study was to develop a rate structure that would provide the utility with continual revenue stability and promote conservation.

Fixed Charges

Meter sizes have different fixed charges based on the capacity requirements of each size meter connected to the system. This is because larger meters have the potential to use more of the system's capacity, or said differently, they have higher peaking factors compared to smaller meters. The potential capacity demanded (peaking) is proportional to the maximum hydraulic flow through each meter size as established by the AWWA hydraulic capacity ratios⁴. As an example, a 2-inch meter has a greater capacity, or potential peak demand than a 3/4-inch meter; therefore, the fixed charge for a 2-inch meter is larger than a 3/4-inch meter based on their proportionate capacity requirements⁵. A "hydraulic capacity factor" is calculated by dividing the maximum capacity or flow of large meters by the capacity of the base meter size, which is typically the most common residential meter size (in this case a 1-inch meter).

The actual number of meters by size is multiplied by the corresponding capacity ratios to calculate the total number of equivalent meters. The number of equivalent meters is used as a proxy for the potential demand that each customer can place on the water system (which dictates the sizing of the system's maximum capacity). A significant portion of a water system's peak capacity, and in turn, the utility's fixed operating and capital costs, are related to meeting system capacity requirements.

Currently, the City charges all customer classes a fixed monthly charge based on meter size and customer class. NBS recommends maintaining the current fixed rate structure. Not uncommon in industry practice, 5/8-inch and 3/4-inch meters are set to be equivalent to the 1-inch base meter.

Fire service customers will still be subject to a different set of fixed charges than the other customer classes. Fire service customers differ from other water service customers because their service is more of a standby service, where a readiness-to-serve charge is appropriate. Except in the event of a fire, these users are not intended to use water on a regular basis (as shown previously in Figure 4). However, the City still needs to provide sufficient capacity for fire meters and recover other operations and maintenance costs of providing water to such properties for private fire service protection. Based on the cost-of-service analysis and the standby nature of fire meters, the overall cost to serve these users is less than that of a standard service; therefore, the fixed charges are less.

Figures 9, 10 and 11 show how fixed meter charges were calculated for each customer class. The customer component of the rate is \$3.47 per meter and does not vary by meter size because it represents costs to the utility for having connections to the water system. Capacity costs vary by meter size and are based on their hydraulic capacity, but customer costs remain consistent across all customers.

⁴ See: American Water Works Association, *Principles of Water Rates, Fees and Charges: Manual of Water Supply Practices M1*, 386, (7th ed. 2017) and American Water Works Association, *Water Meters – Selection, Installation, Testing and Maintenance M6*, 65 (5th ed. 2012).

⁵ This is reflected in the fixed charge calculations by using the AWWA hydraulic capacity factors to represent the maximum volume each meter size is capable of delivering.

Figure 9. Calculation of FY 2022/23 Residential Fixed Meter Charges

Residential Meter Size	Hydraulic Capacity Factor	Number of Meters	Total Equivalent Meters	Fixed Meter Charge		Total Monthly Fixed Meter Charge	Estimated Revenue from Fixed Charges
				Customer Component	Capacity Component		
5/8-1 inch	1.00	12,981	12,981	\$3.47	\$29.63	\$33.10	\$ 5,155,716
1.5 inch	2.00	41	82	\$3.47	\$59.25	\$62.72	\$ 30,860
2 inch	3.20	60	192	\$3.47	\$94.80	\$98.27	\$ 70,757
3 inch	6.40	-	-	\$3.47	\$189.60	\$193.08	\$ -
4 inch	10.00	8	80	\$3.47	\$296.25	\$299.73	\$ 28,774
6 inch	20.00	4	80	\$3.47	\$592.51	\$595.98	\$ 28,607
Total (Residential Customers)		13,094	13,415				\$ 5,314,714

Figure 10. Calculation of FY 2022/23 Non-Residential Fixed Meter Charges

Non-Residential Meter Size	Hydraulic Capacity Factor	Number of Meters	Total Equivalent Meters	Fixed Meter Charge		Total Monthly Fixed Meter Charge	Estimated Revenue from Fixed Charges
				Customer Component	Capacity Component		
5/8-1 inch	1.00	703	703	\$3.47	\$50.14	\$53.62	\$ 452,314
1.5 inch	2.00	360	720	\$3.47	\$100.29	\$103.76	\$ 448,252
2 inch	3.20	549	1,757	\$3.47	\$160.46	\$163.94	\$ 1,080,008
3 inch	6.40	14	90	\$3.47	\$320.93	\$324.40	\$ 54,499
4 inch	10.00	35	350	\$3.47	\$501.45	\$504.92	\$ 212,067
6 inch	20.00	1	20	\$3.47	\$1,002.90	\$1,006.37	\$ 12,076
8 inch	32.00	1	32	\$3.47	\$1,604.63	\$1,608.11	\$ 19,297
10 inch	84.00	-	-	\$3.47	\$4,212.16	\$4,215.63	\$ -
Total (Non-Residential Customers)		1,663	3,671				\$ 2,278,513

Figure 11. Calculation of FY 2022/23 Private Fire Protection Fixed Meter Charges

Fire Meter Size	Hydraulic Capacity Factor	Number of Meters	Total Equivalent Meters	Fixed Meter Charge		Total Monthly Fixed Meter Charge	Estimated Revenue from Fixed Charges
				Customer Component	Capacity Component		
2 inch	3.20	1	3	\$3.47	\$4.64	\$8.11	\$ 97
3 inch	7.00	-	-	\$3.47	\$10.14	\$13.61	\$ -
4 inch	14.00	64	896	\$3.47	\$20.28	\$23.75	\$ 18,242
6 inch	32.00	126	4,032	\$3.47	\$46.36	\$49.83	\$ 75,340
8 inch	56.00	67	3,752	\$3.47	\$81.12	\$84.59	\$ 68,014
10 inch	88.00	5	440	\$3.47	\$127.48	\$130.95	\$ 7,857
Total (Fire Customers)		263	9,123				\$ 169,550

Volumetric Rates

Currently, the City charges all customers a uniform commodity rate for all water consumed (commodity or volumetric rates are charged per unit of water, or hundred cubic feet (hcf), or 748 gallons). NBS recommends maintaining the uniform, or single-tier, volumetric rate for all customers. It is easier to demonstrate that the use of a uniform volumetric rate meets the requirements of Proposition 218.

In addition, because of the significant differences in typical water use of commercial customers (e.g., laundromat vs. restaurants vs. office space), uniform commodity charges are a commonly used rate structure for these types of customers and is the primary reason why tiered rates typically aren't used for commercial customers. **Figure 12** shows water consumption, commodity related costs, and the uniform volumetric rate that will apply to all customer classes.

Figure 12. Calculation of FY 2022/23 Uniform Volumetric Rates

	Number of Meters ¹	Water Consumption (hcf/yr.) ²	Target Rev. Req't from Vol. Charges	% of Total Rate Revenue	Uniform Commodity Rates (\$/hcf)	Proposed Rate Structure
Residential	13,094	2,146,005	\$ 6,195,093	36.7%	\$2.89	Uniform
Non-Residential	1,663	929,760	\$ 2,684,034	15.9%		
Subtotal	14,757	3,075,765	\$ 8,879,127	53%		
Fire	263	565	\$ -	0.00%	\$2.89	Uniform
Grand Total	15,020	3,076,330	\$ 8,879,127	53%		

1. Number of meters and consumption by size and class is per the City of Morgan Hill's utility billing data as of May 2021 in the Billed Consumption Report by Month spreadsheets.

Current and Proposed Water Rates

Figure 13 compares the current and proposed rates for Fiscal Year 2022/23 through 2026/27.

Figure 13. Current and Proposed Water Rates for FY 2022/23 through 2026/27

Water Rate Schedule	Current Monthly Rates	Proposed Monthly Water Rates				
		FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
Fixed Service Charges						
<u>Single- and Multi-Family Residential:</u>						
5/8 inch	\$31.14	\$33.10	\$36.08	\$39.32	\$42.08	\$45.02
3/4 inch	\$31.14	\$33.10	\$36.08	\$39.32	\$42.08	\$45.02
1 inch	\$31.14	\$33.10	\$36.08	\$39.32	\$42.08	\$45.02
1.5 inch	\$58.72	\$62.72	\$68.37	\$74.52	\$79.74	\$85.32
2 inch	\$91.81	\$98.27	\$107.12	\$116.76	\$124.93	\$133.68
4 inch	\$279.36	\$299.73	\$326.70	\$356.11	\$381.03	\$407.71
6 inch	\$555.17	\$595.98	\$649.62	\$708.09	\$757.65	\$810.69
<u>Non-Residential:</u>						
5/8 inch	\$47.23	\$53.62	\$58.44	\$63.70	\$68.16	\$72.93
3/4 inch	\$47.23	\$53.62	\$58.44	\$63.70	\$68.16	\$72.93
1 inch	\$47.23	\$53.62	\$58.44	\$63.70	\$68.16	\$72.93
1.5 inch	\$90.90	\$103.76	\$113.10	\$123.28	\$131.91	\$141.14
2 inch	\$143.31	\$163.94	\$178.69	\$194.77	\$208.41	\$222.99
3 inch	\$283.06	\$324.40	\$353.59	\$385.42	\$412.40	\$441.27
4 inch	\$440.28	\$504.92	\$550.36	\$599.90	\$641.89	\$686.82
6 inch	\$877.00	\$1,006.37	\$1,096.94	\$1,195.67	\$1,279.36	\$1,368.92
8 inch	\$1,401.07	\$1,608.11	\$1,752.84	\$1,910.59	\$2,044.33	\$2,187.43
<u>Fire Service:</u>						
5/8 inch	\$4.02	\$4.05	\$4.42	\$4.81	\$5.15	\$5.51
3/4 inch	\$4.25	\$4.34	\$4.73	\$5.16	\$5.52	\$5.91
1 inch	\$4.71	\$4.92	\$5.36	\$5.85	\$6.26	\$6.69
1.5 inch	\$5.86	\$6.37	\$6.94	\$7.57	\$8.10	\$8.66
2 inch	\$7.24	\$8.11	\$8.84	\$9.63	\$10.31	\$11.03
3 inch	\$11.61	\$13.61	\$14.84	\$16.17	\$17.31	\$18.52
4 inch	\$19.66	\$23.75	\$25.89	\$28.22	\$30.20	\$32.31
6 inch	\$40.37	\$49.83	\$54.31	\$59.20	\$63.34	\$67.78
8 inch	\$67.98	\$84.59	\$92.21	\$100.51	\$107.54	\$115.07
10 inch	\$104.79	\$130.95	\$142.74	\$155.58	\$166.47	\$178.13
Volumetric Charges						
Uniform Rate, All Customers	\$2.57	\$2.89	\$3.15	\$3.43	\$3.67	\$3.93

1. The FY 2022/23 rate increase will be effective July 1, 2022; subsequent rate increases will be effective on July 1st each year.

Figures 14 and 15 compare monthly bills for single-family and multi-family residential customers under current and proposed rates at varying levels of water consumption. **Figure 16** compares monthly bills for commercial customers under current and proposed rates at varying levels of water consumption. The recommended rates and monthly bills shown in these Figures differ from existing rates due to both the rate increases and changes in the allocation factors (water consumption, peaking factors, etc.), which change over time. The City's current policy is to charge 5/8" – 1" meters the same rate; this practice has been maintained in the proposed rates shown in Figure 13, per direction from City Staff.

Figure 14. Comparison of Monthly Water Bills for Single-Family Residential Customers

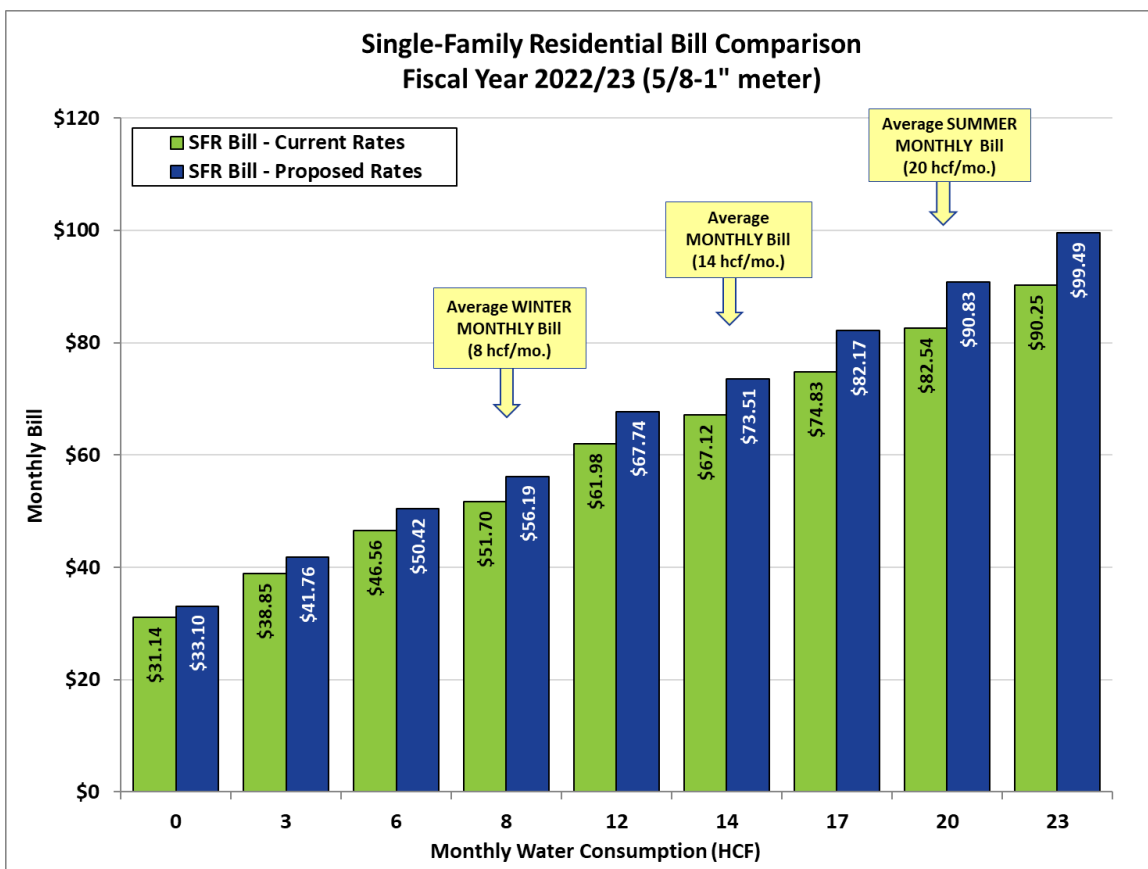


Figure 15. Comparison of Monthly Water Bills for Multi-Family Residential Customers

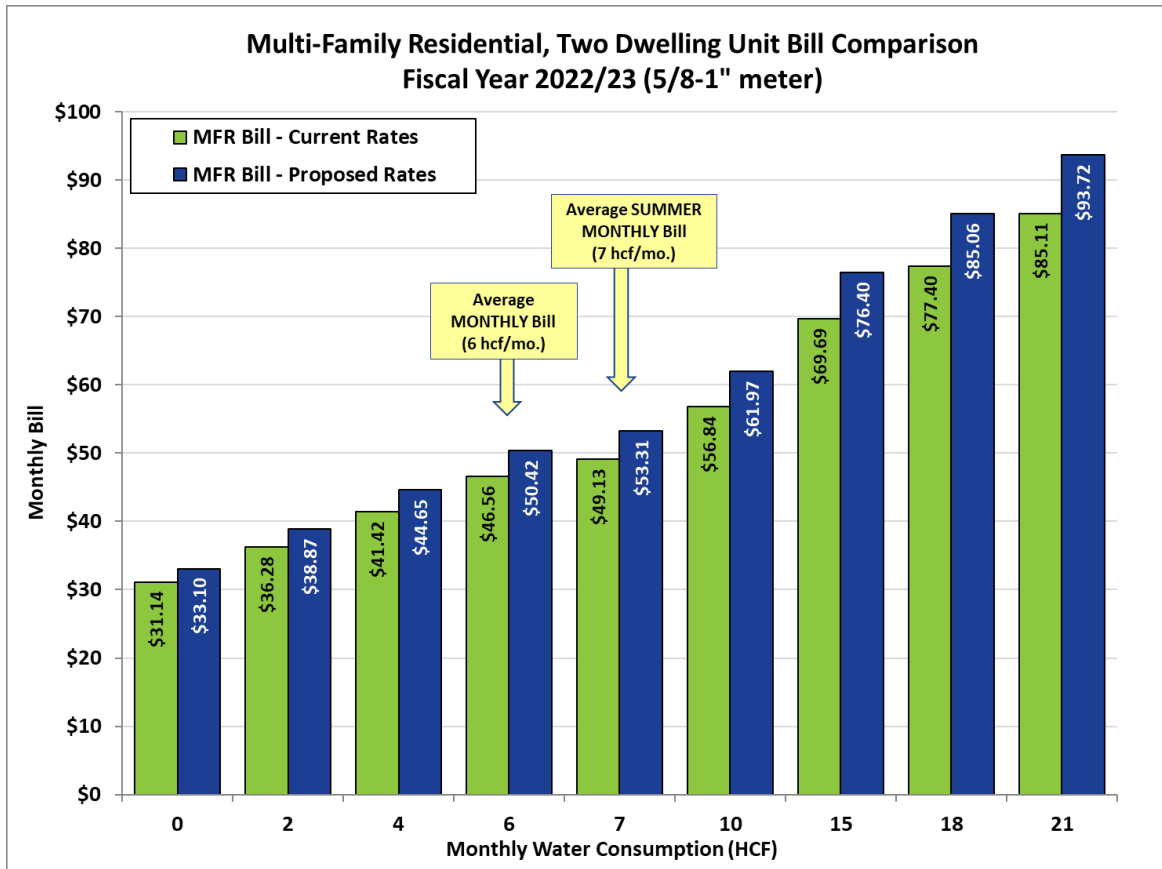
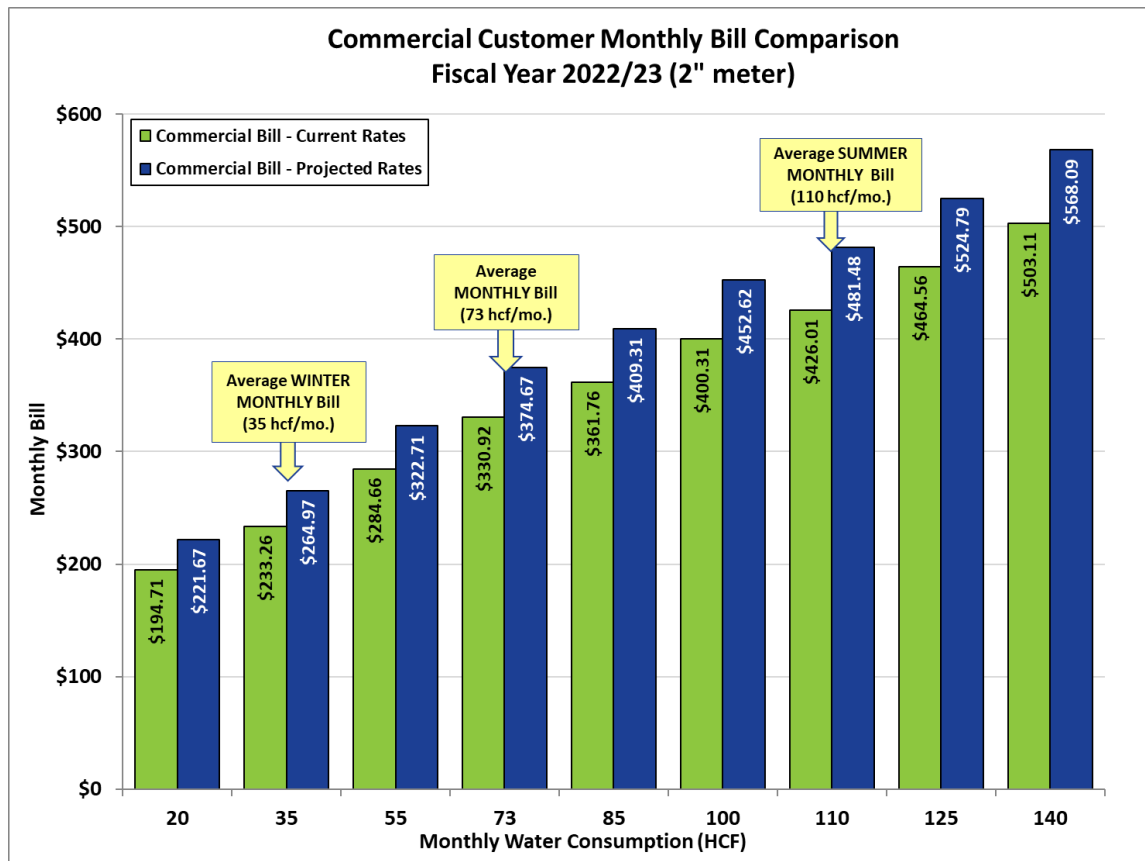


Figure 16. Comparison of Monthly Water Bills for Commercial Customers



SECTION 3. REVENUE STABILIZATION RATE ANALYSIS

If revenue from volumetric rates fall below the levels currently expected, the City is still obligated to meet its annual net revenue requirements. In contrast to drought rates, which are specifically intended to respond to revenue losses related to various drought stages, revenue stabilization rates are intended to offset revenue losses for any reason. For example, revenue losses could be related to conservation, unusual weather conditions, catastrophic loss of system infrastructure, or similar emergencies. To this end, revenue stabilization rates have been developed so that the water utility would still be kept financially whole under these conditions.

CALCULATION OF REVENUE STABILIZATION RATES

The intent of revenue stabilization rates is to offset the revenue losses that may be due to a variety of reasons and thereby decoupling this process from specific drought rates, drought stages, and/or State-mandated conservation. Revenue stabilization rates are the expected volumetric rate revenue divided by the reduced levels of water sales.

Figure 17 shows the estimated water consumption by customer class at various levels of reduction, up to 30%. **Figure 18** shows the calculation of the revenue stabilization rates for FY 2022/23. **Figure 19** shows the whole proposed rate schedule for revenue stabilization rates through FY 2026/27.

Figure 17. Average Monthly Consumption at Various Levels of Conservation

Customer Class	Water Consumption ¹ (hcf/yr.)	Annual Consumption at Various Levels of Reduction				
		10%	15%	20%	25%	30%
Single Family - Inside	1,773,378	1,596,040	1,507,371	1,418,702	1,330,034	1,241,365
Single Family - Outside	52,931	47,638	44,991	42,345	39,698	37,052
Multi-Family	319,696	287,726	271,742	255,757	239,772	223,787
Commercial	929,760	836,784	790,296	743,808	697,320	650,832
Total	3,075,765	2,768,189	2,614,400	2,460,612	2,306,824	2,153,036

1. Consumption data source: *Morgan Hill_2018-2021 Consumption Billing Data.xlsx*

Figure 18. Proposed Revenue Stabilization Rates for FY 2022/23

Customer Class	Total Target Rev. Req't from Vol. Charges	10%	15%	20%	25%	30%
Residential (Single & Multi-Family)	\$ 6,195,093					
Non-Residential (Commercial)	\$ 2,684,034	\$3.21	\$3.40	\$3.61	\$3.85	\$4.12
Fire	\$ -					
Grand Total	\$ 8,879,127					

Figure 19. Proposed Revenue Stabilization Rates FY 2022/23 through FY 2026/27

	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
10% Revenue Stabilization Rate*	\$3.21	\$3.50	\$3.82	\$4.09	\$4.38
15% Revenue Stabilization Rate*	\$3.40	\$3.71	\$4.04	\$4.32	\$4.62
20% Revenue Stabilization Rate*	\$3.61	\$3.93	\$4.28	\$4.58	\$4.90
25% Revenue Stabilization Rate*	\$3.85	\$4.20	\$4.58	\$4.90	\$5.24
30% Revenue Stabilization Rate*	\$4.12	\$4.49	\$4.89	\$5.23	\$5.60

* Revenue Stabilization Rates would be implemented if current revenue from water sales are below the percentages indicated.

REVENUE-STABILIZATION RATE TRIGGER AND COUNCIL NOTIFICATION

For background/informational purposes, City Staff (staff) will provide the City Council with the average units of water sales (for each month) for the rolling previous three years at the periodic financial update, which will serve as the “baseline” against which current annual sales to date will be compared. The City will include a revenue stabilization rate schedule in each budget year (and Proposition 218 Notices) indicating the volumetric rate for increases of 10%, 15%, 20%, 25% and 30%. This information will be provided as a part of the budget package each year.

If staff determines that annual water sales revenue to date is more than 10% below expected year-to-date levels (based on monthly averages over the previous three-years) and expense reduction measures have been reviewed and considered, staff will implement the revenue-stabilization rates. Staff will inform the Council of the revenue-stabilization rates implementation at the earliest financial update. Staff will also update the Council on current reserve levels and provide an analysis of why the revenue losses are occurring, along with a six-month projection of anticipated water sales.

Implementing Revenue Stabilization Rates: Once City staff has informed the Council of implementation, the Council may:

- Act to implement less than 100% of the revenue stabilization rates at the earliest billing cycle.
- Utilize reserves to meet all or part of the revenue gap.
- Take no action, which results in implementation of revenue stabilization rates from the revenue-stabilization rate schedule⁶.

Rescinding Revenue Stabilization Rates: Once the volumetric water sales revenue has returned to expected levels⁷, City staff will rescind the revenue-stabilization rates and previously adopted uniform volumetric rate are (again) in effect. In addition, City staff will inform the Council of such action at the earliest financial update.

⁶ The Revenue-Stabilization rate schedule will be the current uniform volumetric rate that correspond to water sales reductions of 10%, 15%, 20%, 25% and 30%.

⁷ The expected year-to-date volumetric rate revenue is the three-year rolling average monthly water sales (in units) times the currently adopted uniform volumetric water rate.

SECTION 4. ZONAL ELEVATION SURCHARGES

OVERVIEW OF ZONAL ELEVATION SURCHARGES

While most of the City's water customers are located within normal elevation zones (those not requiring significant additional infrastructure to get water to the higher elevations), some customers are in higher elevation zones that costs more to pump water to them. These elevation surcharges are part of the current rate structure and NBS evaluated the current cost of service for these customers.

Although this analysis could have included the annual costs of power as well as pumping facility maintenance and replacement costs, the calculated surcharges only included annual power costs. The City decided to only recover power costs at least partly because the fixed assets of the water system are sized to provide fire protection, not just water service, and fire protection is a community-wide issue for which the costs are shared community-wide. Also, surcharges for all three zones were calculated as a single volumetric rate based on the annual flows through these three zones.

NBS is proposing a single volumetrically based zonal elevation surcharge since energy is a variable cost. **Figure 20** shows the proposed water zonal elevation surcharges.

Figure 20. Water Zonal Elevation Surcharges

	Surcharge Costs	VOLUMETRIC SURCHARGES (for 100% of Power Costs)			Total Revenue
Elevation Zones	Annual Power Costs	Annual Flow (hcf)	Costs to Recover in Volumetric Surcharge	Volumetric Surcharges (\$/hcf)	Fixed + Volumetric Revenue from Surcharges
All Zones	\$ 267,520	752,540	\$ 267,520	\$0.36	\$ 267,520
Total	\$ 267,520	752,540	\$ 267,520	--	\$ 267,520

A five-year projection of costs was prepared as part of the zonal elevation surcharge analysis, in order to provide a five-year schedule of surcharges that is consistent with the rate schedules prepared in this study. **Figure 21** show the five-year schedules of zonal elevation surcharge options. Refer to the Appendix of this report, which show the detail of how the surcharges were calculated.

Figure 21. Five-Year Schedule of Water Zonal Elevation Surcharges

Water Enterprise Zonal Elevation Surcharges: Volumetric Surcharges						
Elevation Zones	Current	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26
Volumetric Surcharges (\$/hcf)	\$0.11	\$0.36	\$0.37	\$0.39	\$0.41	\$0.43

1. The Annual % increase is due to inflation of energy costs.

SECTION 5. RECOMMENDATIONS AND NEXT STEPS

CONSULTANT RECOMMENDATIONS

NBS recommends the City take the following actions for the water and wastewater rates:

- **Approve and Accept This Study Report:** NBS recommends that the City Council formally approve and adopt this report and its recommendations. This will provide documentation of the rate study analyses and the basis for analyzing potential changes to future rates.
- **Maintain Reserve Fund Targets:** The City should periodically evaluate reserve fund levels and make it a long-term goal to achieve these levels for the Operating, Capital, and Rate Stabilization Reserves.
- **Implement Recommended Levels of Rate Increases and Proposed Rates:** Based on the analysis presented in this report, the City Council should implement the proposed water rates recommended in this report for the next five years as shown in Figure 13 in Section 2 of this report.
- **Adopt Revenue Stabilization Rates:** Adopt the revenue stabilization rates shown in Figure 19 in Section 3 of this report.
- **Adopt Elevation Zone Surcharges:** Adopt the zonal surcharges shown in Figures 21 in Section 4 of this report.
- **Complete a Legal Review:** This rate study outlines proposed new rates, including new revenue stabilization rates, updated zonal elevation surcharges, and the continued use of outside surcharges. Particularly in light of changing legal requirements, these rates should be reviewed by competent legal counsel with respect to compliance with Proposition 218 and related State laws prior to adoption, including language for new resolutions and public notices required to implement these rates.

NEXT STEPS

- **Annually Review Rates and Revenue** – Any time an Agency adopts new utility rates or rate structures, those new rates should be closely monitored over the next several years to ensure the revenue generated is sufficient to meet the annual revenue requirements. Changing economic and drought-related water consumption patterns underscore the need for this review, as well as potential and unseen changing revenue requirements, particularly those related to environmental regulations that can significantly affect capital improvements and repair and replacement costs.

Note: The attached Technical Appendices provide detailed information on the analysis of the water revenue requirements, cost of service and rate design analyses that have been summarized in this report.

PRINCIPAL ASSUMPTIONS AND CONSIDERATIONS

In preparing this report and the recommendations included herein, NBS has relied on a number of principal assumptions and considerations with regard to financial matters, number of customer accounts, conditions and events that may occur in the future. This information and assumptions, including the City's budgets and customer account information from City staff, were provided by sources we believe to be reliable, although NBS has not independently verified this data.

While we believe NBS' use of such information and assumptions is reasonable for the purpose of this report and its recommendations, some assumptions will invariably not materialize as stated herein or may vary significantly due to unanticipated events and circumstances. Therefore, the actual results can be expected to vary from those projected to the extent that actual future conditions differ from those assumed by us or provided to us by others.

APPENDIX - WATER RATE ANALYSIS

TABLE 1 : FINANCIAL PLAN AND SUMMARY OF REVENUE REQUIREMENTS

RATE REVENUE REQUIREMENTS SUMMARY	Budget	5-Year Rate Adoption Period						Projected			
	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	FY 2029/30	FY 2030/31	
Sources of Water Funds											
Rate Revenue:											
Current Rate Revenue	\$ 15,179,148	\$ 15,497,910	\$ 15,823,366	\$ 16,155,656	\$ 16,494,925	\$ 16,841,319	\$ 17,194,986	\$ 17,556,081	\$ 17,924,759	\$ 18,301,179	
Non-Rate Revenue in Operations & System Replacement Funds:											
Interest Income ¹	180,121	176,388	164,908	110,214	94,864	79,547	64,233	84,685	104,494	149,683	
Other, Non-Rate Revenues	1,098,954	1,106,147	1,113,492	1,120,991	1,128,647	1,136,465	1,144,446	1,152,595	1,160,915	1,169,410	
Total Sources of Funds	\$ 16,458,222	\$ 16,780,445	\$ 17,101,766	\$ 17,386,862	\$ 17,718,436	\$ 18,057,331	\$ 18,403,665	\$ 18,793,361	\$ 19,190,168	\$ 19,620,272	
Uses of Water Funds											
Operating Expenses²											
Water Operations	\$ 9,785,473	\$ 10,785,807	\$ 11,339,535	\$ 11,923,538	\$ 12,539,549	\$ 13,189,404	\$ 13,875,048	\$ 14,598,542	\$ 15,362,070	\$ 16,167,943	
Water Operations - Capital Expenses	860,985	886,815	913,419	940,822	969,046	998,118	1,028,061	1,058,903	1,090,670	1,123,390	
Utility Billing	957,802	998,262	1,040,523	1,084,667	1,130,781	1,178,958	1,229,293	1,281,886	1,336,843	1,394,273	
Water Conservation	157,393	332,540	347,059	362,242	378,118	394,721	412,085	430,246	449,242	469,112	
Water Rate Stabilization Fund Admin.	371	383	394	406	418	431	443	457	470	485	
Water System Replacement Fund	23,178	23,874	24,590	25,328	26,088	26,870	27,676	28,507	29,362	30,243	
Subtotal: Operating Expenses	\$ 11,785,202	\$ 13,027,679	\$ 13,665,520	\$ 14,337,001	\$ 15,043,999	\$ 15,788,501	\$ 16,572,607	\$ 17,398,541	\$ 18,268,656	\$ 19,185,446	
Other Expenditures:											
Rate-Funded Capital Expenses	\$ -	\$ 890,787	\$ 6,412,621	\$ 7,432,357	\$ 8,616,828	\$ 9,023,266	\$ 6,688,244	\$ 6,690,613	\$ 5,015,485	\$ 5,610,429	
Subtotal: Other Expenditures	\$ -	\$ 890,787	\$ 6,412,621	\$ 7,432,357	\$ 8,616,828	\$ 9,023,266	\$ 6,688,244	\$ 6,690,613	\$ 5,015,485	\$ 5,610,429	
Total Uses of Water Funds	\$ 11,785,202	\$ 13,918,466	\$ 20,078,141	\$ 21,769,358	\$ 23,660,827	\$ 24,811,767	\$ 23,260,850	\$ 24,089,153	\$ 23,284,141	\$ 24,795,875	
plus: Revenue from Rate Increases ³	-	1,394,812	2,976,375	4,382,496	5,942,391	6,754,436	7,137,192	7,535,504	7,949,935	8,381,064	
Increase/Decrease to Reserves	\$ 4,673,020	\$ 4,256,790	\$ -	\$ -	\$ -	\$ -	\$ 2,280,007	\$ 2,239,712	\$ 3,855,961	\$ 3,205,461	
Net Revenue Req't. (Total Uses less Non-Rate Revenue)	\$ 10,506,128	\$ 12,635,931	\$ 18,799,741	\$ 20,538,153	\$ 22,437,316	\$ 23,595,754	\$ 22,052,171	\$ 22,851,873	\$ 22,018,732	\$ 23,476,782	
Total Rate Revenue After Rate Increases	\$ 15,179,148	\$ 16,892,721	\$ 18,799,741	\$ 20,538,153	\$ 22,437,316	\$ 23,595,754	\$ 24,332,178	\$ 25,091,585	\$ 25,874,694	\$ 26,682,243	
Projected Annual Rate Revenue Increase	0.00%	9.00%	9.00%	7.00%	7.00%	3.00%	1.00%	1.00%	1.00%	1.00%	
Cumulative Increase from Annual Revenue Increases	0.00%	9.00%	18.81%	27.13%	36.03%	40.11%	41.51%	42.92%	44.35%	45.80%	
Debt Coverage After Rate Increase⁴	4.45	4.22	5.12	6.63	6.84	6.84	6.68	6.67	6.66	6.66	
Target Debt Coverage	1.20	1.20	1.20	1.20	1.20	1.20	1.20	1.20	1.20	1.20	

1. Interest earnings for FY 2021/22 are per the City's budget projections. For all future years, interest earnings are calculated here based on historical LAIF returns and projected cash balances.

2. The FY 2021/22 operating expenses are per the City's budget projections. Inflationary factors are applied to these expenses to project costs in FY 2022/23 and beyond.

3. Revenue from rate increases are implemented on January 1, 2022, so the City will collect 6 months of the increased rate revenue for the first year of the adjustment. The rate increase for future years through 2026 will occur on January 1 annually.

4. Per the Installment Loan Agreement for the 2014 Revenue Bonds, the City is required to maintain a debt coverage ratio of 1.20 for these bond issues and all other parity debt. Connection fee revenue and interest earnings in that fund are figured into this calculation.

TABLE 2 : RESERVE FUND SUMMARY

SUMMARY OF CASH ACTIVITY	Budget	5-Year Rate Adoption Period					Projected			
	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	FY 2029/30	FY 2030/31
Total Beginning Cash¹	\$ 14,627,203									
Water Operations Fund (650)										
Beginning Reserve Balance ¹	\$ 2,958,793	\$ 2,946,301	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 4,143,152	\$ 4,349,635	\$ 4,567,164
Plus: Net Cash Flow (After Rate Increases)	4,673,020	4,256,790	-	-	-	-	2,280,007	2,239,712	3,855,961	3,205,461
Plus: Transfer of Debt Reserve Surplus	-	-	-	-	-	-	-	-	-	-
Plus: Transfer of Rate Stabilization Reserve Surplus	134,930	-	-	-	-	-	-	-	-	-
Less: Transfer Out to Water System Replacement Reserve	(4,820,442)	(3,946,171)	-	-	-	-	(1,393,775)	(2,033,229)	(3,638,432)	(2,976,264)
Less: Transfer Out to Rate Stabilization Fund	-	-	-	-	-	-	-	-	-	-
Ending Operating Reserve Balance	\$ 2,946,301	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 3,256,920	\$ 4,143,152	\$ 4,349,635	\$ 4,567,164	\$ 4,796,361
Target Ending Balance (90-days of O&M)²	\$ 2,946,301	\$ 3,256,920	\$ 3,416,380	\$ 3,584,250	\$ 3,761,000	\$ 3,947,125	\$ 4,143,152	\$ 4,349,635	\$ 4,567,164	\$ 4,796,361
Water System Replacement Fund (653)										
Beginning Reserve Balance ¹	\$ 8,513,872	\$ 8,288,597	\$ 7,246,771	\$ 3,763,100	\$ 2,785,359	\$ 1,809,794	\$ 834,340	\$ 1,250,817	\$ 2,306,010	\$ 4,966,775
Plus: Grant Proceeds	-	-	-	-	-	-	-	-	-	-
Plus: Transfer of Operating Reserve Surplus	4,820,442	3,946,171	-	-	-	-	1,393,775	2,033,229	3,638,432	2,976,264
Less: Existing Debt Service	(978,736)	(976,266)	(975,971)	(977,741)	(975,565)	(975,454)	(977,298)	(978,036)	(977,667)	(976,192)
(Replacement Fund Allocation of 59%) ³										
Less: Use of Reserves for Capital Projects	(4,066,982)	(4,011,731)	(2,507,700)	-	-	-	-	-	-	-
Ending System Replacement Reserve Bal.	\$ 8,288,597	\$ 7,246,771	\$ 3,763,100	\$ 2,785,359	\$ 1,809,794	\$ 834,340	\$ 1,250,817	\$ 2,306,010	\$ 4,966,775	\$ 6,966,847
Target Ending Balance (6% of Assets)^{2,4}	\$ 2,953,600	\$ 3,300,600	\$ 3,763,100	\$ 4,236,000	\$ 4,757,700	\$ 5,194,200	\$ 5,460,800	\$ 5,719,500	\$ 5,872,800	\$ 6,056,000
Rate Stabilization Fund (652)										
Beginning Reserve Balance ¹	\$ 3,154,538	\$ 3,035,830	\$ 3,083,492	\$ 3,131,903	\$ 3,181,074	\$ 3,231,017	\$ 3,281,744	\$ 3,333,267	\$ 3,385,599	\$ 3,438,753
Plus: Contributions to Rate Stabilization Fund	-	-	-	-	-	-	-	-	-	-
Plus: Interest Earnings ⁵	16,222	47,663	48,411	49,171	49,943	50,727	51,523	52,332	53,154	53,988
Less: Transfer of Surplus to Operating Reserve	(134,930)	-	-	-	-	-	-	-	-	-
Ending Rate Stabilization Balance	\$ 3,035,830	\$ 3,083,492	\$ 3,131,903	\$ 3,181,074	\$ 3,231,017	\$ 3,281,744	\$ 3,333,267	\$ 3,385,599	\$ 3,438,753	\$ 3,492,742
Target Ending Balance (20% of Estimated Revenue)²	\$ 3,035,830	\$ 3,099,582	\$ 3,164,673	\$ 3,231,131	\$ 3,298,985	\$ 3,368,264	\$ 3,438,997	\$ 3,511,216	\$ 3,584,952	\$ 3,660,236
Ending Balance - Excludes Debt Reserve	\$ 14,270,727	\$ 13,587,183	\$ 10,151,923	\$ 9,223,353	\$ 8,297,731	\$ 7,373,003	\$ 8,727,235	\$ 10,041,244	\$ 12,972,693	\$ 15,255,950
Minimum Target Ending Balance - Excludes Debt Reserve	\$ 8,935,730	\$ 9,657,102	\$ 10,344,153	\$ 11,051,382	\$ 11,817,685	\$ 12,509,589	\$ 13,042,949	\$ 13,580,351	\$ 14,024,916	\$ 14,512,597
Ending Surplus/(Deficit) Compared to Reserve Targets	\$ 5,334,997	\$ 3,930,081	\$ (192,230)	\$ (1,828,029)	\$ (3,519,954)	\$ (5,136,586)	\$ (4,315,714)	\$ (3,539,107)	\$ (1,052,223)	\$ 743,353
Days Cash on Hand for Unrestricted Funds⁶	483	412	293	252	216	182	205	224	274	306
City's Minimum DCOH (per City Fiscal Policies)	202	193	189	186	183	180	177	175	172	170

1. Total beginning cash is the sum of the projected cash balances in Funds 650, 651, 652, and 653 as of 07.01.21. Source file: *balance sheet.pdf*.

2. Reserve targets are set according to existing City policy.

3. Per email provided by Staff on 10.07.15, the debt service payment for the 2014 Water Revenue Bonds is split as follows: 41% to the Water Impact Fund (651) and 59% to the Water System Replacement Fund (653).

4. The Water System Replacement reserve target is set to 6% of net assets.

5. Interest earnings for FY 2021/22 are per the City's budget projections. For all future years, interest earnings are calculated here based on historical LAIF returns and projected cash balances per the California Treasurer's Office website Source: <https://www.treasurer.ca.gov/pmia-laif/historical/annual.asp>.

6. Days cash on hand represents the number of days cash the City has available to cover operating expenses and debt service payments.

TABLE 3 : RESERVE FUND SUMMARY, CONTINUED

SUMMARY OF CASH ACTIVITY, continued	Budget	5-Year Rate Adoption Period					Projected			
	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	FY 2029/30	FY 2030/31
Restricted Reserves:										
Impact Fund (651)										
Beginning Reserve Balance ¹	\$ 3,397,655	\$ 2,123,277	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Plus: Interest Earnings ⁵	64,003	33,335	-	-	-	-	-	-	-	-
Plus: Impact Fee Revenue ⁷	1,782,143	918,214	1,146,810	2,608,188	1,722,220	1,287,082	1,072,302	1,072,302	1,072,302	1,072,302
Less: Annual Operating Expenditures	(51,830)	(53,385)	(54,986)	(56,636)	(58,335)	(60,085)	(61,888)	(63,744)	(65,657)	(67,626)
Less: Debt Service (Impact Fund Allocation of 41%) ³	(680,139)	(678,422)	(678,217)	(679,447)	(677,935)	(677,858)	(679,139)	(679,652)	(679,396)	(678,371)
Less: Use of Reserves for Capital Projects	(2,388,555)	(2,343,019)	(413,607)	(1,872,105)	(985,950)	(549,139)	(331,275)	(328,906)	(327,250)	(326,305)
Ending Connection Fee Fund Balance	\$ 2,123,277	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Annual Interest Earnings Rate⁵	1.57%	1.57%	1.57%	1.57%	1.57%	1.57%	1.57%	1.57%	1.57%	1.57%

1. Total beginning cash is the sum of the projected cash balances in Funds 650, 651, 652, and 653 as of 07.01.21. Source file: *balance sheet.pdf*.

2. Reserve targets are set according to existing City policy.

3. Per email provided by Staff on 10.07.15, the debt service payment for the 2014 Water Revenue Bonds is split as follows: 41% to the Water Impact Fund (651) and 59% to the Water System Replacement Fund (653).

4. The Water System Replacement reserve target is set to 6% of net assets.

5. Interest earnings for FY 2021/22 are per the City's budget projections. For all future years, interest earnings are calculated here based on historical LAIF returns and projected cash balances per the California Treasurer's Office website Source: <https://www.treasurer.ca.gov/pmia-laif/historical/annual.asp>.

6. Days cash on hand represents the number of days cash the City has available to cover operating expenses and debt service payments.

7. Impact fee revenue projections are from the following file: *Budget.xlsx* and updated per City staff via email March 9, 2022.

CHART 1

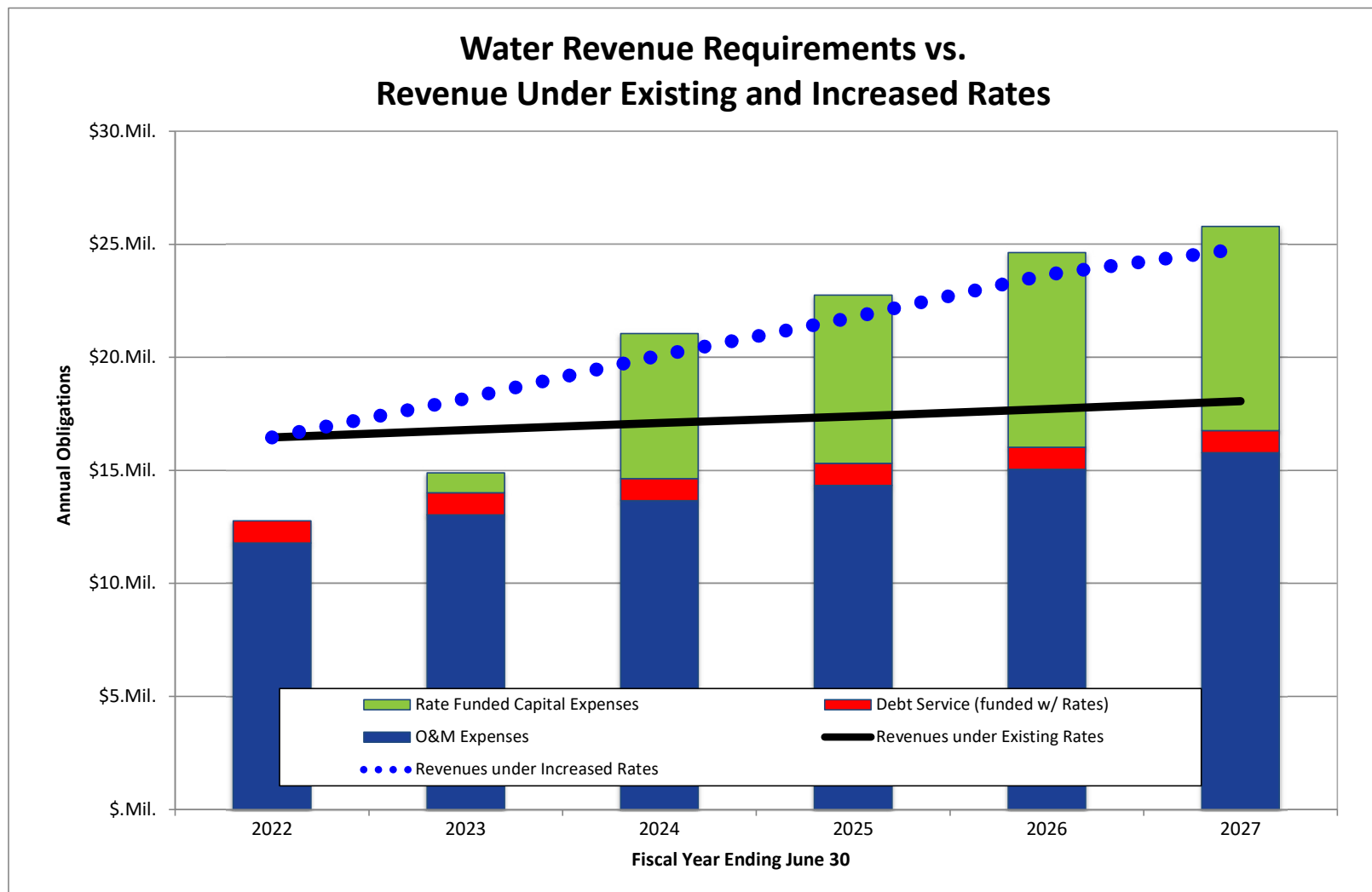


CHART 2

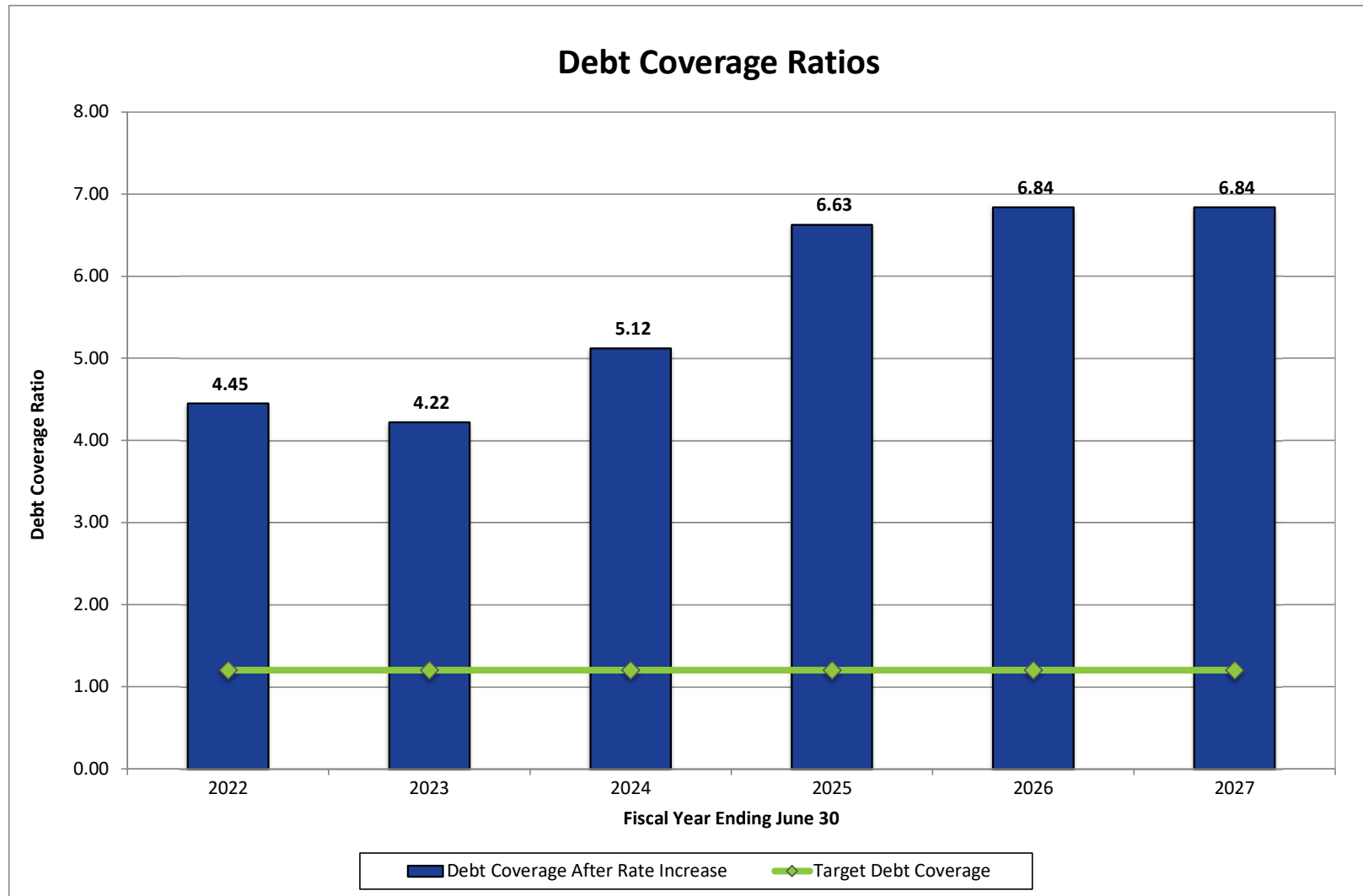
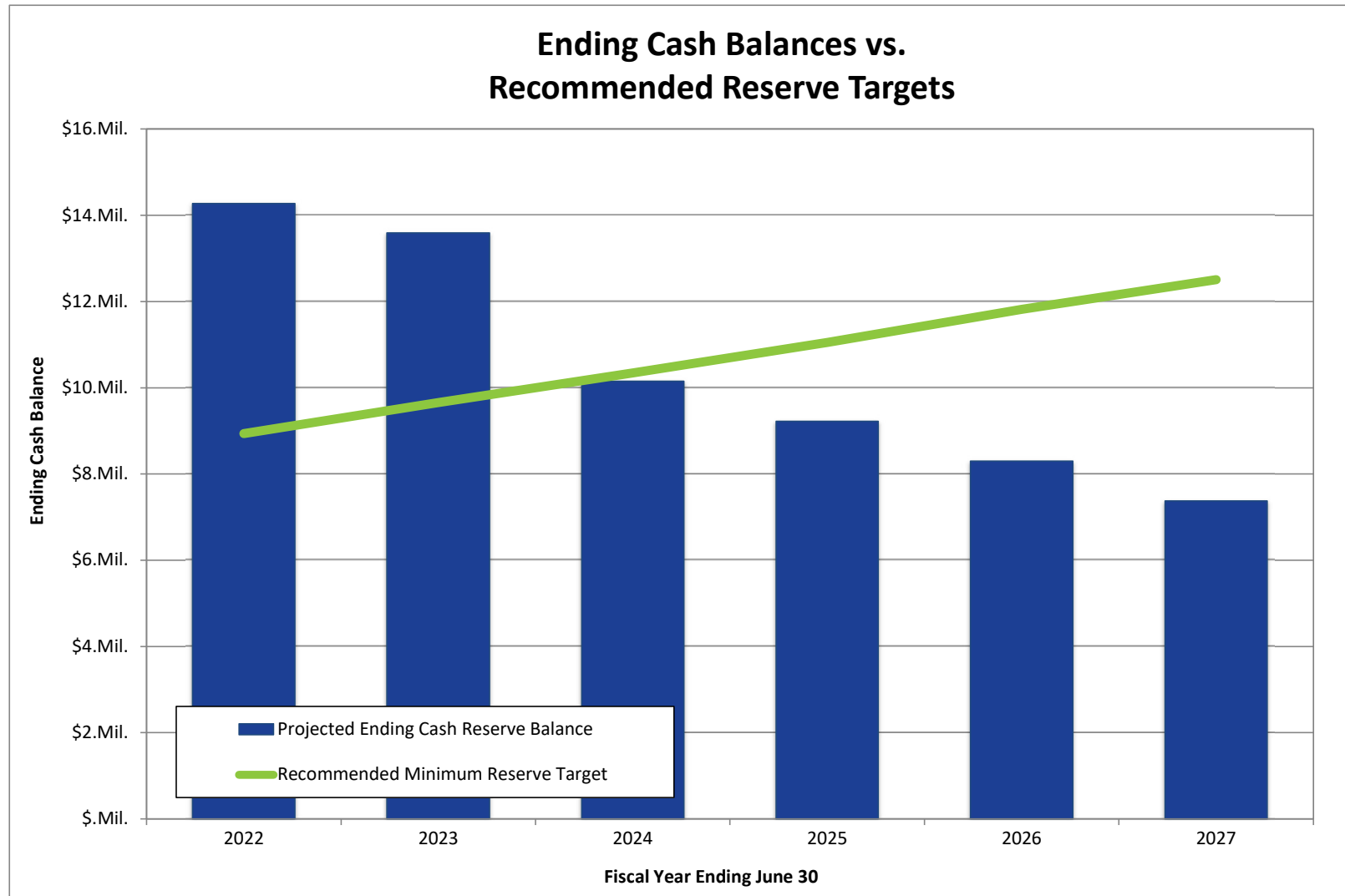


CHART 3



CITY OF MORGAN HILL
WATER RATE STUDY
Operating Revenue and Expenses

EXHIBIT 1

TABLE 4 : REVENUE FORECAST¹

WATER OPERATIONS	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Water Operations Fund (650)											
INTEREST INCOME ²	See FP	\$ 58,595	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
RENT & CONCESSIONS	6	54,097	54,097	54,097	54,097	54,097	54,097	54,097	54,097	54,097	54,097
WATER SALES	1	15,179,148	15,497,910	15,823,366	16,155,656	16,494,925	16,841,319	17,194,986	17,556,081	17,924,759	18,301,179
BOOSTER STATION CHARGES	6	147,088	147,088	147,088	147,088	147,088	147,088	147,088	147,088	147,088	147,088
UB COLLECTIONS	6	2,806	2,806	2,806	2,806	2,806	2,806	2,806	2,806	2,806	2,806
METER INSTALL & SERVICE	1	25,215	25,745	26,285	26,837	27,401	27,976	28,564	29,163	29,776	30,401
REIMBURSEMENT OF EXPENSES	6	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
MISC. SALES	6	5,253	5,253	5,253	5,253	5,253	5,253	5,253	5,253	5,253	5,253
ANNUAL BACKFLOW TESTING ADMINISTRATION	6	13,432	13,432	13,432	13,432	13,432	13,432	13,432	13,432	13,432	13,432
ANNUAL BACKFLOW INSPECTION	6	3,263	3,263	3,263	3,263	3,263	3,263	3,263	3,263	3,263	3,263
UTILITY ACCOUNT SET-UP	1	81,423	83,133	84,879	86,662	88,481	90,340	92,237	94,174	96,151	98,171
CONSTRUCTION BACKFLOW INSPECTION	6	2,101	2,101	2,101	2,101	2,101	2,101	2,101	2,101	2,101	2,101
UTILITY BILL DELINQ CHR	1	28,104	28,694	29,297	29,912	30,540	31,182	31,837	32,505	33,188	33,885
DELINQUENT BILL CHARGE	1	130,278	133,013	135,807	138,659	141,570	144,543	147,579	150,678	153,842	157,073
UTILITY SERVICE CALL	1	77,536	79,164	80,827	82,524	84,257	86,027	87,833	89,678	91,561	93,484
TRANSFER FROM-640 (SEWER OPS)	6	488,357	488,357	488,357	488,357	488,357	488,357	488,357	488,357	488,357	488,357
Water Impact Fund (651)											
INTEREST INCOME ²	See FP	64,003	-	-	-	-	-	-	-	-	-
DEVELOPMENT IMPACT FEES (AB1600)	6	1,782,143	918,214	1,146,810	2,608,188	1,722,220	1,287,082	1,072,302	1,072,302	1,072,302	1,072,302
Water Rate Stabilization Fund (652)											
INTEREST INCOME ²	See FP	16,222	-	-	-	-	-	-	-	-	-
Water System Replacement Fund (653)											
INTEREST INCOME ²	See FP	17,211	-	-	-	-	-	-	-	-	-
TOTAL: REVENUE		\$18,216,275	\$17,522,271	\$18,083,668	\$19,884,835	\$19,345,793	\$19,264,865	\$19,411,734	\$19,780,978	\$20,157,976	\$20,542,891

TABLE 5 : REVENUE SUMMARY, CONT.

WATER OPERATIONS	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Water Operations Fund (650)										
WATER RATE REVENUE	\$ 15,179,148	\$ 15,497,910	\$ 15,823,366	\$ 16,155,656	\$ 16,494,925	\$ 16,841,319	\$ 17,194,986	\$ 17,556,081	\$ 17,924,759	\$ 18,301,179
INTEREST INCOME ²	58,595	-	-	-	-	-	-	-	-	-
OTHER REVENUE	1,098,954	1,106,147	1,113,492	1,120,991	1,128,647	1,136,465	1,144,446	1,152,595	1,160,915	1,169,410
Water Impact Fund (651)										
IMPACT FEE REVENUE	1,782,143	918,214	1,146,810	2,608,188	1,722,220	1,287,082	1,072,302	1,072,302	1,072,302	1,072,302
INTEREST INCOME ²	64,003	-	-	-	-	-	-	-	-	-
Water Rate Stabilization Fund (652)										
RATE STABILIZATION REVENUE	-	-	-	-	-	-	-	-	-	-
INTEREST INCOME ²	16,222	-	-	-	-	-	-	-	-	-
Water System Replacement Fund (653)										
SYSTEM REPLACEMENT REVENUE	-	-	-	-	-	-	-	-	-	-
INTEREST INCOME ²	17,211	-	-	-	-	-	-	-	-	-
TOTAL: REVENUE	\$18,216,275	\$17,522,271	\$18,083,668	\$19,884,835	\$19,345,793	\$19,264,865	\$19,411,734	\$19,780,978	\$20,157,976	\$20,542,891

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

Impact fee revenue updated per City staff via email March 9, 2022.

2. Interest earnings beyond 2021/22 and internal transfers are calculated in the Financial Plan and Reserve Fund Summary of this model.

CITY OF MORGAN HILL
WATER RATE STUDY
Operating Revenue and Expenses

EXHIBIT 1

TABLE 6 : OPERATING EXPENSE FORECAST¹

WATER OPERATIONS FUND - Operations	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
SALARIES											
SALARIES - GENERAL*	4	\$ 1,862,956	\$ 2,275,547	\$ 2,389,325	\$ 2,508,791	\$ 2,634,230	\$ 2,765,942	\$ 2,904,239	\$ 3,049,451	\$ 3,201,923	\$ 3,362,020
SALARIES - PART-TIME TEMP	4	13,792	14,482	15,206	15,966	16,764	17,602	18,483	19,407	20,377	21,396
EARNED LEAVE LIABILITY	4	44,788	47,027	49,378	51,847	54,440	57,162	60,020	63,021	66,172	69,480
OVERTIME - GENERAL	4	77,780	81,669	85,752	90,040	94,542	99,269	104,233	109,444	114,916	120,662
RETIREMENT - GENERAL	4	396,929	416,775	437,614	459,495	482,470	506,593	531,923	558,519	586,445	615,767
DEFERRED COMPENSATION	4	24,860	26,103	27,408	28,779	30,217	31,728	33,315	34,981	36,730	38,566
GROUP INSURANCE	4	330,233	346,745	364,082	382,286	401,400	421,470	442,544	464,671	487,905	512,300
MEDICARE	4	26,706	28,041	29,443	30,916	32,461	34,084	35,789	37,578	39,457	41,430
MEDICARE PTT AND OT	4	1,328	1,394	1,464	1,537	1,614	1,695	1,779	1,868	1,962	2,060
INCOME PROTECTION INS	4	11,926	12,522	13,148	13,806	14,496	15,221	15,982	16,781	17,620	18,501
WORKERS COMP	4	45,762	48,050	50,453	52,975	55,624	58,405	61,325	64,392	67,611	70,992
WORKERS COMP PTT AND OT	4	2,289	2,404	2,524	2,650	2,783	2,922	3,068	3,221	3,382	3,551
BENEFITS	4	7,097	7,452	7,824	8,216	8,626	9,058	9,511	9,986	10,486	11,010
UNIFORM	4	3,500	3,675	3,859	4,052	4,254	4,467	4,690	4,925	5,171	5,430
SUPPLIES											
TAXES	6	535	535	535	535	535	535	535	535	535	535
ELECTRIC	5	1,197,082	1,436,499	1,508,324	1,583,740	1,662,927	1,746,073	1,833,377	1,925,046	2,021,298	2,122,363
GROUNDWATER PRODUCTION	3	3,508,289	3,739,836	3,986,666	4,249,785	4,530,271	4,829,269	5,148,001	5,487,769	5,849,962	6,236,059
WATER/SEWER	2	12,731	13,113	13,506	13,911	14,329	14,758	15,201	15,657	16,127	16,611
TELEPHONE	2	24,110	24,833	25,578	26,346	27,136	27,950	28,789	29,652	30,542	31,458
GASOLINE & OIL	2	36,771	37,874	39,010	40,181	41,386	42,628	43,906	45,224	46,580	47,978
CONTRACT SERVICES	2	346,470	356,864	367,570	378,597	389,955	401,654	413,703	426,114	438,898	452,065
BANK CARD SERVICE FEES	2	580	597	615	634	653	672	693	713	735	757
RENTALS - OUTSIDE	2	2,630	2,709	2,790	2,874	2,960	3,049	3,140	3,235	3,332	3,432
STATIONERY & OFFICE SUPPLIES	2	3,250	3,348	3,448	3,551	3,658	3,768	3,881	3,997	4,117	4,241
COMPUTER HARDWARE-NON CAPITAL	2	5,780	5,953	6,132	6,316	6,505	6,701	6,902	7,109	7,322	7,542
COMPUTER SOFTWARE-NON CAPITAL	2	2,630	2,709	2,790	2,874	2,960	3,049	3,140	3,235	3,332	3,432
OTHER SUPPLIES	2	225,710	232,481	239,456	246,639	254,039	261,660	269,510	277,595	285,923	294,500
ADVERTISING	2	3,250	3,348	3,448	3,551	3,658	3,768	3,881	3,997	4,117	4,241
PHOTOCOPYING	2	810	834	859	885	912	939	967	996	1,026	1,057
POSTAGE & FREIGHT	2	2,000	2,060	2,122	2,185	2,251	2,319	2,388	2,460	2,534	2,610
PRINTING	2	2,360	2,431	2,504	2,579	2,656	2,736	2,818	2,903	2,990	3,079
AUTO MILEAGE	2	290	299	308	317	326	336	346	357	367	378
CHEMICALS	2	31,827	32,782	33,765	34,778	35,822	36,896	38,003	39,143	40,317	41,527
WATER/SEWER MAINTENANCE SVS	2	53,045	54,636	56,275	57,964	59,703	61,494	63,339	65,239	67,196	69,212
SMALL TOOLS	2	11,820	12,175	12,540	12,916	13,304	13,703	14,114	14,537	14,973	15,422
OTHER EXPENSE	2	61,800	63,654	65,564	67,531	69,556	71,643	73,792	76,006	78,286	80,635
TRAINING & EDUCATION	2	12,600	12,978	13,367	13,768	14,181	14,607	15,045	15,496	15,961	16,440
CONFERENCE & MEETINGS	2	6,000	6,180	6,365	6,556	6,753	6,956	7,164	7,379	7,601	7,829
MEMBERSHIP & DUES	2	12,995	13,385	13,786	14,200	14,626	15,065	15,517	15,982	16,462	16,956
SUBSCRIPTION & PUBLICATIONS	2	225	232	239	246	253	261	269	277	285	294
MAINT - BLDGS/IMPROVEMENTS	2	43,290	44,589	45,926	47,304	48,723	50,185	51,691	53,241	54,838	56,484
MAINT - MACHINE/EQUIPMENT	2	32,460	33,434	34,437	35,470	36,534	37,630	38,759	39,922	41,119	42,353
MAINT - AUTO/TRUCKS	2	30,300	31,209	32,145	33,110	34,103	35,126	36,180	37,265	38,383	39,535
SUB-TOTAL: WATER OPERATIONS FUND - Operations		8,521,586	9,483,462	9,997,552	10,540,699	11,114,598	11,721,046	12,361,949	13,039,325	13,755,314	14,512,186

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

* Some salary costs are adjusted per City email on February 2, 2022.

TABLE 7 : OPERATING EXPENSE FORECAST, CONT.¹

WATER OPERATIONS FUND - Operations, cont.	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
CAPITAL											
COMPUTER EQUIPMENT	2	105,000	108,150	111,395	114,736	118,178	121,724	125,375	129,137	133,011	137,001
METERS	2	450,000	463,500	477,405	491,727	506,479	521,673	537,324	553,443	570,047	587,148
INTERNAL SERVICES											
GENERAL LIABILITY INSURANCE	2	146,604	151,002	155,532	160,198	165,004	169,954	175,053	180,304	185,714	191,285
BUILDING MAINT - CURRENT SERVICES	2	79,674	82,064	84,526	87,062	89,674	92,364	95,135	97,989	100,929	103,957
BUILDING MAINT - FUTURE REPLACEMENT	2	14,039	14,460	14,894	15,341	15,801	16,275	16,763	17,266	17,784	18,317
FLEET REPLACEMENT	2	305,985	315,165	324,619	334,358	344,389	354,720	365,362	376,323	387,613	399,241
GIS	2	27,969	28,808	29,673	30,563	31,480	32,424	33,397	34,399	35,431	36,493
INFO SYSTEM SERVICES	2	162,903	167,790	172,824	178,009	183,349	188,850	194,515	200,350	206,361	212,552
GF ADMIN	2	340,207	350,413	360,925	371,753	382,906	394,393	406,225	418,411	430,964	443,893
TRANSFERS											
TRANSFER OUT-010 (GENERAL FUND)	2	357,159	367,874	378,910	390,277	401,986	414,045	426,467	439,261	452,439	466,012
TRANSFER OUT-232 (ENVIRONMENTAL PROGRAMS)	2	108,269	111,517	114,863	118,308	121,858	125,513	129,279	133,157	137,152	141,266
TRANSFER OUT - EMPLOYEE BENEFITS FUND	4	27,062	28,415	29,836	31,328	32,894	34,539	36,266	38,079	39,983	41,982
SUB-TOTAL: WATER OPERATIONS FUND - Operations		2,124,871	2,189,159	2,255,402	2,323,661	2,393,997	2,466,475	2,541,160	2,618,120	2,697,425	2,779,148
TOTAL: WATER OPERATIONS FUND, Operations		10,646,458	11,672,621	12,252,954	12,864,359	13,508,595	14,187,521	14,903,109	15,657,445	16,452,740	17,291,333

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

TABLE 8 : OPERATING EXPENSE FORECAST, CONT.¹

WATER OPERATIONS FUND - Utility Billing	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
SALARIES											
SALARIES - GENERAL	4	\$ 418,147	\$ 439,054	\$ 461,007	\$ 484,057	\$ 508,260	\$ 533,673	\$ 560,357	\$ 588,375	\$ 617,794	\$ 648,683
SALARIES - PART-TIME TEMP	4	-	-	-	-	-	-	-	-	-	-
EARNED LEAVE LIABILITY	4	7,893	8,288	8,702	9,137	9,594	10,074	10,578	11,106	11,662	12,245
RETIREMENT - GENERAL	4	72,607	76,237	80,049	84,052	88,254	92,667	97,300	102,165	107,274	112,637
DEFERRED COMPENSATION	4	5,436	5,708	5,993	6,293	6,607	6,938	7,285	7,649	8,031	8,433
GROUP INSURANCE	4	58,432	61,354	64,421	67,642	71,024	74,576	78,304	82,220	86,331	90,647
MEDICARE	4	4,830	5,072	5,325	5,591	5,871	6,164	6,473	6,796	7,136	7,493
MEDICARE PTT AND OT	4	-	-	-	-	-	-	-	-	-	-
INCOME PROTECTION INS	4	2,544	2,671	2,805	2,945	3,092	3,247	3,409	3,580	3,759	3,947
WORKERS COMP	4	8,392	8,812	9,252	9,715	10,201	10,711	11,246	11,808	12,399	13,019
WORKERS COMP PTT AND OT	4	-	-	-	-	-	-	-	-	-	-
BENEFITS	4	2,694	2,829	2,970	3,119	3,275	3,438	3,610	3,791	3,980	4,179
SUPPLIES											
TELEPHONE	2	1,600	1,648	1,697	1,748	1,801	1,855	1,910	1,968	2,027	2,088
CONTRACT SERVICES	2	67,272	69,290	71,369	73,510	75,715	77,987	80,326	82,736	85,218	87,775
BANK CARD SERVICE FEES	2	120,000	123,600	127,308	131,127	135,061	139,113	143,286	147,585	152,012	156,573
STATIONERY & OFFICE SUPPLIES	2	3,200	3,296	3,395	3,497	3,602	3,710	3,821	3,936	4,054	4,175
COMPUTER HARDWARE-NON CAPITAL	2	-	-	-	-	-	-	-	-	-	-
OTHER SUPPLIES	2	500	515	530	546	563	580	597	615	633	652
ADVERTISING	2	500	515	530	546	563	580	597	615	633	652
POSTAGE & FREIGHT	2	48,500	49,955	51,454	52,997	54,587	56,225	57,912	59,649	61,438	63,281
PRINTING	2	1,000	1,030	1,061	1,093	1,126	1,159	1,194	1,230	1,267	1,305
TRAINING & EDUCATION	2	1,500	1,545	1,591	1,639	1,688	1,739	1,791	1,845	1,900	1,957
INTERNAL SERVICES											
GENERAL LIABILITY INSURANCE	2	20,037	20,638	21,257	21,895	22,552	23,228	23,925	24,643	25,382	26,144
BUILDING MAINT - CURRENT SERVICES	2	33,426	34,429	35,462	36,526	37,622	38,750	39,913	41,110	42,343	43,614
BUILDING MAINT - FUTURE REPLACEMENT	2	1,883	1,939	1,998	2,058	2,119	2,183	2,248	2,316	2,385	2,457
INFO SYSTEM SERVICES	2	33,223	34,220	35,246	36,304	37,393	38,515	39,670	40,860	42,086	43,349
GF ADMIN	2	38,846	40,012	41,212	42,449	43,722	45,034	46,385	47,776	49,210	50,686
TRANSFERS											
TRANSFER OUT - EMPLOYEE BENEFITS FUND	4	5,339	5,606	5,886	6,181	6,490	6,814	7,155	7,513	7,888	8,283
TOTAL: WATER OPERATIONS FUND - Utility Billing		957,802	998,262	1,040,523	1,084,667	1,130,781	1,178,958	1,229,293	1,281,886	1,336,843	1,394,273

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

TABLE 9 : OPERATING EXPENSE FORECAST, CONT.¹

WATER OPERATIONS FUND - Water Conservation	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
SALARIES											
SALARIES - GENERAL*	4	\$ 23,007	\$ 140,908	\$ 147,954	\$ 155,352	\$ 163,119	\$ 171,275	\$ 179,839	\$ 188,831	\$ 198,272	\$ 208,186
SALARIES - PART-TIME TEMP	4	19,680	20,664	21,697	22,782	23,921	25,117	26,373	27,692	29,076	30,530
EARNED LEAVE LIABILITY	4	1,701	1,786	1,876	1,969	2,068	2,171	2,280	2,394	2,513	2,639
RETIREMENT - GENERAL*	4	4,977	49,669	52,153	54,760	57,498	60,373	63,392	66,562	69,890	73,384
DEFERRED COMPENSATION	4	452	475	498	523	549	577	606	636	668	701
GROUP INSURANCE*	4	2,703	5,943	6,240	6,552	6,880	7,224	7,585	7,964	8,363	8,781
MEDICARE*	4	333	2,032	2,134	2,240	2,352	2,470	2,593	2,723	2,859	3,002
MEDICARE PTT AND OT	4	285	300	315	330	347	364	382	402	422	443
INCOME PROTECTION INS	4	151	159	166	175	184	193	202	212	223	234
WORKERS COMP*	4	575	3,523	3,699	3,884	4,078	4,282	4,496	4,720	4,957	5,204
WORKERS COMP PTT AND OT	4	492	517	542	570	598	628	659	692	727	763
BENEFITS*	4	458	903	949	996	1,046	1,098	1,153	1,211	1,271	1,335
SUPPLIES											
CONTRACT SERVICES	2	10,506	10,821	11,146	11,480	11,825	12,179	12,545	12,921	13,309	13,708
STATIONERY & OFFICE SUPPLIES	2	-	-	-	-	-	-	-	-	-	-
OTHER SUPPLIES	2	2,227	2,294	2,363	2,434	2,507	2,582	2,659	2,739	2,821	2,906
POSTAGE & FREIGHT	2	1,114	1,147	1,182	1,217	1,254	1,291	1,330	1,370	1,411	1,454
PRINTING	2	8,930	9,198	9,474	9,758	10,051	10,352	10,663	10,983	11,312	11,652
OTHER EXPENSE	2	52,531	54,107	55,730	57,402	59,124	60,898	62,725	64,607	66,545	68,541
INTERNAL SERVICES											
GENERAL LIABILITY INSURANCE	2	831	856	882	908	935	963	992	1,022	1,053	1,084
BUILDING MAINT - CURRENT SERVICES	2	1,424	1,467	1,511	1,556	1,603	1,651	1,701	1,752	1,804	1,859
BUILDING MAINT - FUTURE REPLACEMENT	2	112	115	119	122	126	130	133	137	142	146
INFO SYSTEM SERVICES	2	1,377	1,418	1,460	1,504	1,549	1,596	1,644	1,693	1,744	1,796
GF ADMIN	2	23,250	23,948	24,666	25,406	26,169	26,954	27,762	28,595	29,453	30,337
TRANSFERS											
TRANSFER OUT - EMPLOYEE BENEFITS FUND	4	276	290	304	320	335	352	370	388	408	428
TOTAL: WATER OPERATIONS FUND - Water Conservation		\$ 157,393	\$ 332,540	\$ 347,059	\$ 362,242	\$ 378,118	\$ 394,721	\$ 412,085	\$ 430,246	\$ 449,242	\$ 469,112
TOTAL: WATER OPERATIONS FUND (650) EXPENSES		\$11,761,652	\$13,003,423	\$13,640,536	\$14,311,268	\$15,017,494	\$15,761,200	\$16,544,487	\$17,369,577	\$18,238,824	\$19,154,718

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

* Some salary costs are adjusted per City email on February 2, 2022.

TABLE 10 : OPERATING EXPENSE FORECAST, CONT.¹

WATER IMPACT FUND	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
INTERNAL SERVICES											
GF ADMIN	2	19,130	19,704	20,295	20,904	21,531	22,177	22,842	23,528	24,233	24,960
TRANSFERS											
TRANSFER OUT-010 (GENERAL FUND)	2	25,000	25,750	26,523	27,318	28,138	28,982	29,851	30,747	31,669	32,619
TRANSFER OUT-207 (GENL PLAN UPDATE)	2	7,700	7,931	8,169	8,414	8,666	8,926	9,194	9,470	9,754	10,047
PROJECTS											
TOTAL: WATER IMPACT FUND (651) EXPENSES		\$ 51,830	\$ 53,385	\$ 54,986	\$ 56,636	\$ 58,335	\$ 60,085	\$ 61,888	\$ 63,744	\$ 65,657	\$ 67,626

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

TABLE 11 : OPERATING EXPENSE FORECAST, CONT.¹

WATER RATE STABILIZATION FUND	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
INTERNAL SERVICES											
GF ADMIN	2	371	383	394	406	418	431	443	457	470	485
TOTAL: WATER RATE STABILIZATION FUND (652) EXPENSES		\$ 371	\$ 383	\$ 394	\$ 406	\$ 418	\$ 431	\$ 443	\$ 457	\$ 470	\$ 485

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

TABLE 12 : OPERATING EXPENSE FORECAST, CONT.¹

WATER SYSTEM REPLACEMENT FUND	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
INTERNAL SERVICES											
GF ADMIN	2	23,178	23,874	24,590	25,328	26,088	26,870	27,676	28,507	29,362	30,243
TOTAL: WATER SYSTEM REPLACEMENT FUND (653) EXPENSES		\$ 23,178	\$ 23,874	\$ 24,590	\$ 25,328	\$ 26,088	\$ 26,870	\$ 27,676	\$ 28,507	\$ 29,362	\$ 30,243
Grand Total: Operating Expenses		\$11,837,032	\$13,081,064	\$13,720,506	\$14,393,637	\$15,102,335	\$15,848,586	\$16,634,494	\$17,462,285	\$18,334,313	\$19,253,072
Grand Total: Operating Expenses (Exc. Impact Fund Expenses)		\$11,785,202	\$13,027,679	\$13,665,520	\$14,337,001	\$15,043,999	\$15,788,501	\$16,572,607	\$17,398,541	\$18,268,656	\$19,185,446

1. Data source for the FY 2020/21-2021/22 budget is from the following file: *Budget.xlsx*. Inflationary factors are applied to project revenue and expenses in all future years.

CITY OF MORGAN HILL
WATER RATE STUDY
Operating Revenue and Expenses

EXHIBIT 1

Excluded from Analysis:³

Revenues:	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Water System Replacement Fund											
TRANSFER FROM-650 (WATER OPS)	6	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenue Excluded from Analysis:		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Expenses:	Basis	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Water Operations Fund											
Operations											
TRANSFERS											
TRANSFER OUT-653 (WATER REPLACE)	6	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000	\$ 4,350,000
TRANSFER OUT-652 (WATER RATE STABILIZATION)	6	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000
Utility Billing											
TRANSFERS											
TRANSFER OUT-BOND/DEBT	6	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420
Water Impact Fund											
PROJECTS											
CONSTRUCTION ⁴	2	1,360,772	1,401,595	1,443,643	1,486,952	1,531,561	1,577,508	1,624,833	1,673,578	1,723,785	1,775,499
TRANSFERS											
TRANSFER OUT-653 (WATER REPLACE)	6	680,139									
Water System Replacement Fund											
DEBT											
PRINCIPAL	6	1,045,000	1,045,000	1,045,000	1,045,000	1,045,000	1,045,000	1,045,000	1,045,000	1,045,000	1,045,000
INTEREST	6	613,875	613,875	613,875	613,875	613,875	613,875	613,875	613,875	613,875	613,875
ISSUANCE COST	6	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
PROJECTS											
CONSTRUCTION ⁴	6	3,383,141	3,383,141	3,383,141	3,383,141	3,383,141	3,383,141	3,383,141	3,383,141	3,383,141	3,383,141
Total Expenses Excluded from Analysis:		\$ 11,564,347	\$ 10,925,031	\$ 10,967,079	\$ 11,010,388	\$ 11,054,997	\$ 11,100,944	\$ 11,148,269	\$ 11,197,014	\$ 11,247,221	\$ 11,298,935

3. The following revenues and expenses have been excluded from this analysis since they do not represent actual cash expenses or are handled in the model elsewhere (i.e., Exhibit 3 (Debt))

4. Construction expenses are excluded from this analysis and are handled in Exhibit 2 (CIP).

TABLE 13 : FORECASTING ASSUMPTIONS

INFLATION FACTORS		2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	Customer Growth ⁵	2.10%	2.10%	2.10%	2.10%	2.10%	2.10%	2.10%	2.10%	2.10%	2.10%
2	General Cost Inflation	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
3	Ground Water Production Inflation	6.60%	6.60%	6.60%	6.60%	6.60%	6.60%	6.60%	6.60%	6.60%	6.60%
4	Labor Cost Inflation ⁷	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
5	Energy Cost Inflation ⁷	5.00%	20.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
6	No Escalation	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

5. Customer growth is based on the historical population growth.

6. Ground water projection cost estimated from average annual increase per City staff from email on February 2, 2022.

7. Labor and energy cost inflation is set to 5% per City Staff.

Per City, energy costs escalated 20% during 2022. Using a one-time escalation then back to assumed 5% in 2023/24.

TABLE 14 : CAPITAL PROJECT FUNDING SUMMARY

CAPITAL FUNDING FORECAST	Budget	5-Year Rate Adoption Period					Projected			
Funding Sources:	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	FY 2029/30	FY 2030/31
Use of Impact Fee Reserves ¹	\$ 2,388,555	\$ 2,343,019	\$ 413,607	\$ 1,872,105	\$ 985,950	\$ 549,139	\$ 331,275	\$ 328,906	\$ 327,250	\$ 326,305
Use of Capital Rehabilitation & Replacement Reserve	4,066,982	4,011,731	2,507,700	-	-	-	-	-	-	-
Rate Revenue	-	890,787	6,412,621	7,432,357	8,616,828	9,023,266	6,688,244	6,690,613	5,015,485	5,610,429
Total Sources of Capital Funds	\$ 6,455,537	\$ 7,245,537	\$ 9,333,928	\$ 9,304,462	\$ 9,602,777	\$ 9,572,404	\$ 7,019,518	\$ 7,019,518	\$ 5,342,734	\$ 5,936,734
Uses of Capital Funds:										
Total Project Costs	\$ 6,455,537	\$ 7,245,537	\$ 9,408,037	\$ 9,826,114	\$10,908,864	\$ 9,712,364	\$ 7,019,518	\$ 7,019,518	\$ 5,342,734	\$ 5,936,734
Capital Funding Surplus (Deficiency)	\$ -	\$ -	\$ (74,109)	\$ (521,652)	\$ (1,306,087)	\$ (139,960)	\$ -	\$ -	\$ -	\$ -

1. The use of the impact fee reserves uses all available funds annually to contribute to future growth projects.

CITY OF MORGAN HILL
WATER RATE STUDY
Capital Improvement Plan Expenditures

EXHIBIT 2

TABLE 15 : CAPITAL IMPROVEMENT PROGRAM COSTS *(in Future-Year Dollars)*

Capital Improvement Program Projects²	Fund	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<u>Pipeline Capacity Improvements</u>											
<i>Boy's Ranch Pressure Zone</i>											
BR-P1 Cochran Rd. to Half Rd.	651	-	-	-	-	-	-	-	-	142,987	142,987
BR-P2 Half Rd. to approx. 1,700' n/o Half Rd.	651	-	-	-	-	-	-	-	-	151,924	151,924
BR-P3 Mission View Dr. to Peet Rd.	651	-	-	-	-	-	-	-	-	310,485	310,485
BR-P4 Between Cochran Rd. and 2,100' nw/o Cochran Rd.	653	67,025	67,025	67,025	-	-	-	-	-	-	-
BR-P5 Half Rd. to 2,100' nw/o Half Rd.	651	-	-	-	-	-	-	-	-	206,990	206,990
BR-P6 Serene Dr. to Conduit Rd.	651	-	-	-	-	-	-	-	-	162,635	162,635
<i>Nob Hill Pressure Zone</i>											
NH-P1 Del Monte Ave. to Monterey Rd.	653	122,770	122,770	122,770	-	-	-	-	-	-	-
NH-P2 Butterfield Blvd. to Railroad Ave.	653	-	-	-	65,415	65,415	65,415	65,415	65,415	-	-
NH-P3 San Pedro Ave. to approx. 600' n/o Mast St.	651	-	-	-	41,628	41,628	41,628	41,628	41,628	-	-
NH-P4 Approx. 600' n/o Mast St. to Mast St.	651	-	-	-	71,362	71,362	71,362	71,362	71,362	-	-
NH-P5 1,100' ne/o Murphy Ave. to Hill Rd.	651	-	-	-	-	-	-	-	-	-	-
NH-P6 San Pedro Ave. to Tennant Ave.	651	-	-	-	-	-	-	-	-	-	-
NH-P7 Hill Rd. to Condit Rd.	651	-	-	-	-	-	-	-	-	-	-
NH-P8 John Wilson Wat to E Middle Ave.	651	-	-	-	-	-	-	-	-	-	-
NH-P9 Monterey Rd. to Olive Ave.	651	-	-	-	-	-	-	-	-	-	-
<i>Holiday Pressure Zone</i>											
HL-P1 Flaming Oak Ln. to Proposed E Dunne Tank	651/653	109,026	109,026	109,026	-	-	-	-	-	-	-
HL-P2 Proposed E Dunne Tank to Flaming Oak Ln.	651/653	90,353	90,353	90,353	-	-	-	-	-	-	-
HL-P3 Proposed E Dunne Tank to Lori Ln.	651	-	-	-	241,488	241,488	241,488	241,488	241,488	-	-
HL-P4 Lori Ln. to 650' nw/o Lori Ln.	651	-	-	-	226,703	226,703	226,703	226,703	226,703	-	-
<u>Storage Reservoir Capacity Improvements</u>											
BR-T1 Replace Boy's Ranch 0.55 MG Tank with 1.20 MG Tank	651/653	-	-	-	-	-	-	-	-	888,861	888,861
GA-T1 Replace Glen Ayre 0.10 MG Tank with 0.25 MG Tank	651/653	-	-	-	231,474	231,474	231,474	231,474	231,474	-	-
ED-T1 Existing Edmundson Tank Site	651	-	-	-	-	-	-	-	-	833,307	833,307
LI-T1 Existing Llagas Tank Site	651/653	-	-	-	185,179	185,179	185,179	185,179	185,179	-	-
JO-T1 Existing Jackson Tank Sity	653	-	-	-	185,179	185,179	185,179	185,179	185,179	-	-
WD-T1 Replace Woodland 0.03 MG Tank with 0.25 MG Tank	651/653	-	-	-	231,474	231,474	231,474	231,474	231,474	-	-
HL-T1 Dunne Ave. approx. 500' ne/o Flaming Oak Ln.	651/653	1,311,688	1,311,688	1,311,688	-	-	-	-	-	-	-
<u>Groundwater Well Capacity Improvements</u>											
BR-W1 Burnett Ave. Approx. 6,000' ne/o Monterey Ave.	651	-	-	-	1,008,008	1,008,008	1,008,008	1,008,008	1,008,008	-	-
BR-W2 Burnett Ave. Approx. 5,000' ne/o Monterey Ave.	651	-	-	-	-	-	-	-	-	-	-
NH-W1* Butterfield Blvd. 400' E of Railroad Ave. and Fisher Ave.	653	-	-	-	1,680,013	1,680,013	1,680,013	-	-	-	-
NH-W2 Butterfield Blvd. and Tennant Ave.	651/653	1,680,013	1,680,013	1,680,013	-	-	-	-	-	-	-
NH-W3 Well Site to determined at later date	651	-	-	-	1,008,008	1,008,008	1,008,008	1,008,008	1,008,008	-	-
NH-W4 Well Site to determined at later date	651	-	-	-	-	-	-	-	-	1,008,008	1,008,008

CITY OF MORGAN HILL
WATER RATE STUDY
Capital Improvement Plan Expenditures

EXHIBIT 2

TABLE 16 : CAPITAL IMPROVEMENT PROGRAM COSTS *(in Future-Year Dollars)*

Capital Improvement Program Projects ²		Fund	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<u>Pump Station Capacity Improvements</u>												
NH-PS1	Dunne Ave. and Magnolia Way	651/653	\$ 933,860	\$ 933,860	\$ 933,860	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
BR-PS1	Current Condit Valve Site	651/653	33,333	33,333	33,333	-	-	-	-	-	-	-
LI-PS1	Llagas Road and Carriage Drive	651/653	-	-	-	109,200	109,200	109,200	109,200	109,200	-	-
HL-PS1	Dunne Ave. approx. 500' ne/o Flaming Oak Ln.	651/653	-	-	-	479,721	479,721	479,721	479,721	479,721	-	-
<u>Pressure Reducing Valve Capacity Improvements</u>												
HL-PRV1	Thomas Gr. Approx. 1,100' w/o Gnarled Oak Ln.	651/653	-	-	-	20,376	20,376	20,376	20,376	20,376	-	-
<u>Known Pipeline Renewal and Replacement</u>												
RP-1	Holiday Lake - Shady Ln.	653	292,925	292,925	292,925	-	-	-	-	-	-	-
RP-2	Jackson Oaks - Hill Top Ct.	653	71,077	71,077	71,077	-	-	-	-	-	-	-
RP-3	Jackson Oaks - Oak View Ct.	653	90,462	90,462	90,462	-	-	-	-	-	-	-
RP-4	Holiday Lake - Holiday Tank Site	653	103,385	103,385	103,385	-	-	-	-	-	-	-
RP-5	Holiday Lake - Manzanita Dr.	653	189,540	189,540	189,540	-	-	-	-	-	-	-
RP-6	Holiday Lake - Raccoon Ct.	653	195,284	195,284	195,284	-	-	-	-	-	-	-
RP-7	Nob Hill - First St.	653	68,924	68,924	68,924	-	-	-	-	-	-	-
RP-8	Hydropneumatic Zone - Oak Canyon Dr.	653	77,539	77,539	77,539	-	-	-	-	-	-	-
<u>Recommended Annual Pipeline Condition Renewal and Replacement (10-year)</u>												
RR 22-24*	0.5% System Pipeline Renewal and Replacement	653	-	-	-	1,012,833	1,012,833	1,012,833	-	-	-	-
RR 25	0.5% System Pipeline Renewal and Replacement	653	-	-	-	426,627	426,627	426,627	426,627	426,627	-	-
RR 26	0.5% System Pipeline Renewal and Replacement	653	-	-	-	429,744	429,744	429,744	429,744	429,744	-	-
RR 27	0.5% System Pipeline Renewal and Replacement	653	-	-	-	432,860	432,860	432,860	432,860	432,860	-	-
RR 28	0.5% System Pipeline Renewal and Replacement	653	-	-	-	435,977	435,977	435,977	435,977	435,977	-	-
RR 29	0.5% System Pipeline Renewal and Replacement	653	-	-	-	439,094	439,094	439,094	439,094	439,094	-	-
RR 30	0.5% System Pipeline Renewal and Replacement	653	-	-	-	-	-	-	-	-	442,210	442,210
RR 31	0.5% System Pipeline Renewal and Replacement	653	-	-	-	-	-	-	-	-	445,327	445,327
<u>Reservoir Condition Improvements</u>												
RC-1	Re-coat and Retrofit Existing Encino Tank	653	330,000	-	-	-	-	-	-	-	-	-
RC-2	Re-coat and Retrofit Existing Glen Ayre Tank	653	55,000	-	-	-	-	-	-	-	-	-
RC-3	Re-coat and Retrofit Existing El Toro Tank	653	-	275,000	-	-	-	-	-	-	-	-
RC-4	Re-coat and Retrofit Existing Edmundson Tank	653	-	-	2,337,500	-	-	-	-	-	-	-
RC-5	Re-coat and Retrofit Existing Boy's Ranch #3 Tank	653	-	-	-	563,750	-	-	-	-	-	-
RC-6	Re-coat and Retrofit Existing Boy's Ranch #2 Tank	653	-	-	-	-	302,500	-	-	-	-	-
<u>5-Year Improvement Projects</u>												
SYR-1	Well Rehabilitation	653	300,000	300,000	300,000	300,000	300,000	-	-	-	-	-
SYR-2	Booster Rehabilitation	653	-	700,000	700,000	-	-	-	-	-	-	-
SYR-3	Generators Replacement (Jackson Booster Station)	653	333,333	333,333	333,333	-	-	-	-	-	-	-
<u>Comprehensive Plan Updates</u>												
PLN-1	Water System Master Plan Updates (Yrs. 2026, 2031, 2036)	651/653	-	-	-	-	237,000	-	-	-	-	237,000
PLN-2	Water Assessment Mngt Plan (Yrs. 2026, 2031, 2036)	651/653	-	-	-	-	119,000	-	-	-	-	119,000
PLN-3	Urban Water Mngt Plan (Yrs. 2026, 2031, 2036)	651/653	-	-	-	-	119,000	-	-	-	-	119,000
PLN-4	Water Rate Study Updates (Yrs. 2026, 2031, 2036)	651/653	-	-	-	-	119,000	-	-	-	-	119,000
<u>Calendar Year Budget Expansion</u>												
CY7.5	Calendar Year Budget Expansion (2026-2035)	651	-	-	-	-	750,000	750,000	750,000	750,000	750,000	750,000
--	Utility System Security Enhancements	--	-	200,000	300,000	-	-	-	-	-	-	-
--	Estimated Future Projects ²	653	-	-	-	-	-	-	-	-	-	-
Total: Capital Improvement Program Costs (Future-Year Dollars)			\$ 6,455,537	\$ 7,245,537	\$ 9,408,037	\$ 9,826,114	\$10,908,864	\$ 9,712,364	\$ 7,019,518	\$ 7,019,518	\$ 5,342,734	\$ 5,936,734

1. Capital Improvement Program projects from Water Supply Management Plan projects found in source file: 2021_WSMPUpdate_Report_FinalDraft_120321.pdf

* Some projects postponed 2 years from Water Supply Management Plan. Source file: *Water CIP from MP revised.pdf*

Utility System Enhancements added per City email on February 2, 2022

2. Estimated future expenditures are calculated based on the City's average annual CIP expenses.

TABLE 17 : EXISTING DEBT OBLIGATIONS

Annual Repayment Schedules	Budget	5-Year Rate Adoption Period						Projected			
	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	FY 2029/30	FY 2030/31	
2014 Water Refunding & CIP Revenue Bonds, \$21,975,000^{1,2}											
Principal Payment	\$ 1,045,000	\$ 1,080,000	\$ 1,120,000	\$ 1,165,000	\$ 1,205,000	\$ 1,250,000	\$ 1,300,000	\$ 1,350,000	\$ 1,400,000	\$ 1,450,000	
Interest Payment	613,875	574,688	534,188	492,188	448,500	403,313	356,438	307,688	257,063	204,563	
Subtotal: Annual Debt Service	\$ 1,658,875	\$ 1,654,688	\$ 1,654,188	\$ 1,657,188	\$ 1,653,500	\$ 1,653,313	\$ 1,656,438	\$ 1,657,688	\$ 1,657,063	\$ 1,654,563	
Coverage Requirement(% above annual payment) ²	120%	120%	120%	120%	120%	120%	120%	120%	120%	120%	
Reserve Requirement ³	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Grand Total: Existing Annual Debt Service	\$ 1,658,875	\$ 1,654,688	\$ 1,654,188	\$ 1,657,188	\$ 1,653,500	\$ 1,653,313	\$ 1,656,438	\$ 1,657,688	\$ 1,657,063	\$ 1,654,563	
Grand Total: Existing Debt Reserve Target	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

TABLE 18 : FUNDING SOURCES FOR EXISTING DEBT OBLIGATIONS

Allocation of Debt Service Payments to Funding Sources ⁴	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	FY 2028/29	FY 2029/30	FY 2030/31
Fund 651 - Impact Fund (41%)	\$ 680,139	\$ 678,422	\$ 678,217	\$ 679,447	\$ 677,935	\$ 677,858	\$ 679,139	\$ 679,652	\$ 679,396	\$ 678,371
Fund 653 - Water System Replacement Fund (59%)	\$ 978,736	\$ 976,266	\$ 975,971	\$ 977,741	\$ 975,565	\$ 975,454	\$ 977,298	\$ 978,036	\$ 977,667	\$ 976,192

- The 2014 Water Revenue Bonds were issued to: (1) finance 2014 Projects; (2) refinance 1999 Projects and refund the Series 1999 COPs; (3) refinance 2004 Projects and refund the Series 2004 Bonds; and, (4) to pay certain costs of issuance.
Source file: *2014 water bonds debt service schedule.pdf*.
- Per the Installment Sales Agreement for the 2014 Revenue Bonds, the City is required to maintain a debt coverage ratio of 1.20 of the maximum annual debt service for these bond issues and all other parity debt. Source files: *Installment Sales Agreement*, page 14 & 6a. *Bond Document - Morgan Hill Water Series 2014.pdf*, page 74.
- There is no reserve requirement for this bond issue.
- Per email provided by Staff on 10.07.15, the debt service payment for the 2014 Water Revenue Bonds is split as follows: 41% to the Water Impact Fund (651) and 59% to the Water System Replacement Fund (653).

CITY OF MORGAN HILL
WATER RATE STUDY
Existing Water Rate Schedule

EXHIBIT 4

TABLE 19 : CURRENT RATES

Existing Water Rate Schedule	Jan. 1, 2020
Single- & Multi-Family Residential Fixed Monthly Service Charge	
5/8 inch	\$31.14
3/4 inch	\$31.14
1 inch	\$31.14
1.5 inch	\$58.72
2 inch	\$91.81
3 inch	\$180.07
4 inch	\$279.36
6 inch	\$555.17
8 inch	\$886.14
10 inch	\$2,320.33
Non-Residential Fixed Monthly Service Charge	
5/8 inch	\$47.23
3/4 inch	\$47.23
1 inch	\$47.23
1.5 inch	\$90.90
2 inch	\$143.31
3 inch	\$283.06
4 inch	\$440.28
6 inch	\$877.00
8 inch	\$1,401.07
10 inch	\$3,672.04
Fire Fixed Monthly Service Charge	
5/8 inch	\$4.02
3/4 inch	\$4.25
1 inch	\$4.71
1.5 inch	\$5.86
2 inch	\$7.24
3 inch	\$11.61
4 inch	\$19.66
6 inch	\$40.37
8 inch	\$67.98
10 inch	\$104.79
Variable Consumption Charge	
Water Rates Per HCF:	
<u>All customers</u>	\$2.57
<i>Out of City water customers add 25% to the rate schedule.</i>	

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

TABLE 20 : CLASSIFICATION OF EXPENSES

Budget Categories	Total Revenue	Commodity	Capacity	Customer	Fire	Direct Alloc.	Basis of Classification				
	Requirements	(COM)	(CAP)	(CA)	Protection	Zonal Elev.	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES											
WATER OPERATIONS FUND - Operations											
SALARIES											
SALARIES - GENERAL*	\$ 2,275,547	\$ 682,664	\$ 1,456,350	\$ 113,777	\$ 22,755	\$ -	30%	64%	5%	1%	0%
SALARIES - PART-TIME TEMP	\$ 14,482	\$ 4,344	\$ 9,268	\$ 724	\$ 145	\$ -	30%	64%	5%	1%	0%
EARNED LEAVE LIABILITY	\$ 47,027	\$ 14,108	\$ 30,097	\$ 2,351	\$ 470	\$ -	30%	64%	5%	1%	0%
OVERTIME - GENERAL	\$ 81,669	\$ 24,501	\$ 52,268	\$ 4,083	\$ 817	\$ -	30%	64%	5%	1%	0%
RETIREMENT - GENERAL	\$ 416,775	\$ 125,033	\$ 266,736	\$ 20,839	\$ 4,168	\$ -	30%	64%	5%	1%	0%
DEFERRED COMPENSATION	\$ 26,103	\$ 7,831	\$ 16,706	\$ 1,305	\$ 261	\$ -	30%	64%	5%	1%	0%
GROUP INSURANCE	\$ 346,745	\$ 104,023	\$ 221,917	\$ 17,337	\$ 3,467	\$ -	30%	64%	5%	1%	0%
MEDICARE	\$ 28,041	\$ 8,412	\$ 17,946	\$ 1,402	\$ 280	\$ -	30%	64%	5%	1%	0%
MEDICARE PTT AND OT	\$ 1,394	\$ 418	\$ 892	\$ 70	\$ 14	\$ -	30%	64%	5%	1%	0%
INCOME PROTECTION INS	\$ 12,522	\$ 3,757	\$ 8,014	\$ 626	\$ 125	\$ -	30%	64%	5%	1%	0%
WORKERS COMP	\$ 48,050	\$ 14,415	\$ 30,752	\$ 2,403	\$ 481	\$ -	30%	64%	5%	1%	0%
WORKERS COMP PTT AND OT	\$ 2,404	\$ 721	\$ 1,538	\$ 120	\$ 24	\$ -	30%	64%	5%	1%	0%
BENEFITS	\$ 7,452	\$ 2,236	\$ 4,769	\$ 373	\$ 75	\$ -	30%	64%	5%	1%	0%
UNIFORM	\$ 3,675	\$ 1,103	\$ 2,352	\$ 184	\$ 37	\$ -	30%	64%	5%	1%	0%
SUPPLIES											
TAXES	\$ 535	\$ -	\$ 535	\$ -	\$ -	\$ -	0%	100%	0%	0%	0%
ELECTRIC	\$ 1,436,499	\$ 1,168,979	\$ -	\$ -	\$ -	\$ 267,520	81%	0%	0%	0%	19%
GROUNDWATER PRODUCTION	\$ 3,739,836	\$ 3,702,438	\$ -	\$ -	\$ 37,398	\$ -	99%	0%	0%	1%	0%
WATER/SEWER	\$ 13,113	\$ 3,934	\$ 8,392	\$ 656	\$ 131	\$ -	30%	64%	5%	1%	0%
TELEPHONE	\$ 24,833	\$ 7,450	\$ 15,893	\$ 1,242	\$ 248	\$ -	30%	64%	5%	1%	0%
GASOLINE & OIL	\$ 37,874	\$ 11,362	\$ 24,239	\$ 1,894	\$ 379	\$ -	30%	64%	5%	1%	0%
CONTRACT SERVICES	\$ 356,864	\$ 107,059	\$ 228,393	\$ 17,843	\$ 3,569	\$ -	30%	64%	5%	1%	0%
BANK CARD SERVICE FEES	\$ 597	\$ -	\$ -	\$ 597	\$ -	\$ -	0%	0%	100%	0%	0%
RENTALS - OUTSIDE	\$ 2,709	\$ 813	\$ 1,734	\$ 135	\$ 27	\$ -	30%	64%	5%	1%	0%
STATIONERY & OFFICE SUPPLIES	\$ 3,348	\$ 1,004	\$ 2,142	\$ 167	\$ 33	\$ -	30%	64%	5%	1%	0%
COMPUTER HARDWARE-NON CAPITAL	\$ 5,953	\$ 1,786	\$ 3,810	\$ 298	\$ 60	\$ -	30%	64%	5%	1%	0%
COMPUTER SOFTWARE-NON CAPITAL	\$ 2,709	\$ 813	\$ 1,734	\$ 135	\$ 27	\$ -	30%	64%	5%	1%	0%
OTHER SUPPLIES	\$ 232,481	\$ 69,744	\$ 148,788	\$ 11,624	\$ 2,325	\$ -	30%	64%	5%	1%	0%
ADVERTISING	\$ 3,348	\$ 1,004	\$ 2,142	\$ 167	\$ 33	\$ -	30%	64%	5%	1%	0%
PHOTOCOPYING	\$ 834	\$ 250	\$ 534	\$ 42	\$ 8	\$ -	30%	64%	5%	1%	0%
POSTAGE & FREIGHT	\$ 2,060	\$ -	\$ -	\$ 2,060	\$ -	\$ -	0%	0%	100%	0%	0%
PRINTING	\$ 2,431	\$ -	\$ -	\$ 2,431	\$ -	\$ -	0%	0%	100%	0%	0%
AUTO MILEAGE	\$ 299	\$ 90	\$ 191	\$ 15	\$ 3	\$ -	30%	64%	5%	1%	0%
CHEMICALS	\$ 32,782	\$ 9,835	\$ 20,980	\$ 1,639	\$ 328	\$ -	30%	64%	5%	1%	0%
WATER/SEWER MAINTENANCE SVS	\$ 54,636	\$ 16,391	\$ 34,967	\$ 2,732	\$ 546	\$ -	30%	64%	5%	1%	0%
SMALL TOOLS	\$ 12,175	\$ 3,652	\$ 7,792	\$ 609	\$ 122	\$ -	30%	64%	5%	1%	0%
OTHER EXPENSE	\$ 63,654	\$ 19,096	\$ 40,739	\$ 3,183	\$ 637	\$ -	30%	64%	5%	1%	0%
TRAINING & EDUCATION	\$ 12,978	\$ 3,893	\$ 8,306	\$ 649	\$ 130	\$ -	30%	64%	5%	1%	0%
CONFERENCE & MEETINGS	\$ 6,180	\$ 1,854	\$ 3,955	\$ 309	\$ 62	\$ -	30%	64%	5%	1%	0%
MEMBERSHIP & DUES	\$ 13,385	\$ 4,015	\$ 8,566	\$ 669	\$ 134	\$ -	30%	64%	5%	1%	0%
SUBSCRIPTION & PUBLICATIONS	\$ 232	\$ 70	\$ 148	\$ 12	\$ 2	\$ -	30%	64%	5%	1%	0%
MAINT - BLDGS/IMPROVEMENTS	\$ 44,589	\$ 13,377	\$ 28,537	\$ 2,229	\$ 446	\$ -	30%	64%	5%	1%	0%
MAINT - MACHINE/EQUIPMENT	\$ 33,434	\$ 10,030	\$ 21,398	\$ 1,672	\$ 334	\$ -	30%	64%	5%	1%	0%
MAINT - AUTO/TRUCKS	\$ 31,209	\$ 9,363	\$ 19,974	\$ 1,560	\$ 312	\$ -	30%	64%	5%	1%	0%
SUB-TOTAL: WATER OPERATIONS FUND - Operations	\$ 9,483,462	\$ 6,161,868	\$ 2,753,498	\$ 220,163	\$ 80,413	\$ 267,520	65%	29%	2%	0.85%	3%

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

TABLE 21 : CLASSIFICATION OF EXPENSES, CONTINUED

Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Zonal	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES											
WATER OPERATIONS FUND - Operations, cont.											
CAPITAL											
MACHINERY/EQUIPMENT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	99%	0%	1%	0%
COMPUTER EQUIPMENT	\$ 108,150	\$ -	\$ 107,069	\$ -	\$ 1,082	\$ -	0%	99%	0%	1%	0%
COMPUTER SOFTWARE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	99%	0%	1%	0%
METERS	\$ 463,500	\$ 107,759	\$ 231,750	\$ 115,875	\$ 8,116	\$ -	23%	50%	25%	1.75%	0%
INTERNAL SERVICES											
GENERAL LIABILITY INSURANCE	\$ 151,002	\$ 45,301	\$ 96,641	\$ 7,550	\$ 1,510	\$ -	30%	64%	5%	1%	0%
BUILDING MAINT - CURRENT SERVICES	\$ 82,064	\$ 24,619	\$ 52,521	\$ 4,103	\$ 821	\$ -	30%	64%	5%	1%	0%
BUILDING MAINT - FUTURE REPLACEMENT	\$ 14,460	\$ 4,338	\$ 9,254	\$ 723	\$ 145	\$ -	30%	64%	5%	1%	0%
FLEET REPLACEMENT	\$ 315,165	\$ 94,549	\$ 201,705	\$ 15,758	\$ 3,152	\$ -	30%	64%	5%	1%	0%
GIS	\$ 28,808	\$ 8,642	\$ 18,437	\$ 1,440	\$ 288	\$ -	30%	64%	5%	1%	0%
INFO SYSTEM SERVICES	\$ 167,790	\$ 50,337	\$ 107,386	\$ 8,390	\$ 1,678	\$ -	30%	64%	5%	1%	0%
GF ADMIN	\$ 350,413	\$ 105,124	\$ 224,264	\$ 17,521	\$ 3,504	\$ -	30%	64%	5%	1%	0%
TRANSFERS											
TRANSFER OUT-010 (GENERAL FUND)	\$ 367,874	\$ -	\$ 364,195	\$ -	\$ 3,679	\$ -	0%	99%	0%	1%	0%
TRANSFER OUT-232 (ENVIRONMENTAL PROGRAMS)	\$ 111,517	\$ -	\$ 110,402	\$ -	\$ 1,115	\$ -	0%	99%	0%	1%	0%
TRANSFER OUT-207 (GENL PLAN UPDATE)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	99%	0%	1%	0%
TRANSFER OUT - EMPLOYEE BENEFITS FUND	\$ 28,415	\$ -	\$ 28,131	\$ -	\$ 284	\$ -	0%	99%	0%	1%	0%
SUB-TOTAL: WATER OPERATIONS FUND - Operations	\$ 2,189,159	\$ 440,670	\$ 1,551,756	\$ 171,360	\$ 25,372	\$ -	20%	71%	8%	1.16%	0%

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

TABLE 22 : CLASSIFICATION OF EXPENSES, CONTINUED

Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Direct Alloc. Zonal Elev.	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES, continued											
WATER OPERATIONS FUND - Utility Billing											
SALARIES											
SALARIES - GENERAL	\$ 439,054	\$ 131,716	\$ 83,420	\$ 219,527	\$ 4,391	\$ -	30%	19%	50%	1%	0%
SALARIES - PART-TIME TEMP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
EARNED LEAVE LIABILITY	\$ 8,288	\$ 2,486	\$ 1,575	\$ 4,144	\$ 83	\$ -	30%	19%	50%	1%	0%
OVERTIME - GENERAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
RETIREMENT - GENERAL	\$ 76,237	\$ 22,871	\$ 14,485	\$ 38,119	\$ 762	\$ -	30%	19%	50%	1%	0%
DEFERRED COMPENSATION	\$ 5,708	\$ 1,712	\$ 1,084	\$ 2,854	\$ 57	\$ -	30%	19%	50%	1%	0%
GROUP INSURANCE	\$ 61,354	\$ 18,406	\$ 11,657	\$ 30,677	\$ 614	\$ -	30%	19%	50%	1%	0%
MEDICARE	\$ 5,072	\$ 1,521	\$ 964	\$ 2,536	\$ 51	\$ -	30%	19%	50%	1%	0%
MEDICARE PTT AND OT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
OTHER POST EMPLOYMENT BENEFITS (OPEB)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
INCOME PROTECTION INS	\$ 2,671	\$ 801	\$ 508	\$ 1,336	\$ 27	\$ -	30%	19%	50%	1%	0%
WORKERS COMP	\$ 8,812	\$ 2,643	\$ 1,674	\$ 4,406	\$ 88	\$ -	30%	19%	50%	1%	0%
WORKERS COMP PTT AND OT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
BENEFITS	\$ 2,829	\$ 849	\$ 537	\$ 1,414	\$ 28	\$ -	30%	19%	50%	1%	0%
SUPPLIES											
TELEPHONE	\$ 1,648	\$ 494	\$ 313	\$ 824	\$ 16	\$ -	30%	19%	50%	1%	0%
CONTRACT SERVICES	\$ 69,290	\$ 20,787	\$ 13,165	\$ 34,645	\$ 693	\$ -	30%	19%	50%	1%	0%
BANK CARD SERVICE FEES	\$ 123,600	\$ 37,080	\$ 23,484	\$ 61,800	\$ 1,236	\$ -	30%	19%	50%	1%	0%
STATIONERY & OFFICE SUPPLIES	\$ 3,296	\$ 989	\$ 626	\$ 1,648	\$ 33	\$ -	30%	19%	50%	1%	0%
COMPUTER HARDWARE-NON CAPITAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
OTHER SUPPLIES	\$ 515	\$ 155	\$ 98	\$ 258	\$ 5	\$ -	30%	19%	50%	1%	0%
ADVERTISING	\$ 515	\$ 155	\$ 98	\$ 258	\$ 5	\$ -	30%	19%	50%	1%	0%
PHOTOCOPYING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
POSTAGE & FREIGHT	\$ 49,955	\$ 14,987	\$ 9,491	\$ 24,978	\$ 500	\$ -	30%	19%	50%	1%	0%
PRINTING	\$ 1,030	\$ 309	\$ 196	\$ 515	\$ 10	\$ -	30%	19%	50%	1%	0%
AUTO MILEAGE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
TRAINING & EDUCATION	\$ 1,545	\$ 464	\$ 294	\$ 773	\$ 15	\$ -	30%	19%	50%	1%	0%
SUBSCRIPTION & PUBLICATIONS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	19%	50%	1%	0%
INTERNAL SERVICES											
GENERAL LIABILITY INSURANCE	\$ 20,638	\$ 6,191	\$ 3,921	\$ 10,319	\$ 206	\$ -	30%	19%	50%	1%	0%
BUILDING MAINT - CURRENT SERVICES	\$ 34,429	\$ 10,329	\$ 6,542	\$ 17,215	\$ 344	\$ -	30%	19%	50%	1%	0%
BUILDING MAINT - FUTURE REPLACEMENT	\$ 1,939	\$ 582	\$ 368	\$ 970	\$ 19	\$ -	30%	19%	50%	1%	0%
INFO SYSTEM SERVICES	\$ 34,220	\$ 10,266	\$ 6,502	\$ 17,110	\$ 342	\$ -	30%	19%	50%	1%	0%
GF ADMIN	\$ 40,012	\$ 12,004	\$ 7,602	\$ 20,006	\$ 400	\$ -	30%	19%	50%	1%	0%
TRANSFERS											
TRANSFER OUT - EMPLOYEE BENEFITS FUND	\$ 5,606	\$ -	\$ 5,550	\$ -	\$ 56	\$ -	0%	99%	0%	1%	0%
TOTAL: WATER OPERATIONS FUND - Utility Billing	\$ 998,262	\$ 297,797	\$ 194,155	\$ 496,328	\$ 9,983	\$ -	30%	19%	50%	1%	0%

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

TABLE 23 : CLASSIFICATION OF EXPENSES, CONTINUED

Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Zonal	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES, continued											
WATER OPERATIONS FUND - Water Conservation											
SALARIES											
SALARIES - GENERAL*	\$ 140,908	\$ 139,499	\$ -	\$ -	\$ 1,409	\$ -	99%	0%	0%	1%	0%
SALARIES - PART-TIME TEMP	\$ 20,664	\$ 20,457	\$ -	\$ -	\$ 207	\$ -	99%	0%	0%	1%	0%
EARNED LEAVE LIABILITY	\$ 1,786	\$ 1,768	\$ -	\$ -	\$ 18	\$ -	99%	0%	0%	1%	0%
RETIREMENT - GENERAL*	\$ 49,669	\$ 49,173	\$ -	\$ -	\$ 497	\$ -	99%	0%	0%	1%	0%
DEFERRED COMPENSATION	\$ 475	\$ 470	\$ -	\$ -	\$ 5	\$ -	99%	0%	0%	1%	0%
GROUP INSURANCE*	\$ 5,943	\$ 5,884	\$ -	\$ -	\$ 59	\$ -	99%	0%	0%	1%	0%
MEDICARE*	\$ 2,032	\$ 2,012	\$ -	\$ -	\$ 20	\$ -	99%	0%	0%	1%	0%
MEDICARE PTT AND OT	\$ 300	\$ 297	\$ -	\$ -	\$ 3	\$ -	99%	0%	0%	1%	0%
OTHER POST EMPLOYMENT BENEFITS (OPEB)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
INCOME PROTECTION INS	\$ 159	\$ 157	\$ -	\$ -	\$ 2	\$ -	99%	0%	0%	1%	0%
WORKERS COMP*	\$ 3,523	\$ 3,487	\$ -	\$ -	\$ 35	\$ -	99%	0%	0%	1%	0%
WORKERS COMP PTT AND OT	\$ 517	\$ 511	\$ -	\$ -	\$ 5	\$ -	99%	0%	0%	1%	0%
BENEFITS*	\$ 903	\$ 894	\$ -	\$ -	\$ 9	\$ -	99%	0%	0%	1%	0%
SUPPLIES											
GASOLINE & OIL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
CONTRACT SERVICES	\$ 10,821	\$ 10,713	\$ -	\$ -	\$ 108	\$ -	99%	0%	0%	1%	0%
STATIONERY & OFFICE SUPPLIES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
OTHER SUPPLIES	\$ 2,294	\$ 2,271	\$ -	\$ -	\$ 23	\$ -	99%	0%	0%	1%	0%
ADVERTISING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
POSTAGE & FREIGHT	\$ 1,147	\$ 1,136	\$ -	\$ -	\$ 11	\$ -	99%	0%	0%	1%	0%
PRINTING	\$ 9,198	\$ 9,106	\$ -	\$ -	\$ 92	\$ -	99%	0%	0%	1%	0%
OTHER EXPENSE	\$ 54,107	\$ 53,566	\$ -	\$ -	\$ 541	\$ -	99%	0%	0%	1%	0%
TRAINING & EDUCATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
CONFERENCE & MEETINGS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
INTERNAL SERVICES											
GENERAL LIABILITY INSURANCE	\$ 856	\$ 847	\$ -	\$ -	\$ 9	\$ -	99%	0%	0%	1%	0%
BUILDING MAINT - CURRENT SERVICES	\$ 1,467	\$ 1,452	\$ -	\$ -	\$ 15	\$ -	99%	0%	0%	1%	0%
BUILDING MAINT - FUTURE REPLACEMENT	\$ 115	\$ 114	\$ -	\$ -	\$ 1	\$ -	99%	0%	0%	1%	0%
INFO SYSTEM SERVICES	\$ 1,418	\$ 1,404	\$ -	\$ -	\$ 14	\$ -	99%	0%	0%	1%	0%
GF ADMIN	\$ 23,948	\$ 23,708	\$ -	\$ -	\$ 239	\$ -	99%	0%	0%	1%	0%
TRANSFERS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	99%	0%	0%	1%	0%
TRANSFER OUT - EMPLOYEE BENEFITS FUND	\$ 290	\$ 287	\$ -	\$ -	\$ 3	\$ -	99%	0%	0%	1%	0%
TOTAL: WATER OPERATIONS FUND - Water Conservation	\$ 332,540	\$ 329,214	\$ -	\$ -	\$ 3,325	\$ -	99%	0%	0%	1%	0%

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

TABLE 24 : CLASSIFICATION OF EXPENSES, CONTINUED

Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Zonal	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES, continued											
WATER IMPACT FUND											
SUPPLIES											
CONTRACT SERVICES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	24%	70%	5%	1%	0%
BANK CARD SERVICE FEES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	24%	70%	5%	1%	0%
DEBT											
SERVICE FEES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	24%	70%	5%	1%	0%
INTERNAL SERVICES											
GF ADMIN	\$ 19,704	\$ 4,729	\$ 13,793	\$ 985	\$ 197	\$ -	24%	70%	5%	1%	0%
TRANSFERS											
TRANSFER OUT-010 (GENERAL FUND)	\$ 25,750	\$ 6,180	\$ 18,025	\$ 1,288	\$ 258	\$ -	24%	70%	5%	1%	0%
TRANSFER OUT-207 (GENL PLAN UPDATE)	\$ 7,931	\$ 1,903	\$ 5,552	\$ 397	\$ 79	\$ -	24%	70%	5%	1%	0%
PROJECTS											
TOTAL: WATER IMPACT FUND (651) EXPENSES	\$ 53,385	\$ 12,812	\$ 37,369	\$ 2,669	\$ 534	\$ -	24%	70%	5%	1%	0%

TABLE 25 : CLASSIFICATION OF EXPENSES, CONTINUED

Classification of Expenses											
Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Direct Alloc. Zonal Elev.	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES, continued											
WATER RATE STABILIZATION FUND											
SUPPLIES											
CONTRACT SERVICES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	64%	5%	1%	0%
INTERNAL SERVICES											
GF ADMIN	\$ 383	\$ 115	\$ 245	\$ 19	\$ 4	\$ -	30%	64%	5%	1%	0%
TOTAL: WATER RATE STABILIZATION FUND (652) EXPENSES	\$ 383	\$ 115	\$ 245	\$ 19	\$ 4	\$ -	30%	64%	5%	1%	0%

TABLE 26 : CLASSIFICATION OF EXPENSES, CONTINUED

Classification of Expenses											
Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Direct Alloc. Zonal Elev.	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
OPERATING EXPENSES, continued											
WATER SYSTEM REPLACEMENT FUND											
SUPPLIES											
CONTRACT SERVICES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	64%	5%	1%	0%
DEBT											
SERVICE FEES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30%	64%	5%	1%	0%
INTERNAL SERVICES											
GF ADMIN	\$ 23,874	\$ 7,162	\$ 15,279	\$ 1,194	\$ 239	\$ -	30%	64%	5%	1%	0%
TOTAL: WATER SYSTEM REPLACEMENT FUND (653) EXPENSES	\$ 23,874	\$ 7,162	\$ 15,279	\$ 1,194	\$ 239	\$ -	30%	64%	5%	1%	0%
Grand Total: Operating Expenses	\$ 13,027,679	\$ 7,236,826	\$ 4,514,932	\$ 889,064	\$ 119,336	\$ 267,520	56%	35%	7%	1%	2%

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

TABLE 27 : CLASSIFICATION OF EXPENSES, CONTINUED

Classification of Expenses, continued											
Budget Categories	Total Revenue Requirements	Commodity	Capacity	Customer	Fire Protection	Direct Alloc. Zonal Elev.	Basis of Classification				
	FY 2022/23	(COM)	(CAP)	(CA)	(FP)	(ZON)	(COM)	(CAP)	(CA)	(FP)	(ZON)
DEBT SERVICE PAYMENTS											
2014 Water Refunding & CIP Revenue Bonds, \$21,975,000	\$ 976,266	\$ -	\$ 976,266	\$ -	\$ -	\$ -	0%	100%	0%	0%	0%
New Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	100%	0%	0%	0%
TOTAL: DEBT SERVICE PAYMENTS	\$ 976,266	\$ -	\$ 976,266	\$ -	\$ -	\$ -	0%	100%	0%	0%	0%
Capital Expenditures											
Rate Funded Capital Expenses	\$ 890,787	\$ 400,854	\$ 481,025	\$ -	\$ 8,908	\$ -	45%	54%	0%	1%	0%
TOTAL REVENUE REQUIREMENTS	\$ 14,894,732	\$ 7,637,680	\$ 5,972,223	\$ 889,064	\$ 128,244	\$ 267,520	51%	40%	6%	0.86%	2%
Less: Non-Rate Revenues											
INTEREST INCOME2	\$ (176,388)	\$ (90,448)	\$ (72,244)	\$ (10,529)	\$ -	\$ (3,168)	51%	41%	6%	0%	2%
RENT & CONCESSIONS	\$ (54,097)	\$ (27,740)	\$ (22,156)	\$ (3,229)	\$ -	\$ (972)	51%	41%	6%	0%	2%
WATER SALES											
BOOSTER STATION CHARGES	\$ (147,088)	\$ (75,423)	\$ (60,243)	\$ (8,780)	\$ -	\$ (2,642)	51%	41%	6%	0%	2%
FRONT FOOTAGE/OFFSITE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
PERCHLORATE SURCHARGE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
UB COLLECTIONS	\$ (2,806)	\$ -	\$ -	\$ (2,806)	\$ -	\$ -	0%	0%	100%	0%	0%
METER INSTALL & SERVICE	\$ (25,745)	\$ (5,985)	\$ (12,872)	\$ (6,436)	\$ (451)	\$ -	23%	50%	25%	1.75%	0%
FIRE HYDRANT CHARGE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
OTHER REVENUE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
REIMBURSEMENT OF EXPENSES	\$ (40,000)	\$ (20,511)	\$ (16,383)	\$ (2,388)	\$ -	\$ (718)	51%	41%	6%	0%	2%
MISC. SALES	\$ (5,253)	\$ (2,694)	\$ (2,152)	\$ (314)	\$ -	\$ (94)	51%	41%	6%	0%	2%
SURPLUS SALES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
MISC. REVENUE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
ANNUAL BACKFLOW TESTING ADMINISTRATION	\$ (13,432)	\$ (6,888)	\$ (5,501)	\$ (802)	\$ -	\$ (241)	51%	41%	6%	0%	2%
ANNUAL BACKFLOW INSPECTION	\$ (3,263)	\$ (1,673)	\$ (1,337)	\$ (195)	\$ -	\$ (59)	51%	41%	6%	0%	2%
UTILITY ACCOUNT SET-UP	\$ (83,133)	\$ -	\$ -	\$ (83,133)	\$ -	\$ -	0%	0%	100%	0%	0%
CONSTRUCTION BACKFLOW INSPECTION	\$ (2,101)	\$ (1,077)	\$ (861)	\$ (125)	\$ -	\$ (38)	51%	41%	6%	0%	2%
CONST.INSPECT.-BACKFLOW	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
UTILITY BILL DELINQ CHR	\$ (28,694)	\$ -	\$ -	\$ (28,694)	\$ -	\$ -	0%	0%	100%	0%	0%
DELINQUENT BILL CHARGE	\$ (133,013)	\$ -	\$ -	\$ (133,013)	\$ -	\$ -	0%	0%	100%	0%	0%
UTILITY SERVICE CALL	\$ (79,164)	\$ -	\$ -	\$ (79,164)	\$ -	\$ -	0%	0%	100%	0%	0%
CHGS-CURR/PLANS & SPECS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
TRANSFER FROM-640 (SEWER OPS)	\$ (488,357)	\$ (250,418)	\$ (200,017)	\$ (29,150)	\$ -	\$ (8,771)	51%	41%	6%	0%	2%
TRANSFER FROM-653 (WATER CIP)2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
TRANSFER FROM-652 (WATER STABL)2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
Water System Replacement Fund (653)											
INTEREST INCOME2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
OTHER REVENUE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
BOND PROCEEDS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
CAPITAL CONTRIBUTIONS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
CHGS-CURR/PLANS & SPECS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
TRANSFER FROM-650 (WATER OPS)2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
TRANSFER FROM-651 (WATER IMPACT)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	51%	41%	6%	0%	2%
NET REVENUE REQUIREMENTS	\$ 13,612,197	\$ 7,154,823	\$ 5,578,457	\$ 500,306	\$ 127,794	\$ 250,817					
Allocation of Revenue Requirements	100.0%	52.6%	41.0%	3.7%	0.94%	1.8%					

CITY OF MORGAN HILL
WATER RATE STUDY
Cost of Service Analysis

Classification of Expenses, continued						
Adjustments to Classification of Expenses						
Adjustment for Current Rate Level:	Total	(COM)	(CAP)	(CA)	(FP)	(ZON)
Test Year Target Rate Rev. After Rate Increases	\$16,892,721					
Projected Rate Revenue at Current Rates	\$15,497,910					
Test Year Projected Rate Adjustment	9%					
Net Revenue Requirements	\$ 16,892,721	\$ 8,879,127	\$ 6,978,331	\$ 625,855	\$ 158,592	\$ 250,817
<i>Percent of Revenue</i>	<i>100.0%</i>	<i>52.6%</i>	<i>41.3%</i>	<i>3.7%</i>	<i>0.94%</i>	<i>1.5%</i>

Cost-of-Service Allocation to Fixed vs. Variable Charges	
Fixed Charges	47%
Variable Charges	53%

TABLE 28 : DEVELOPMENT OF THE BASE COMMODITY ALLOCATION FACTOR

Development of the BASE COMMODITY Allocation Factor			Average Monthly Consumption Per meter and % of SFR average	
Customer Class	FY 2020/21 Volume (hcf) ¹	Percent of Total Volume		
Single Family - Inside	1,773,378	57.7%	14.1	100%
Single Family - Outside	52,931	1.7%	14.3	102%
Multi-Family	319,696	10.4%	11.7	83%
Commercial	929,760	30.2%	46.6	331%
Grand Total	3,075,765	100.0%		
Fire	565	0.02%	0.2	

1. Consumption data source: Morgan Hill_2018-2021 Consumption Billing Data.xlsx

Commodity Related Costs: These costs are associated with the total consumption (flow) of water over a specified period of time (e.g. annual).

TABLE 29 : DEVELOPMENT OF THE PEAK CAPACITY ALLOCATION FACTOR

Development of the CAPACITY (MAX MONTH) Allocation Factors					2020	2015
Customer Class	Average Monthly Use (hcf)	Peak Monthly Use (hcf) ¹	Peak Month Factor	Max Month Capacity Factor	Peaking Factor as % of SFR	
Single Family - Inside	147,782	217,683	1.47	58.2%	100%	100%
Single Family - Outside	4,411	6,725	1.52	1.8%	104%	89%
Multi-Family	26,641	31,378	1.18	8.4%	80%	90%
Commercial	77,480	118,489	1.53	31.7%	104%	100%
Grand Total	256,314	374,275	1.46	100.0%		
Fire	47	261	5.54	0.1%		

1. Based on peak monthly data (peak day data not available).

Capacity Related Costs: Costs associated with the maximum demand required at one point in time or the maximum size of facilities required to meet this demand.

TABLE 30 : DEVELOPMENT OF THE CUSTOMER ALLOCATION FACTOR

Development of the Customer Allocation Factor		
Customer Class	Number of Meters ¹	Percent of Total
Single Family - Inside	10,502	69.9%
Single Family - Outside	308	2.1%
Multi-Family	2,284	15.2%
Commercial	1,663	11.1%
Fire	263	1.75%
Grand Total	15,020	100.0%

1. Number of meters is from source: *Morgan Hill_2018-2021 Consumption Billing Data.xlsx*

Customer Related Costs : Costs associated with having a customer on the water system. These costs vary with the addition or deletion of customers on the system. Examples: Meter-reading, Postage and billing.

TABLE 31 : HYDRAULIC CAPACITY FACTORS

Meter Size	Standard Meters		Fire Service Meters	
	Meter Capacity (gpm) ¹	Equivalency to 1-inch ²	Meter Capacity (gpm) ³	Equivalency to 1-inch
	<u>Displacement Meters</u>		<u>Displacement Meters</u>	
5/8 inch	20	1.00	20	0.40
3/4 inch	30	1.00	30	0.60
1 inch	50	1.00	50	1.00
1.5 inch	100	2.00	100	2.00
2 inch	160	3.20	160	3.20
	<u>Compound Class I Meters</u>		<u>Fire Service Type I & II</u>	
3 inch	320	6.40	350	7.00
4 inch	500	10.00	700	14.00
6 inch	1,000	20.00	1,600	32.00
8 inch	1,600	32.00	2,800	56.00
	<u>Turbine Class II Meters</u>			
10 inch	4,200	84.00	4,400	88.00

1. Per AWWA M-1, Table B-1.
2. Residential meters 5/8" - 1" are all set to an equivalency factor of 1.0, per direction from City Staff.
3. Per AWWA M-6, Table 5-3. Base meter of 1 inch for Fire Meters.

TABLE 32 : ALLOCATION OF WATER REVENUE REQUIREMENTS

Classification Components	Cost-of-Service Net Revenue Requirements		Proposed Rate Adjusted Net Revenue Requirements		Totals	
Commodity-Related Costs	\$ 8,879,127	52.6%	\$ 8,879,127	52.6%	52.6%	Variable
Capacity-Related Costs (Fixed)	6,978,331	41.3%	6,978,331	41.3%		
Customer-Related Costs	625,855	3.7%	625,855	3.7%	46.0%	Fixed
Fire Protection-Related Costs	158,592	0.94%	158,592	0.94%		
Subtotal Revenue Requirement	\$16,641,905	98.5%	\$16,641,905	98.5%		
Zonal-Related Costs	\$ 250,817	1.5%	\$ 250,817	1.5%	1.5%	
Net Total Revenue Requirement	\$16,892,721	100%	\$16,892,721	100%	100.0%	

1. Zonal Related Costs are recovered via the zonal charge and are not included in this rate revenue calculation.

TABLE 33 : ALLOCATION OF FY 2021/22 ADJUSTED NET REVENUE REQUIREMENTS

Customer Class	Cost Classification Components				Cost of Service Net Revenue Req'ts	% of COS Net Revenue Req'ts
	Commodity	Capacity	Customer	Fire Protection		
Residential (Single & Multi-Family)	\$ 6,195,093	\$ 4,769,112	\$ 545,602	\$ -	\$ 11,509,807	69.2%
Non-Residential (Commercial)	\$ 2,684,034	\$ 2,209,219	\$ 69,294	\$ -	\$ 4,962,547	29.8%
Fire	\$ -	\$ -	\$ 10,959	\$ 158,592	\$ 169,550	1.0%
Grand Total	\$ 8,879,127	\$ 6,978,331	\$ 625,855	\$ 158,592	\$ 16,641,905	100%
	53%		47%			

TABLE 34 : CALCULATION OF MONTHLY RESIDENTIAL FIXED METER SERVICE CHARGES

Number of Meters by Class and Size ¹	FY2022-23								Total
	5/8-1 inch	1.5 inch	2 inch	3 inch	4 inch	6 inch	8 inch	10 inch	
Residential	12,981	41	60	-	8	4	-	-	13,094
<i>Hydraulic Capacity Factor²</i>	1.00	2.00	3.20	6.40	10.00	20.00	32.00	84.00	
Total Equivalent Meters	12,981	82	192	-	80	80	-	-	13,415
Monthly Fixed Service Charges									
Customer Costs (\$/Acct/mo.) ³	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	
Capacity Costs (\$/Acct/mo.) ⁴	\$ 29.63	\$ 59.25	\$ 94.80	\$ 189.60	\$ 296.25	\$ 592.51	\$ 948.02	\$ 2,488.54	
Total Monthly Meter Charge	\$ 33.10	\$ 62.72	\$ 98.27	\$ 193.08	\$ 299.73	\$ 595.98	\$ 951.49	\$ 2,492.01	
Annual Fixed Costs Allocated to Monthly Meter Charges									
Customer Costs	\$ 545,602								
Capacity Costs	\$ 4,769,112								
Total Fixed Meter Costs	\$ 5,314,714								
Annual Revenue from Monthly Meter Charges									
Customer Charges	\$ 540,893	\$ 1,708	\$ 2,500	\$ -	\$ 333	\$ 167	\$ -	\$ -	\$ 545,602
Capacity Charges	4,614,822	29,151	68,257	-	28,440	28,440	-	-	\$ 4,769,112
Total Revenue from Mo. Meter Charges	\$ 5,155,716	\$ 30,860	\$ 70,757	\$ -	\$ 28,774	\$ 28,607	\$ -	\$ -	\$ 5,314,714

TABLE 35 : CALCULATION OF MONTHLY NON-RESIDENTIAL FIXED METER SERVICE CHARGES

Number of Meters by Class and Size ¹	FY2022-23								Total
	5/8-1 inch	1.5 inch	2 inch	3 inch	4 inch	6 inch	8 inch	10 inch	
Non - Residential	703	360	549	14	35	1	1	-	1,663
<i>Hydraulic Capacity Factor</i> ²	1.00	2.00	3.20	6.40	10.00	20.00	32.00	84.00	
Total Equivalent Meters	703	720	1,757	90	350	20	32	-	3,671
Monthly Fixed Service Charges									
Customer Costs (\$/Acct/mo.) ³	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	
Capacity Costs (\$/Acct/mo.) ⁴	\$ 50.14	\$ 100.29	\$ 160.46	\$ 320.93	\$ 501.45	\$ 1,002.90	\$ 1,604.63	\$ 4,212.16	
Total Monthly Meter Charge	\$ 53.62	\$ 103.76	\$ 163.94	\$ 324.40	\$ 504.92	\$ 1,006.37	\$ 1,608.11	\$ 4,215.63	
Annual Fixed Costs Allocated to Monthly Meter Charges									
Customer Costs	\$ 69,294								
Capacity Costs	\$ 2,209,219								
Total Fixed Meter Costs	\$ 2,278,513								
Annual Revenue from Monthly Meter Charges									
Customer Charges	\$ 29,293	\$ 15,001	\$ 22,876	\$ 583	\$ 1,458	\$ 42	\$ 42	\$ -	\$ 69,294
Capacity Charges	423,021	433,251	1,057,132	53,916	210,608	12,035	19,256	-	\$ 2,209,219
Total Revenue from Mo. Meter Charges	\$ 452,314	\$ 448,252	\$ 1,080,008	\$ 54,499	\$ 212,067	\$ 12,076	\$ 19,297	\$ -	\$ 2,278,513

1. Number of meters by size and class is per the City of Morgan Hill's utility billing data as of May 2021 in the Billed Consumption Report by Month spreadsheets.
2. Source: AWWA Manual M1, "Principles of Water Rates, Fees, and Charges", Table B-1. Assumes displacement meters for 5/8 - 2 inch meters, Compound Class I for 3 - 8 inch meters, and Turbine Class II for 10 inch meters.
3. Customer costs are allocated to each customer by dividing the total customer costs by the total number of customers.
4. Capacity costs are allocated by meter size and the hydraulic capacity of the meter.

TABLE 36 : CALCULATION OF MONTHLY FIXED METER SERVICE CHARGES COMMERCIAL FIRE METERS

Number of Meters by Class and Size ¹	FY2022-23										Total
	5/8 inch	3/4 inch	1 inch	1.5 inch	2 inch	3 inch	4 inch	6 inch	8 inch	10 inch	
Fire Meters	-	-	-	-	1	-	64	126	67	5	263
Customer Costs (\$/Acct/mo.) ³	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	\$ 3.47	
Fire Protection Costs (\$/Acct/mo.) ⁴	\$ 0.58	\$ 0.87	\$ 1.45	\$ 2.90	\$ 4.64	\$ 10.14	\$ 20.28	\$ 46.36	\$ 81.12	\$ 127.48	
Total Monthly Meter Charge	\$ 4.05	\$ 4.34	\$ 4.92	\$ 6.37	\$ 8.11	\$ 13.61	\$ 23.75	\$ 49.83	\$ 84.59	\$ 130.95	
Annual Fixed Costs Allocated to Monthly Meter Charges											
Customer Costs	\$ 10,959										
Fire Protection Costs	\$ 158,592										
Total Fixed Meter Costs	\$ 158,592										
Annual Revenue from Monthly Meter Charges											
Customer Charges	\$ -	\$ -	\$ -	\$ -	\$ 42	\$ -	\$ 2,667	\$ 5,250	\$ 2,792	\$ 208	\$ 10,959
Fire Protection Costs	-	-	-	-	56	-	15,575	70,090	65,222	7,649	158,592
Total Revenue from Mo. Meter Charges	\$ -	\$ -	\$ -	\$ -	\$ 97	\$ -	\$ 18,242	\$ 75,340	\$ 68,014	\$ 7,857	\$ 169,550

1. Number of meters by size and class is per the City of Morgan Hill's utility billing data as of May 2021 in the Billed Consumption Report by Month spreadsheets.
2. Source: AWWA Manual M6, "Water Meters - Selection, Installation, Testing and Maintenance", Table 5-3. Assumes Displacement Meters for 5/8 - 2 inch meters and Fire Service Type I & II for 3 - 10 inch meters.
3. Customer costs are allocated to each customer by dividing the total customer costs by the total number of customers.
4. Fire Protection costs are allocated by meter size and the hydraulic capacity of the meter.

TABLE 37 : PROJECTED REVENUE FROM FIXED CHARGES BY CUSTOMER CLASS

Number of Meters by Class and Size ¹	FY2022-23								Total
	5/8-1 inch	1.5 inch	2 inch	3 inch	4 inch	6 inch	8 inch	10 inch	
Residential (Single & Multi-Family)	12,981	41	60	-	8	4	-	-	13,094
Non-Residential (Commercial)	703	360	549	14	35	1	1	-	1,663
Fire Meters	-	-	1	-	64	126	67	5	263
Total Meters/Accounts	13,684	401	610	14	107	131	68	5	15,020
Residential Fixed Charges by Meter Size	\$ 33.10	\$ 62.72	\$ 98.27	\$ 193.08	\$ 299.73	\$ 595.98	\$ 951.49	\$ 2,492.01	
Non-Residential Fixed Charges by Meter Size	\$ 53.62	\$ 103.76	\$ 163.94	\$ 324.40	\$ 504.92	\$ 1,006.37	\$ 1,608.11	\$ 4,215.63	
Fixed Charges - Fire Meters Only	\$ 4.92	\$ 6.37	\$ 8.11	\$ 13.61	\$ 23.75	\$ 49.83	\$ 84.59	\$ 130.95	
Revenue from Fixed Charges									
Residential (Single & Multi-Family)	\$ 5,155,716	\$ 30,860	\$ 70,757	\$ -	\$ 28,774	\$ 28,607	\$ -	\$ -	\$ 5,314,714
Non-Residential (Commercial)	\$ 452,314	\$ 448,252	\$ 1,080,008	\$ 54,499	\$ 212,067	\$ 12,076	\$ 19,297	\$ -	\$ 2,278,513
Fire	\$ -	\$ -	\$ 97	\$ -	\$ 18,242	\$ 75,340	\$ 68,014	\$ 7,857	\$ 169,550
Total Revenue - Fixed Charges									\$ 7,762,777

CITY OF MORGAN HILL
WATER RATE STUDY
Water Cost of Service Analysis/Rate Design

Proposed Volume Charges

TABLE 38 : PROPOSED VOLUMETRIC RATES

	Number of Meters ¹	Water Consumption (hcf/yr.) ²	Target Rev. Req't from Vol. Charges	% of Total Rate Revenue	Uniform Commodity Rates (\$/hcf)	Proposed Rate Structure
Residential	13,094	2,146,005	\$ 6,195,093	36.7%	\$2.89	Uniform
Non-Residential	1,663	929,760	\$ 2,684,034	15.9%		
Subtotal	14,757	3,075,765	\$ 8,879,127	53%		
Fire	263	565	\$ -	0.00%	\$2.89	Uniform
Grand Total	15,020	3,076,330	\$ 8,879,127	53%		

1. Number of meters and consumption by size and class is per the City of Morgan Hill's utility billing data as of May 2021 in the Billed Consumption Report by Month spreadsheets.

TABLE 39 : CURRENT VS. PROPOSED WATER RATES

Water Rate Schedule	Current Monthly Rates	Proposed Monthly Water Rates				
		FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
Fixed Service Charges						
Single- and Multi-Family Residential:						
5/8 inch	\$31.14	\$33.10	\$36.08	\$39.32	\$42.08	\$45.02
3/4 inch	\$31.14	\$33.10	\$36.08	\$39.32	\$42.08	\$45.02
1 inch	\$31.14	\$33.10	\$36.08	\$39.32	\$42.08	\$45.02
1.5 inch	\$58.72	\$62.72	\$68.37	\$74.52	\$79.74	\$85.32
2 inch	\$91.81	\$98.27	\$107.12	\$116.76	\$124.93	\$133.68
4 inch	\$279.36	\$299.73	\$326.70	\$356.11	\$381.03	\$407.71
6 inch	\$555.17	\$595.98	\$649.62	\$708.09	\$757.65	\$810.69
Non-Residential:						
5/8 inch	\$47.23	\$53.62	\$58.44	\$63.70	\$68.16	\$72.93
3/4 inch	\$47.23	\$53.62	\$58.44	\$63.70	\$68.16	\$72.93
1 inch	\$47.23	\$53.62	\$58.44	\$63.70	\$68.16	\$72.93
1.5 inch	\$90.90	\$103.76	\$113.10	\$123.28	\$131.91	\$141.14
2 inch	\$143.31	\$163.94	\$178.69	\$194.77	\$208.41	\$222.99
3 inch	\$283.06	\$324.40	\$353.59	\$385.42	\$412.40	\$441.27
4 inch	\$440.28	\$504.92	\$550.36	\$599.90	\$641.89	\$686.82
6 inch	\$877.00	\$1,006.37	\$1,096.94	\$1,195.67	\$1,279.36	\$1,368.92
8 inch	\$1,401.07	\$1,608.11	\$1,752.84	\$1,910.59	\$2,044.33	\$2,187.43
Fire Service:						
5/8 inch	\$4.02	\$4.05	\$4.42	\$4.81	\$5.15	\$5.51
3/4 inch	\$4.25	\$4.34	\$4.73	\$5.16	\$5.52	\$5.91
1 inch	\$4.71	\$4.92	\$5.36	\$5.85	\$6.26	\$6.69
1.5 inch	\$5.86	\$6.37	\$6.94	\$7.57	\$8.10	\$8.66
2 inch	\$7.24	\$8.11	\$8.84	\$9.63	\$10.31	\$11.03
3 inch	\$11.61	\$13.61	\$14.84	\$16.17	\$17.31	\$18.52
4 inch	\$19.66	\$23.75	\$25.89	\$28.22	\$30.20	\$32.31
6 inch	\$40.37	\$49.83	\$54.31	\$59.20	\$63.34	\$67.78
8 inch	\$67.98	\$84.59	\$92.21	\$100.51	\$107.54	\$115.07
10 inch	\$104.79	\$130.95	\$142.74	\$155.58	\$166.47	\$178.13
Volumetric Charges						
Uniform Rate, All Customers	\$2.57	\$2.89	\$3.15	\$3.43	\$3.67	\$3.93

1. The FY 2022/23 rate increase will be effective July 1, 2022; subsequent rate increases will be effective on July 1st each year.

CITY OF MORGAN HILL
WATER RATE STUDY
Water Revenue Stabilization Rates

TABLE 40 : ALLOCATION OF WATER COST REQUIREMENTS

Classification Components	Adjusted Net Revenue Requirements (2021/22)	
Commodity-Related Costs	\$ 8,879,127	52.6%
Capacity-Related Costs (Fixed)	\$ 6,978,331	41.3%
Customer-Related Costs	\$ 625,855	3.7%
<u>Fire Protection-Related Costs</u>	<u>\$ 158,592</u>	<u>0.9%</u>
Subtotal Revenue Requirement	\$ 16,641,905	98.5%
<u>Zonal-Related Costs</u>	<u>\$ 250,817</u>	<u>1.5%</u>
Net Total Revenue Requirement	\$ 16,892,721	100%

TABLE 41 : AVERAGE MONTHLY CONSUMPTION AT VARIOUS LEVELS OF CONSERVATION

Customer Class	Water Consumption ¹ (hcf/yr.)	Annual Consumption at Various Levels of Reduction				
		10%	15%	20%	25%	30%
Single Family - Inside	1,773,378	1,596,040	1,507,371	1,418,702	1,330,034	1,241,365
Single Family - Outside	52,931	47,638	44,991	42,345	39,698	37,052
Multi-Family	319,696	287,726	271,742	255,757	239,772	223,787
Commercial	929,760	836,784	790,296	743,808	697,320	650,832
Total	3,075,765	2,768,189	2,614,400	2,460,612	2,306,824	2,153,036

1. Consumption data source: *Morgan Hill_2018-2021 Consumption Billing Data.xlsx*

TABLE 42 : ALLOCATION OF NET REVENUE REQUIREMENTS

Customer Class	Cost Classification Components				Total Cost of Service Net Revenue Req'ts	% of COS Net Revenue Req'ts
	Commodity	Capacity	Customer	Fire Protection		
Residential (Single & Multi-Family)	\$ 6,195,093	\$ 4,769,112	\$ 545,602	\$ -	\$ 11,509,807	69.2%
Non-Residential (Commercial)	\$ 2,684,034	\$ 2,209,219	\$ 69,294	\$ -	\$ 4,962,547	29.8%
Fire	\$ -	\$ -	\$ 10,959	\$ 158,592	\$ 169,550	1.0%
Grand Total	\$ 8,879,127	\$ 6,978,331	\$ 625,855	\$ 158,592	\$ 16,641,905	100%

CITY OF MORGAN HILL
WATER RATE STUDY
Water Revenue Stabilization Rates

TABLE 43 : PROPOSED RATE STABILIZATION VOLUMETRIC CHARGES FOR FY 2022/23

Customer Class	Total Target Rev. Req't from Vol. Charges	10%	15%	20%	25%	30%
Residential (Single & Multi-Family)	\$ 6,195,093					
Non-Residential (Commercial)	\$ 2,684,034	\$3.21	\$3.40	\$3.61	\$3.85	\$4.12
Fire	\$ -					
Grand Total	\$ 8,879,127					

TABLE 44 : PROPOSED RATE STABILIZATION VOLUMETRIC CHARGES THROUGH FY 2025/26

	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
<i>Proposed Rates (Unadjusted)</i>	<i>\$2.89</i>	<i>\$3.15</i>	<i>\$3.43</i>	<i>\$3.67</i>	<i>\$3.93</i>
10% Revenue Stabilization Rate*	\$3.21	\$3.50	\$3.82	\$4.09	\$4.38
15% Revenue Stabilization Rate*	\$3.40	\$3.71	\$4.04	\$4.32	\$4.62
20% Revenue Stabilization Rate*	\$3.61	\$3.93	\$4.28	\$4.58	\$4.90
25% Revenue Stabilization Rate*	\$3.85	\$4.20	\$4.58	\$4.90	\$5.24
30% Revenue Stabilization Rate*	\$4.12	\$4.49	\$4.89	\$5.23	\$5.60

* Revenue Stabilization Rates would be implemented if current revenue from water sales are below the percentages indicated.

CITY OF MORGAN HILL
WATER AND WASTEWATER RATE STUDY
Zonal Elevation Surcharges

TABLE 45 : WATER ZONAL SURCHARGES SUMMARY OF CUSTOMER STATS AND POWER COSTS

Water Enterprise				
	Customer Statistics			Surcharge Costs
Elevation Zones	Number of Customers	Annual Flow (gal.)	Annual Flow (hcf)	Annual Power Costs
Zone 1 Booster Stations	2,023	427,400,000	571,390	\$ 202,520
Zone 2 Booster Stations	757	118,500,000	158,422	\$ 57,000
Zone 3 Booster Stations	106	17,000,000	22,727	\$ 8,000
Total	2,886	562,900,000	752,540	\$ 267,520

TABLE 46 : WATER ZONAL SURCHARGES SUMMARY - VOLUMETRIC ONLY

Water Enterprise Zonal Surcharges					
	Surcharge Costs	VOLUMETRIC SURCHARGES (for 100% of Power Costs)			Total Revenue
Elevation Zones	Annual Power Costs	Annual Flow (hcf)	Costs to Recover in Volumetric Surcharge	Volumetric Surcharges (\$/hcf)	Volumetric Revenue from Surcharges
All Zones	\$ 267,520	752,540	\$ 267,520	\$0.36	\$ 267,520
Total	\$ 267,520	752,540	\$ 267,520	--	\$ 267,520

CITY OF MORGAN HILL
WATER AND WASTEWATER RATE STUDY
5-Year Schedule of Zonal Elevation Surcharges

TABLE 47 : WATER ZONAL SURCHARGES SUMMARY OF COSTS

Water Enterprise Calculation of Zonal Elevation Cost Increases over 5-year Period						
Cost Category	CPI Factor	2021/22	2022/23	2023/24	2024/25	2025/26
Power	5.00%	\$ 267,520	\$ 280,896	\$ 294,941	\$ 309,688	\$ 325,172
Total		\$ 267,520	\$ 280,896	\$ 294,941	\$ 309,688	\$ 325,172
Overall Cost Increase		--	5.0%	5.0%	5.0%	5.0%

Inflation Factors Used in Rate Analysis & Applied to Zone Costs	
Energy/Power ¹	5.00%
Labor ¹	5.00%
Capital ²	2.87%

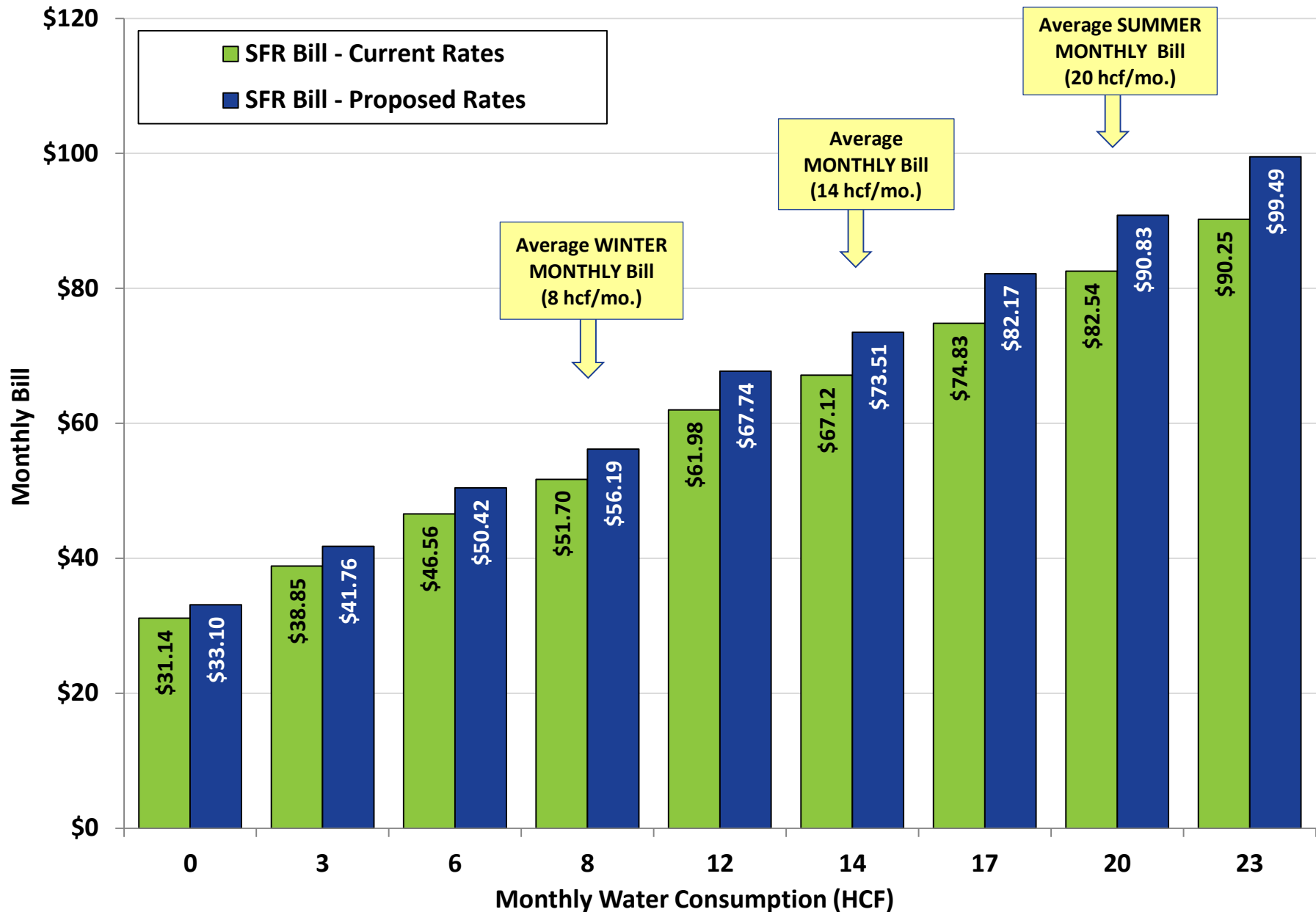
1. Inflation factor provided by City Staff.
2. For reference purposes, the annual Construction Cost Inflation percentage is the 10 year average change in the Construction Cost Index for 2011-20:
Source: *Engineering News Record website (http://enr.construction.com).*

TABLE 48 : WATER ZONAL SURCHARGES SUMMARY OF VOLUMETRIC SURCHARGES

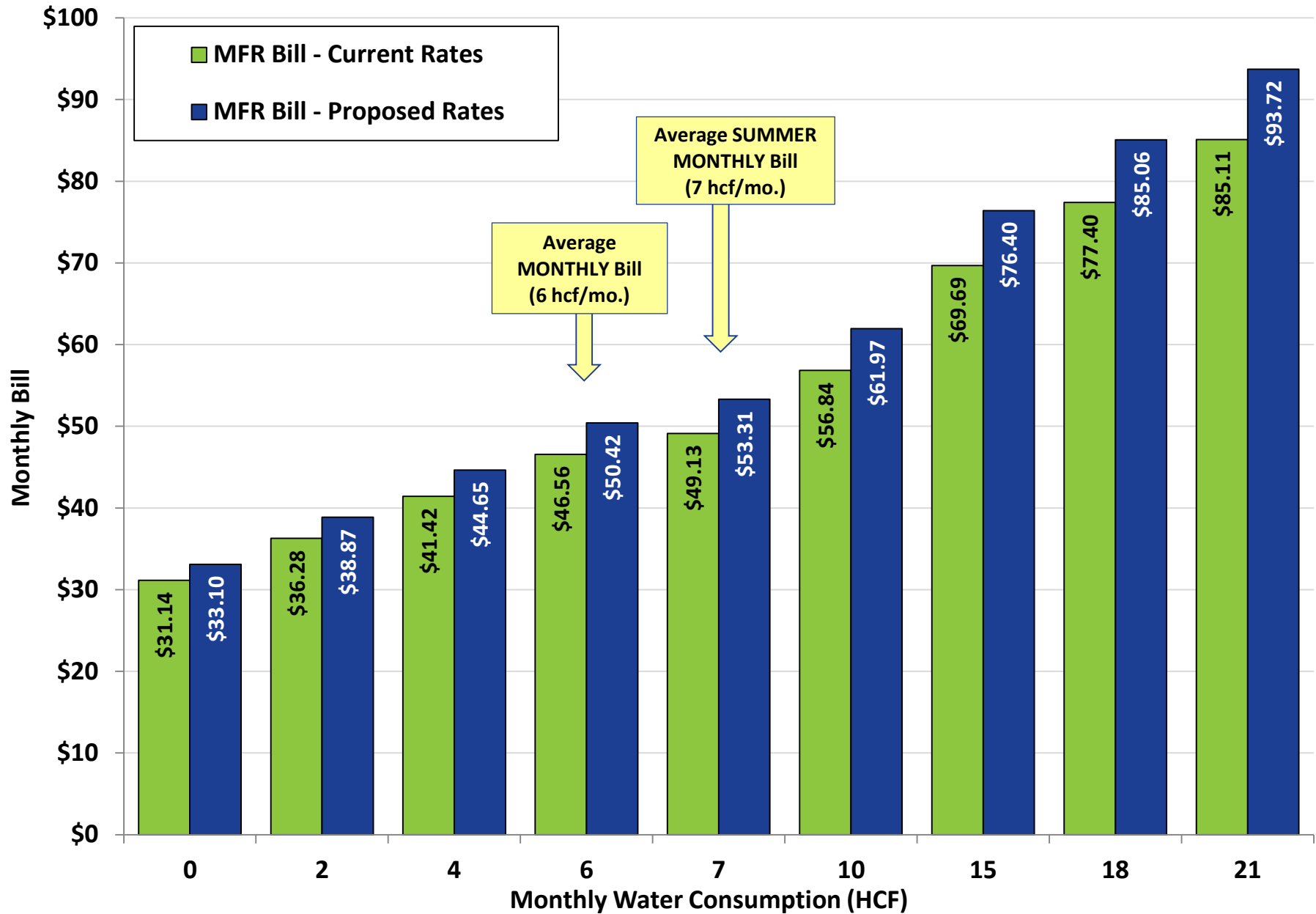
Water Enterprise Zonal Elevation Surcharges: Volumetric Surcharges						
Elevation Zones	Current	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26
Volumetric Surcharges (\$/hcf)	\$0.11	\$0.36	\$0.37	\$0.39	\$0.41	\$0.43

1. The Annual % increase is due to inflation of energy costs.

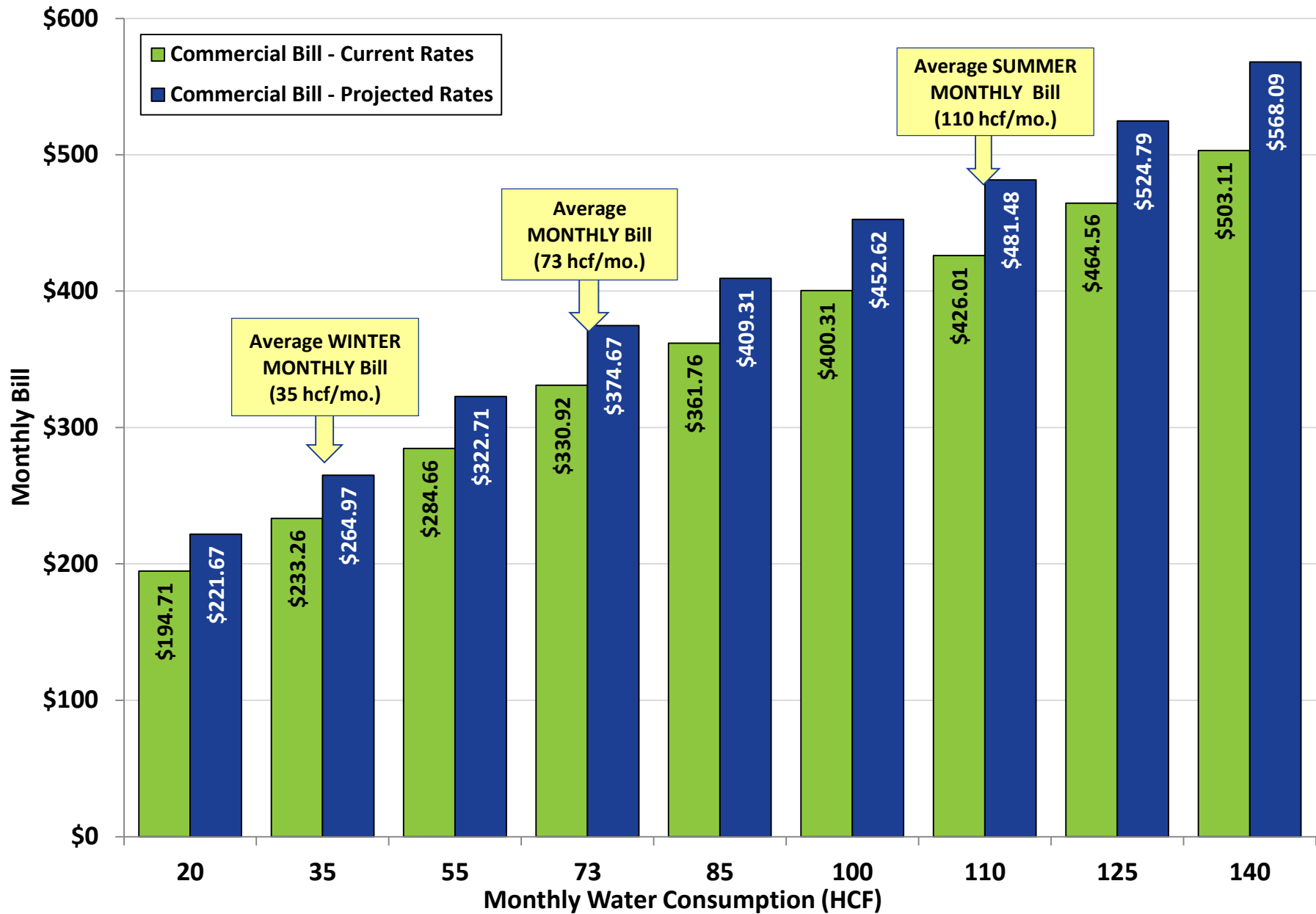
Single-Family Residential Bill Comparison Fiscal Year 2022/23 (5/8-1" meter)



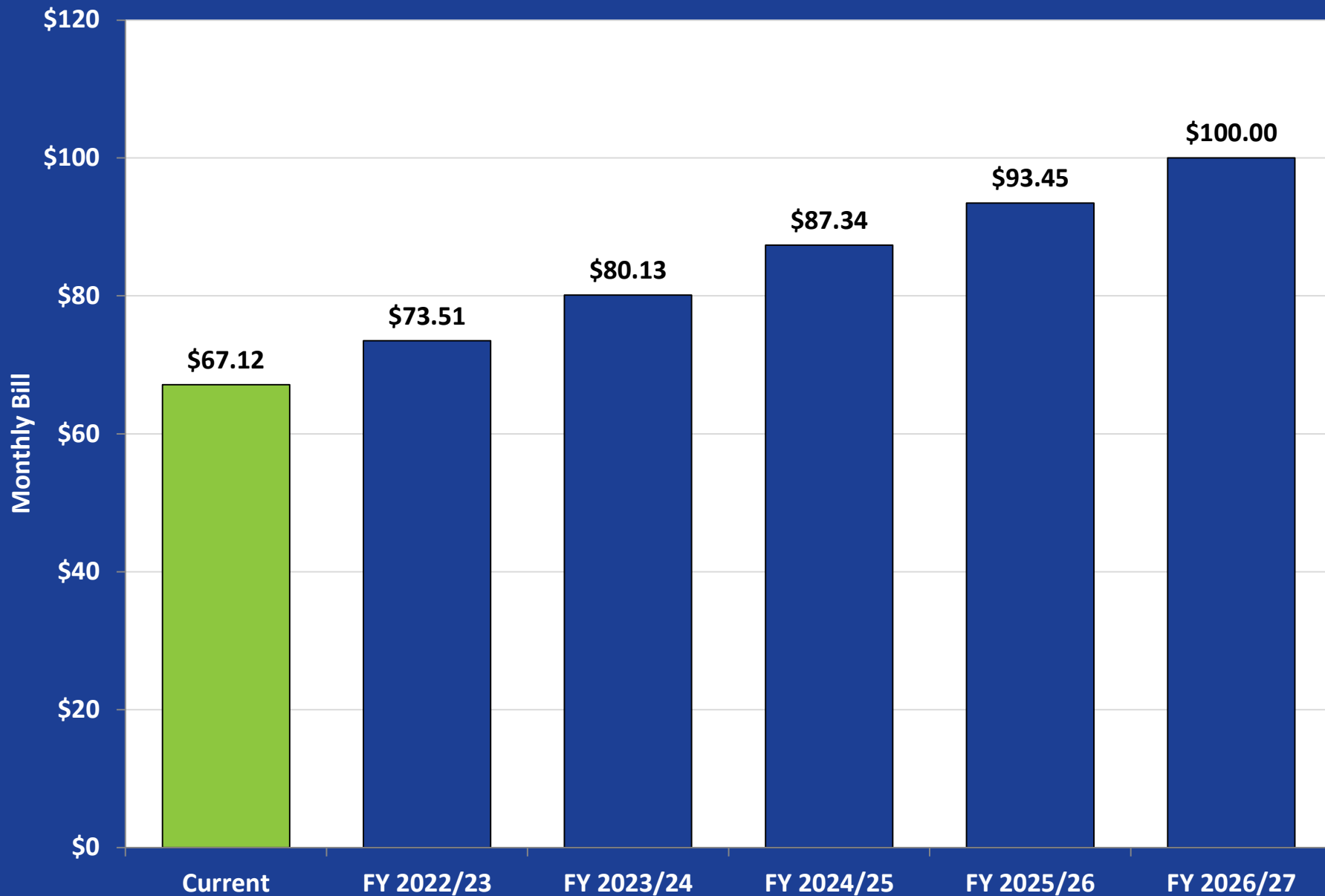
Multi-Family Residential, Two Dwelling Unit Bill Comparison Fiscal Year 2022/23 (5/8-1" meter)



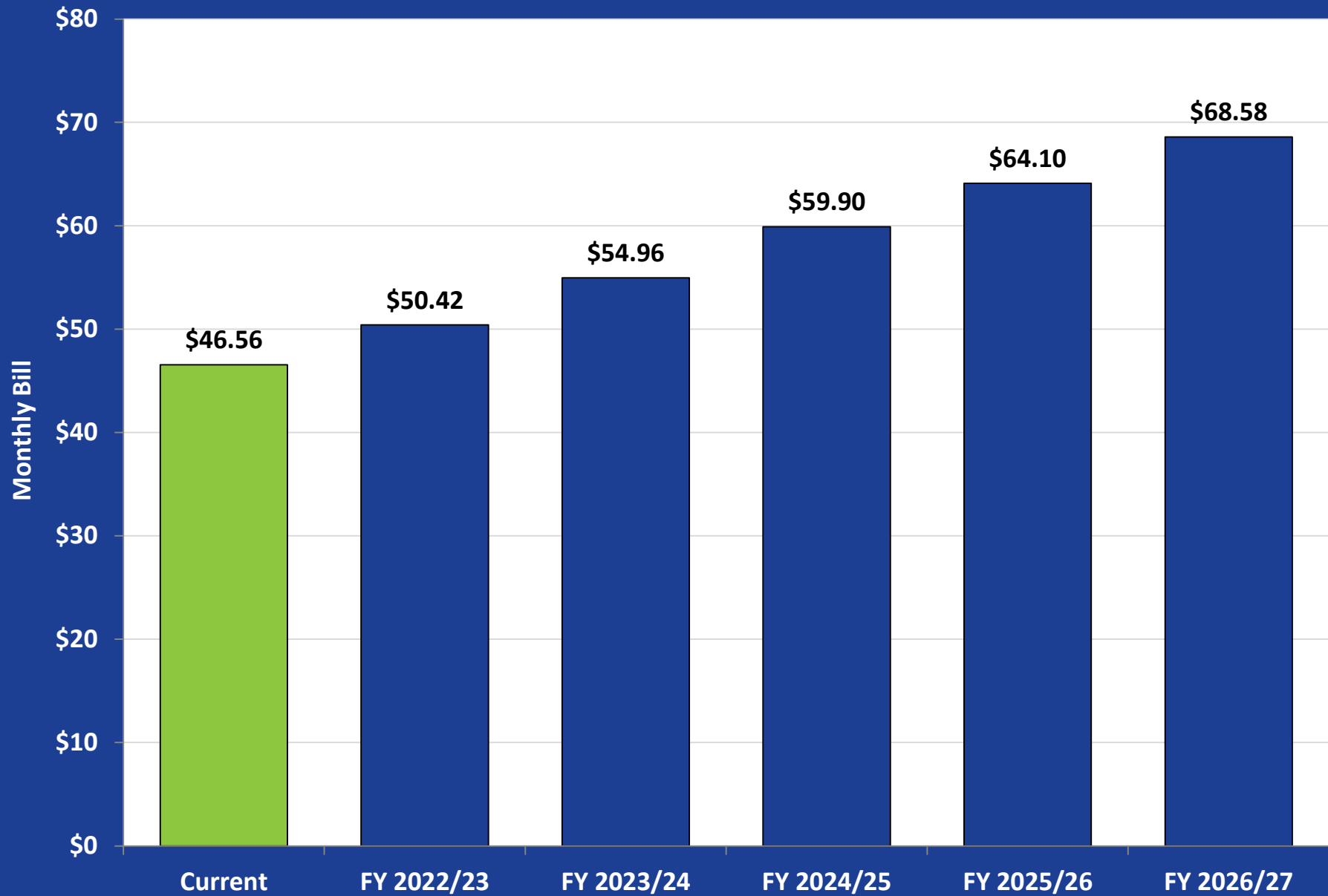
Commercial Customer Monthly Bill Comparison Fiscal Year 2022/23 (2" meter)



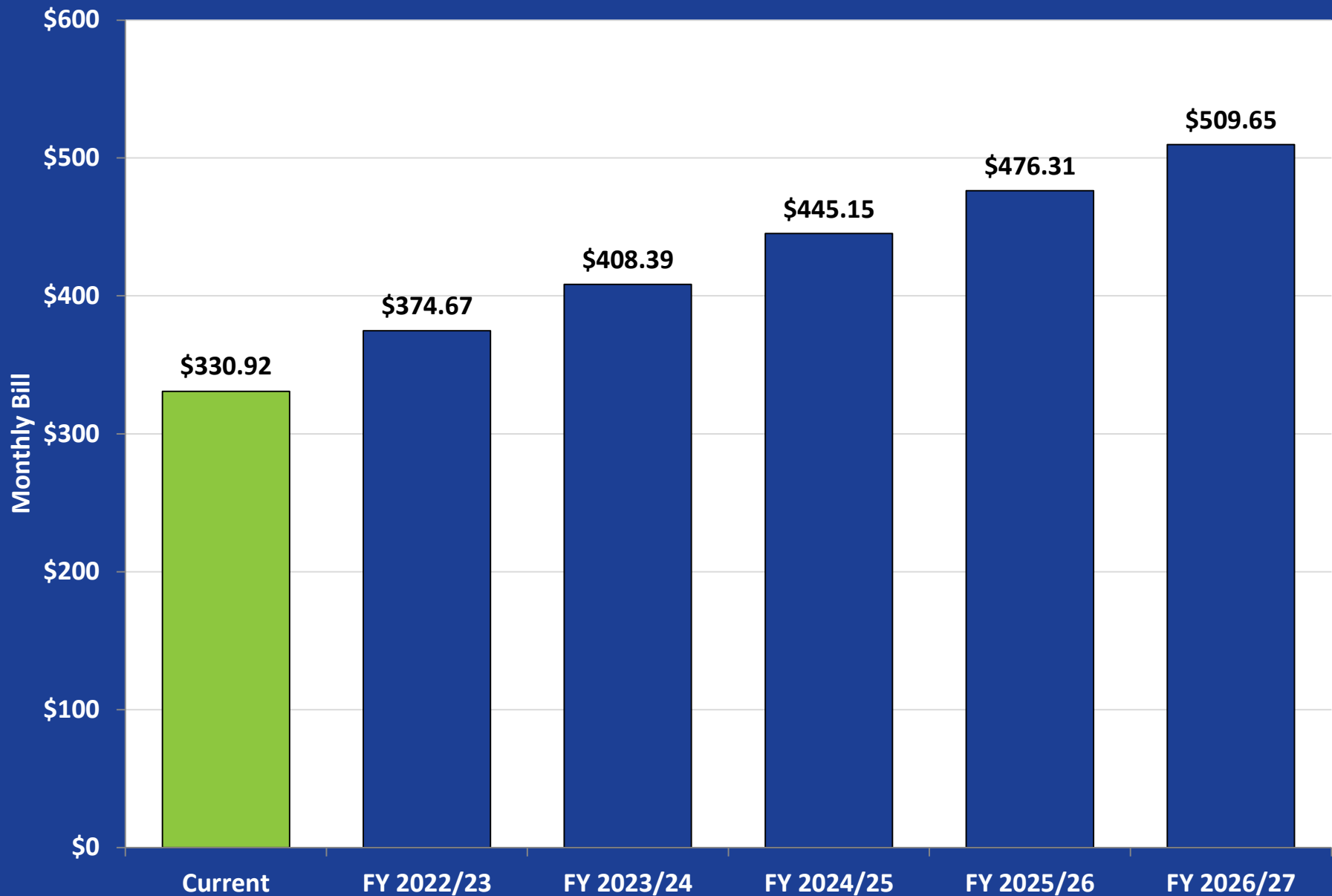
Single-Family Residential Bill Comparison (1" meter with 14 hcf)



Multi-Family Residential, Per Unit Bill Comparison (1" meter and 6 hcf)



Commercial Customer Monthly Bill Comparison (2" meter with 73 hcf)



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS INTENTION TO ADJUST WATER RATES AND SETTING THE TIME AND PLACE FOR A PROPOSITION 218 PUBLIC HEARING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO PROVIDE NOTICE IN COMPLIANCE WITH STATE-MANDATED TIMING REQUIREMENTS

WHEREAS, the City of Morgan Hill has identified ongoing operational and capital needs associated with the City’s water utility system; and

WHEREAS, in order to fund the identified water system’s operational and capital costs, it will be necessary to adjust the City’s current water rates; and

WHEREAS, on November 5, 1996, California voters approved Proposition 218, requiring specific procedures be followed with regard to “property-related” fee increases, including the need to provide written notice at least 45 days in advance of a public hearing; and

WHEREAS, on July 24, 2006, the California Supreme Court confirmed that charges for water, wastewater (sewer), and solid waste services are subject to Proposition 218 procedures (Bighorn-Desert View Water Agency v. Verjil (2006) 39 Cal. 4th 205); and

WHEREAS, on April 20, 2015, the California Court of Appeal ruled that water rate surcharges and by analogy wastewater surcharges may be charged as long as they are based upon the actual cost of service to the ratepayers receiving the surcharge. (Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano (2015) 235 Cal.App.4th 1493; and

WHEREAS, the City Council believes it is in the public interest to and desires to proceed through the requisite processes pursuant to the provisions of Proposition 218 in order to consider adjustments to the City of Morgan Hill's fees, rates and charges related to its water system.

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

1. A Proposition 218 Public Hearing is hereby set and will be held before the City Council on June 1, 2022 in order for the City Council to consider adjustments to the City’s water service fees, rates and/or charges; and
2. The City Manager, or designee, is hereby authorized and directed to cause a notice of Public Hearing that provides details related to adjustments to the specific water service fees, rates and/or charges being proposed to be mailed no later than April 15, 2022, in a manner that complies with applicable laws, including without limitation, the State-mandated minimum 45-day required notice under Proposition 218.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at its regular meeting held on this 6th day of April 2022 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Rich Constantine, MAYOR

∞ **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. _____, adopted by the City Council at a regular meeting held on April 6, 2022.

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

DATE: _____

Michelle Bigelow, CITY CLERK



Proposition 218 Notification

Notice of Public Hearing On Water Rate Adjustments

17555 PEAK AVENUE
MORGAN HILL, CA 95037-4128
WWW.MORGANHILL.CA.GOV

Hearing Date and Time: June 1, 2022, at 7:00 pm or as soon thereafter as possible Hearing

Location: City Council Chambers • 17555 Peak Avenue • Morgan Hill, CA 95037-4128

**If held virtually: Join the meeting at <https://bit.ly/MHCityCouncilMeeting>
or by calling 669-900-9128, then enter the webinar id: 873 3200 8380**

The City of Morgan Hill is proposing a five-year water rate program adjustment for all customers. The proposal will be considered by the City Council at a Public Hearing on **June 1, 2022**. If approved, the water rate adjustments will commence with service period containing July 1, 2022 and adjusted annually thereafter. You are receiving this notification in compliance with California Constitution Article XIII D Section 6 (Proposition 218) requirements that all impacted property owners are mailed notice of proposed rate changes at least 45 days prior to a public hearing. In addition, Section 53755 of the Government Code authorizes those notices be mailed to customers who are billed for the service. Proposition 218 also establishes a protest process for the public to follow if they wish to oppose the proposed rates.

BASIS OF PROPOSED RATES

The City is required by State law and City policy to collect revenues sufficient to cover the costs of operating the water system. These revenues allow the City to ensure the City's water supply needs are continually met and that water quality meets or exceeds all public health and environmental standards. Costs that must be recovered through rate revenue include groundwater production, electricity, equipment, supplies and services, debt service, and salaries and benefits. Additionally, revenues generated from water rates would be used to finance the repair and renovation of aging water infrastructure and maintain reserve funds. The rates proposed herein were developed through a Water Rate Study designed to meet all legal requirements and fairly and equitably recover the required revenue from all customer classes. The Rate Study is available for review at <https://www.morgan-hill.ca.gov/DocumentCenter/View/40685/2022-Rate-Study-PDF>.

WHAT DO WATER RATES FUND?

The City provides water utility services to residential and commercial customers. All revenue generated from customer water bills is used to pay for the ongoing operation, maintenance, repair and replacement of the City's existing water system. The cost of system expansions, to serve new development, is recovered through connection or impact fees imposed on the developer requesting City services. By State law, the City may not collect more revenue than necessary to recover the costs of providing services.

PROPOSED WATER RATES

The City currently charges residential and non-residential customers a monthly fixed water charge based on meter size. In addition to a fixed monthly charge, all customers pay a uniform commodity rate for all water consumed (commodity or volumetric rates are charged per unit of water, or hundred cubic feet (hcf), or 748 gallons. The proposed water rate charges for the next five years are presented in detail on **Table 1: Current and Proposed Water Rates for FY2022/23 through 2026/27**.

Table 1. Current and Proposed Water Rates for FY 2022/23 through 2026/27

Water Rate Schedule	Current Monthly Rates	Proposed Monthly Water Rates				
		FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
Fixed Service Charges						
<u>Single- and Multi-Family Residential:</u>						
5/8 inch	\$31.14	\$33.10	\$36.08	\$38.60	\$41.30	\$42.54
3/4 inch	\$31.14	\$33.10	\$36.08	\$38.60	\$41.30	\$42.54
1 inch	\$31.14	\$33.10	\$36.08	\$38.60	\$41.30	\$42.54
1.5 inch	\$58.72	\$62.72	\$68.37	\$73.15	\$78.28	\$80.62
2 inch	\$91.81	\$98.27	\$107.12	\$114.62	\$122.64	\$126.32
4 inch	\$279.36	\$299.73	\$326.70	\$349.57	\$374.04	\$385.26
6 inch	\$555.17	\$595.98	\$649.62	\$695.09	\$743.75	\$766.06
<u>Non-Residential:</u>						
5/8 inch	\$47.23	\$53.62	\$58.44	\$62.53	\$66.91	\$68.92
3/4 inch	\$47.23	\$53.62	\$58.44	\$62.53	\$66.91	\$68.92
1 inch	\$47.23	\$53.62	\$58.44	\$62.53	\$66.91	\$68.92
1.5 inch	\$90.90	\$103.76	\$113.10	\$121.02	\$129.49	\$133.37
2 inch	\$143.31	\$163.94	\$178.69	\$191.20	\$204.58	\$210.72
3 inch	\$283.06	\$324.40	\$353.59	\$378.35	\$404.83	\$416.98
4 inch	\$440.28	\$504.92	\$550.36	\$588.89	\$630.11	\$649.01
6 inch	\$877.00	\$1,006.37	\$1,096.94	\$1,173.73	\$1,255.89	\$1,293.56
8 inch	\$1,401.07	\$1,608.11	\$1,752.84	\$1,875.53	\$2,006.82	\$2,067.03
<u>Fire Service:</u>						
5/8 inch	\$4.02	\$4.05	\$4.42	\$4.73	\$5.06	\$5.21
3/4 inch	\$4.25	\$4.34	\$4.73	\$5.06	\$5.42	\$5.58
1 inch	\$4.71	\$4.92	\$5.36	\$5.74	\$6.14	\$6.33
1.5 inch	\$5.86	\$6.37	\$6.94	\$7.43	\$7.95	\$8.19
2 inch	\$7.24	\$8.11	\$8.84	\$9.46	\$10.12	\$10.42
3 inch	\$11.61	\$13.61	\$14.84	\$15.88	\$16.99	\$17.50
4 inch	\$19.66	\$23.75	\$25.89	\$27.70	\$29.64	\$30.53
6 inch	\$40.37	\$49.83	\$54.31	\$58.11	\$62.18	\$64.05
8 inch	\$67.98	\$84.59	\$92.21	\$98.66	\$105.57	\$108.74
10 inch	\$104.79	\$130.95	\$142.74	\$152.73	\$163.42	\$168.32
Volumetric Charges						
Uniform Rate, All Customers	\$2.57	\$2.89	\$3.15	\$3.37	\$3.60	\$3.71

ZONAL WATER RATES

While most of the City's water customers are located within normal elevation zones (those not requiring significant additional infrastructure to get water to the higher elevations), some customers are in higher elevation zones that costs more to pump water to them. These elevation surcharges are part of the current rate structure and the Water Rate Study evaluated the current cost of service for these customers. **Table 2** shows the five-year schedule of water zonal elevation surcharges.

Table 2. Five-Year Schedule of Water Zonal Elevation Surcharges

Water Enterprise Zonal Elevation Surcharges: <i>Volumetric Surcharges</i>						
Elevation Zones	Current	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26
Volumetric Surcharges (\$/hcf)	\$0.11	\$0.36	\$0.37	\$0.39	\$0.41	\$0.43

A map that allows customers to determine if they fall within a zonal area are available for review at <http://www.morgan-hill.ca.gov/2292/Proposed-Water-Rate-Adjustment>.

REVENUE STABILIZATION RATES

If revenue from volumetric rates fall below the levels currently expected, the City is still obligated to meet its annual net revenue requirements. The intent of revenue stabilization rates is to offset the revenue losses that may be due to a variety of reasons and thereby decoupling this process from specific drought rates, drought stages, and/or State-mandated conservation. Revenue stabilization rates are the expected volumetric rate revenue divided by the reduced levels of water sales. The proposed volumetric charges per water unit (hcf) with Revenue Stabilization Rates for the next five years are presented in detail on **Table 3: Proposed Volumetric Charges per Water Unit (hcf) with Revenue Stabilization Rates for FY 2022/23 through FY 2026/27**.

Table 3. Proposed Volumetric Charges per Water Unit (hcf) with Revenue Stabilization Rates FY 2022/23 through FY 2026/27

	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27
10% Revenue Stabilization Rate*	\$3.21	\$3.50	\$3.82	\$4.09	\$4.38
15% Revenue Stabilization Rate*	\$3.40	\$3.71	\$4.04	\$4.32	\$4.62
20% Revenue Stabilization Rate*	\$3.61	\$3.93	\$4.28	\$4.58	\$4.90
25% Revenue Stabilization Rate*	\$3.85	\$4.20	\$4.58	\$4.90	\$5.24
30% Revenue Stabilization Rate*	\$4.12	\$4.49	\$4.89	\$5.23	\$5.60

* Revenue Stabilization Rates would be implemented if current revenue from water sales are below the percentages indicated.

IMPACT TO WATER CHARGE ON THE BILL

If approved, water rate increases would commence with water consumption period containing July 1, 2022 and adjust annually for the water consumption period containing July 1 thereafter.

HOW TO PROTEST THE PROPOSED RATE ADJUSTMENTS

As the owner or customer of record of a parcel subject to the imposition of the proposed rate adjustments, you may submit a written protest against the proposed rate changes. If the City receives written protests against proposed water rates by a majority of the affected property owners or tenants or utility customers on record prior to the end of the hearing, the Council will not approve the change. Only one written protest will be counted per identified parcel.

You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing. The City Council will count all written protests received (not postmarked) prior to the conclusion of the public hearing. The City Council will not count written protests submitted after the conclusion of the public hearing. Only one protest per parcel will be counted.

A written protest must include (1) your name; (2) identification of the parcel by address or assessor's parcel number; (3) whether you are the owner of the parcel or the person receiving the service for which the fee is charged; and (4) your statement of the specific rate changes for which you protest the increase in the fee; and (5) your original signature. Written protests will not be accepted by e-mail or by fax. Verbal protests will not be counted. Written protests may be submitted by mail or in person to:

**City of Morgan Hill
Attn: Water Rate Protest
17575 Peak Avenue
Morgan Hill, CA 95037-4128**

For more information, visit <https://www.morgan-hill.ca.gov/2292/Proposed-Water-Rate-Adjustment>

This material is available in alternative formats upon request to accommodate persons with disabilities or non-English speakers. To order information in an alternative format, or to arrange for a sign language or oral interpreter at the June 1, 2022 hearing, please call or email the Clerk's office by 5 pm on Thursday, May 26, 2022.

City Clerk: (408) 779-7259, cityclerk@morganhill.ca.gov

CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2022

PREPARED BY:

Michelle Bigelow, Deputy City Clerk

APPROVED BY: City Manager

ADOPT THE COMMUNICATIONS, OUTREACH, AND ENGAGEMENT PLAN AND APPROVE THE RECOMMENDED STAFFING CHANGES

RECOMMENDATION(S)

1. Adopt the Communications, Outreach, and Engagement Plan; and
2. Approve the classifications for City Clerk/Public Information Officer (PIO); Communications and Engagement Coordinator; and updated Multimedia Coordinator.

Estimated Time: 30 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

The City Council's Sustainable Morgan Hill identifies priorities and objectives. At the January 2018 City Council Goal Setting Workshop, the City Council identified Community Engagement and Messaging as a Strategic Priority. In 2021, the strategic priority was amended to Community Outreach, Engagement, and Messaging and it remains a strategic priority in the 2022-2023 Sustainable Morgan Hill Plan. To improve the City's overall communications, outreach, and engagement, we have developed the City's first Communications, Outreach, and Engagement Plan (Plan). The Plan defines the messages, priorities, strategies, and tools the City will use when communicating and engaging with the community. Through the Plan, the City will tell the Morgan Hill story and work to build and sustain trust in our community and ensure that we provide effective community engagement.

The Plan has two primary goals; effective community engagement and building and sustaining trust with the community. Through the effective application of communication strategies, this Plan will help 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 communications resources with the goals of the Plan 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.

Further, the Plan includes strategies and tactics that leverage our current communications efforts and the momentum that our efforts have generated. We want to ensure that the Morgan Hill community can engage with the City and understand the work the City is doing to meet community needs. In alignment with Strategic Morgan Hill, the Plan helps City teammates tell the Morgan Hill story effectively and serves to improve and strengthen communication and engagement with our community.

Some high-level aspects of the Plan include:

- Creating opportunities for meaningful stakeholder participation and collaboration
- Continuing to provide open and timely communications
- Leading strategic communications efforts
- Ensuring our City team is well-informed
- Developing and reinforcing our brand identity
- Measurements of our progress and success, including key performance indicators

The Plan is just one element in our comprehensive plan for effective communications. The second element is the staff and resources necessary to implement the Plan. We have seen in recent years (and Covid has highlighted) that effective communications, outreach, and engagement are more important than ever. Since the retirement of our Communications and Engagement Director in February 2021, our City Clerk has been serving as the Interim Public Information Officer and the team has been exploring the most efficient and cost-effective ways for the Communications and Engagement Division to move forward. To maximize City staff resources and dollars, staff recommends combining the City Clerk and Public Information Officer positions and eliminating the Communications and Engagement Director Position. This change creates cost savings and allows for additional staff resources to be brought in to support the communications effort. For this Plan to be successful, it is critical that the recommended staffing adjustments are made, ensuring there is staffing support at the appropriate levels for the new, combined workload.

These staff changes are as follows:

- Combine the City Clerk and Public Information Officer positions, allowing for broader oversight of the two divisions that work closely to both hear and learn

from, as well as provide information to the community.

- With the cost savings from the Communications and Engagement Director position, create a Communications Coordinator position to provide staff resources for the Communications and Engagement division.
- Through the budget process, staff will bring forward a recommendation to reclassify both the Council Services Assistant and the Municipal Service Assistant positions in the Council Services and Records Management (CSRM) Division to a newly created Deputy City Clerk classification. This change will allow for better cross-training and added capacity to the CSRM division and will allow for the City Clerk/PIO to focus more strategically on Communications and Engagement and City Clerk-related duties.
- Also through the budget process, we will recommend funding for communications consulting to address needs as they arise.

In addition to the changes listed above, staff recommends the Council approve the updated classification for the full-time Multimedia Coordinator position that was approved by the City Council at the [August 18, 2021 City Council Meeting](#).

With the adoption and implementation of the Communications, Outreach, and Engagement Plan and the recommended staff changes, the team will be able to ensure that communications are in line with the City's values, mission, and goals; that we can proactively manage issues rather than react; understand what we know and don't know; and efficiently manage City resources.

COMMUNITY ENGAGEMENT:

Engage.

The Communications, Engagement, and Outreach Plan was shared with the community 10 days in advance of this Council meeting, allowing the community additional time to review the plan. As we implement this Plan, we will work with the community to ensure that we are actively listening to and engaging with the community and incorporating the information we receive into the work we do.

ALTERNATIVE ACTIONS:

The Council may ask staff to add or change strategies or tactics within the plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

The resources needed to implement the Communications, Outreach, and Engagement Plan and associated staffing changes will be included in the fiscal years 2022-23 and 2023-24 budget.

CEQA (California Environmental Quality Act):

Not a Project. The Communications, Engagement, and Outreach Plan is not a project, as defined in Section 15378 of the State CEQA guidelines.



City of Morgan Hill Communications, Outreach, and Engagement Plan

April 2022

Table of Contents

Executive Summary.....	2
Goals	3
Principles.....	3
Audiences and Stakeholders.....	4
Issue Identification.....	6
Crisis Management and Communications	7
Strategies and Tactics	9
Measurements of Progress and Success.....	18
Key Performance Indicators.....	18
Conclusion.....	21
Appendices.....	22
Appendix A: Roles of City Council and City Leadership	23
Appendix B: Social Media Guidelines for Elected Officials	25
Appendix C: Digital Asset Overview	27

Executive Summary

Purpose

The Communications, Outreach, and Engagement Plan defines the messages, priorities, strategies, and tools the City of Morgan Hill will use when communicating with the community. In alignment with the City Council's Sustainable Morgan Hill Vision and Priorities document, this Plan helps the City Council, Commissioners, and City teammates tell the Morgan Hill story effectively and serves to improve and strengthen communication and engagement with our community.

Goals

The two primary goals of this Plan are effective community engagement and building and sustaining trust with the community. Through effective application of communication strategies, this Plan will ensure that all City Council Members, Commissioners, and teammates have the tools to provide accurate, timely, and relevant information to the community. This Plan also aligns communications 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 and on-going priorities.

Implementation

It is critical that for each project or activity, the City use the appropriate tools for communications, outreach, and engagement ensuring efficient and effective use of City resources by matching the tools used to the target audience and project goal.

"Democracy is interactive... It's a constant job of information, education, explanation, listening, and interactive communication."

*Dick Gephardt
American attorney, lobbyist, and politician*

Goals

In supporting the strategic priorities of the City, the communications team will work together with the community and departments throughout the City to achieve two primary goals for the coming years:

Effective Community Engagement

Develop measurable methods for connecting with our identified constituents.

Building and Sustaining Trust with the Community

Increase public awareness of City services and roles and encourage informed participation in local government.

Principles

Fundamental beliefs about outreach and engagement

To successfully execute the strategies and tasks outlined in this Plan, the Communications Team will ensure that our communication activities match the needs of the City in both message and execution.	We will work with stakeholders within the community to develop a better understanding of the City's role and the services we provide.	We will ensure that the effectiveness of our communications will not be measured by output or distribution alone, but by the productive responses we elicit.
Coordination, consistency, and repetition will ensure our messages build value in the City's brand.	We will, in an environment of limited resources, focus our efforts on strategic partners who can help the City achieve its goals.	We will involve, educate, and seek feedback from the community on City projects and initiatives. We will close the feedback loop by sharing what was learned and how it will be used with the community.
We will operate in the knowledge that every member of the community can affect our reputation and that effective communication is everyone's responsibility, including the City Council, Commissioners, and teammates.	The services delivered by every City department play a critical role in the lives of those in our community. The Communications Team helps to both create and sustain productive connections between City services and Morgan Hill community members, businesses, and visitors to tell the City's story, and listen to and share our community's stories.	Informing vs. Persuading: It is critical for City staff to provide complete and unbiased information to residents on issues that are coming to the City Council before the Council has had the opportunity to deliberate and establish the City's official position or vote on a specific decision. Our commitment is to inform the community in a manner that is factual, relevant, and transparent.

Audiences and Stakeholders

Understanding our audiences and stakeholders is critical to ensuring that we are reaching our audience segments effectively. It is also critical that we use targeted messages and tools that reach those audiences. The different audiences and stakeholders have different needs, priorities, and concerns and require different considerations and methods be used for communications, outreach, and engagement. It is critical that the community knows where to go and how to access factual information on projects and services.

The City has a variety of groups that make up our target audiences:

- Business community
- Citizens at large
- City commissions
- City Council
- City teammates
- Community organizations
- Critics of city government
- Developers
- Environmental groups
- Faith-based organizations
- Families
- Future employees
- Future/potential business owners
- Future/potential residents
- Media; print, radio and television, internet
- Other governmental agencies; local, county, state, federal
- Partner agencies
- Property owners; residential and business
- Renters
- School District
- Seniors
- Users of city services
- Visitors
- Youth

Understanding Our Audiences

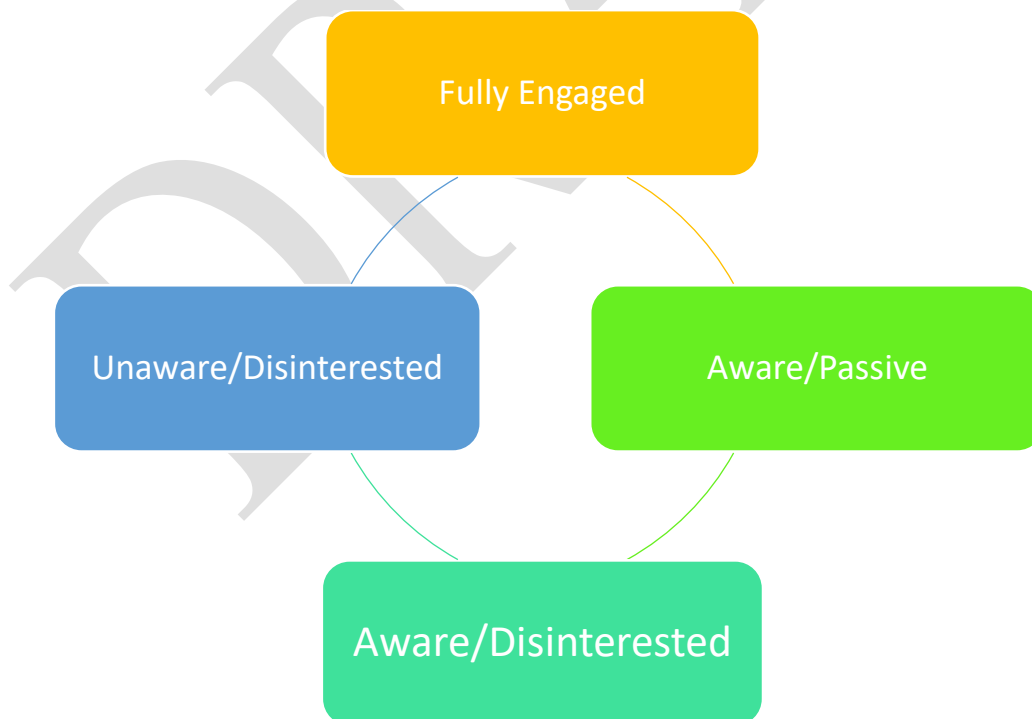
Just as City projects and initiatives should align with the Council's priorities, all communication efforts should also reflect and support City goals. This includes communication initiatives for teammates and external communications. This coordination ensures consistency, strengthens strategic message delivery, and enhances mutual understanding.

Another way of grouping our audiences is through their level of engagement: fully engaged, aware/passive, aware/disinterested, or unaware/disinterested.

We recognize that the City's most engaged audience is primarily made up of three distinct sub-groups:

- Community members who participate in the governing process either as volunteers or through participation in specific programs
- Ambassadors and those that monitor government actions to ensure that they are appropriate and ethical
- Community members looking to learn about upcoming community events and resources

We understand it is also possible for disinterested or passive audience members to shift suddenly to interested or engaged when a City policy or program directly affects them. Staff needs to keep this in mind when planning initiatives, programs, or projects. This change can occur within any audience group at any time, therefore anticipating and assuming this shift is key to ensuring that we are communicating thoroughly on all projects/initiatives, not just ones that may controversial.



Issue Identification

An important aspect of communications, outreach, and engagement is anticipating, identifying, and addressing issues of importance to the community. This is important because anticipating challenges before they become problems allows the necessary steps to be taken to educate, garner support, prepare audiences, identify potential questions, and ensure preparedness. The City has established several formal avenues for identifying emerging issues. The key mechanisms are:

- Community feedback
- Staff review of City Council agendas and City Council meetings
- Media tracking and analysis
- Bi-weekly Leadership Team meetings

City Council Members are strongly encouraged to contact the City Manager whenever they have a concern that a particular issue may need to be addressed.

There are several areas that will continue to be important for the City to communicate. These include:

Public Safety: The Police and Fire Teams are planning for the future and determining how to best provide adequate resources to protect Morgan Hill. Issues such as number and location of fire facilities, police and fire equipment, and police and fire staffing will continue to generate discussion as we develop plans and strategies to address needs.

Financial Management: An important element of this topic is the legal and contractual restrictions the City has regarding use of funds and making sure residents understand the different sources of funding. The City will continue to be financial stewards of its resources and assets to ensure long-term fiscal sustainability.

Development Services: A department which is made up of planning, building, code compliance, housing, and economic development will continue to focus on protecting the City's job-generating lands, supporting our unhoused community, implementing our Regional Housing Needs Allocation Strategy, and working with the State on High-Speed Rail to mitigate the impacts to Morgan Hill.

Public Services: Maintenance and enhancement of City infrastructure, including streets, sidewalks, parks, public buildings, street trees, flood control channels and traffic signals continues to be a priority. Additionally, implementation of the City's Climate Action Plan, water conservation ordinance, and traffic management and improvement are areas of focus.

Crisis Management and Communications

Issues, for the purposes of this discussion, are topics of concern to one or more audiences that relate directly to City policies or programs. Many issues arise over the course of a year, a minority of which may rise to the level of crisis.

There is a critical distinction between emergencies – such as floods, earthquakes, and fires – and crises. Where we recognize any threat to public safety as an emergency, a crisis is a threat to the organization's financial health or reputation.

The City cannot predict every issue that will arise unexpectedly, nor would it be feasible to attempt to prepare for every possible contingency. Instead, in the event that a situation arises, City staff will provide informative communications with sufficient background and relevant information allowing for flexibility in evolving situations. When an issue comes up, the first step should be to determine what actions – if any – are appropriate in response.

There can be unintended consequences if the City were to attempt to proactively respond to every evolving issue; we could waste resources, diffuse our strategic messages, and potentially generate negative stories that might otherwise not have happened.

The key then, is preparation – through clear procedures and general strategies. As issues arise and are identified by the team, the first step is to determine if:

- The issue should be monitored, but no response should be made
- The issue requires a response; or
- The issue rises to the level of crisis

Issues not requiring a public response are generally routine topics generated by local media or public comment. In most cases the story may pass without much community discussion, or the individuals affected can be directly contacted to address their concerns or answer their questions. Routine exchanges have a limited impact or a very short lifespan.

Issues requiring a response are those that impact a large number of people and have a relatively long lifespan, meaning that the issue will continue to impact people over several days or longer. The standard approach should be to research and quickly develop a list of talking points that describe the issue, outline City policy regarding the issue, and describe the City's response plan.

Appropriate staff and elected officials, if appropriate, will be briefed on the situation. Then the City should publicly respond with an explanation and the plan to address the issue.

For crises, the approach is similar, but more robust. In general, the City will respond within 24 hours – if not sooner – to the emergence of the crisis, as described below. To promote the greatest levels of transparency and credibility, the City's response will be a factual overview of the events and the City's plan to resolve the problem.

There are three phases in our approach to crisis management.

When a crisis arises, the first phase is **preparation**. During that time City staff will conduct research to determine:

- What has happened?
- What are the questions people might have?
- Who is our audience?
- What is our message?

As soon as possible, we will move to the **response** phase. The key here is that our messages should say what we are doing or will be doing, then we disseminate information to the elected officials and community:

- What has happened.
- What we are doing about it.
- Estimated timeline.

During the **recovery** phase we will assess the following:

- Did we reach our intended audience?
- Was our message accurate?
- Was our message credible?
- Have we solved the problem?
- What can we learn from this?

Each crisis has a “teachable moment” as anxiety starts to subside when we can deliver important information about City policies or programs. The City can leverage a crisis as an opportunity to reach higher levels of awareness and engagement if we are prepared and respond appropriately.

Strategies and Tactics

A variety of strategies and tactics will be used to attain our goals. Throughout this Plan there are a variety of available tactics to implement. The Communications Team will review and implement those that best address the City's strategic and on-going priorities.

Priority #1: Create Opportunities for Meaningful Stakeholder Participation and Collaboration

Encourage engagement through audience-appropriate, two-way communication, and ensure opportunities for constructive feedback.

STRATEGIES:

Use interactive communication approaches to maintain ongoing dialogue between constituents and City government. Provide opportunities for two-way communication whenever possible. It's important to solicit feedback on how the City is doing and how it can best serve the community and its constituencies. Put tools in place that make it easier for residents to engage with their local government, gain a better understanding of City services.

Expand outreach to audiences in targeted areas and groups. The residents of Morgan Hill are diverse and come from many cultural and socio-economic backgrounds. Use a variety of communication methods and leverage partnerships to reach a broader audience. Utilize the platforms each audience prefers to more effectively distribute information.

TACTICS:

- | | |
|--|---|
| 1. Community Polls and Micro-interactions | Separate from a large, formal survey, the City will offer smaller and more manageable opportunities for public input throughout the year. It is a best practice only to ask questions about topics the City can truly influence, change, or resolve. When asking for feedback, it is important to be conscious of how the input will be used. If the City asks for feedback on projects or programs, it is assumed by the participant that their feedback will be used in decision making. Equally important to asking the right questions, is following up with the community on the results of the survey or poll, what information was learned, and what we will do with that information. This is an important step towards, building credibility and respecting and honoring the communities time and efforts. |
| 2. External Advisory Groups, Either Formal or Informal | Continue and refine use of, as needed, issue-specific community advisory groups that can ensure the City is collaboratively reaching Morgan Hill's diverse audiences. This could include creating an advisory group or intentionally engaging with external stakeholders when an opportunity arises that calls for their unique perspective and input. |

3. Customer Surveys

The City provides service to the community through permit issuance, water service, maintenance of infrastructure, recreation services, emergency response, and many other public services. We collect information on the services provided through annual surveys and provide-feedback-as-you-go with the City's customers.

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Priority #2: Provide Open and Timely Communication

Share accurate, non-biased information promptly through a variety of communication channels.

STRATEGIES:

Provide information that is convenient, timely, and easily accessible for the target audience. The City should be prompt in publishing information in a variety of channels appropriate for key audiences so that the public is informed as quickly as possible. Timely and effective distribution of relevant information will reinforce the City's commitment to transparency and demonstrates that public feedback is highly valued.

Promote accurate, comprehensive local and regional media coverage. Building relationships between the City and local media is helpful to the community. By working with the media to establish greater trust, the City will have more influence over the accuracy of information that is communicated to the public and increase the likelihood of stories about Morgan Hill receiving appropriate media coverage.

TACTICS:

- | | |
|--|---|
| 1. Editorial Calendars | Develop an annual editorial calendar and review and update monthly to strategically plan out social media, newsletter, news media, and website content. This will help ensure communication campaigns are coordinated to reduce conflicts, bottlenecks and allow the City to be strategic about communicating important projects, overarching stories, and timely topics. Tailor messages and provide relevant content to support the varied content needs of the City's various divisions and their services and programs. This may include monthly themes or annual areas of focus like Emergency Preparedness Month or the City's Anniversary. |
| 2. Columns, Editorials, and Paid Content Opportunities | To have a greater presence and ensure consistent messages, boosted social media posts, feature articles, guest columns, and/or editorial opportunities should be developed in coordination with the Communications Team. The City will work with local newspapers to provide regularly scheduled columns in which a City representative writes about pertinent City-related topics. |
| 3. Identify and Engage with Hard-to-Reach Audiences | Engage with community partners, City teammates, and other leaders in in Morgan Hill to identify hard-to-reach communities. Determine their barriers, which may include; mobility, language, and/or financial. Identify opportunities to surmount these obstacles and integrate these findings into strategic engagement planning. |
| 4. Develop a Plan for Multi-Lingual Translation and | The City is missing a segment of the community by communicating principally in English. Developing a plan for multi-lingual translation services will ensure the City doesn't overlook important audience segments and is able to successfully reach non-English speaking residents more effectively. As |

Interpretation Services	Morgan Hill's demographics change over time, the City will monitor language needs and adjust accordingly.
5. Standardize Communication Processes and Procedures	To ensure that a project or initiative is properly communicated, a solid communication process should be established. Through this process, standard communication steps can be outlined and then followed for each new messaging campaign. This may include sharing information on the City website, scheduling social media posts, hybrid virtual/in-person meetings or in-person meetings, distributing information to the media and City staff, and creating custom graphics for the campaign. The process will be adjusted based on the project goals and constraints, but a general approach will provide a framework for how communication tools can be used. We will continue to communicate the status of projects and provide opportunities for the community to participate in decision making.
6. Increase Use of Visuals	Text-heavy communications should be minimized in favor of visuals that make a more personal connection. Videos and infographics are popular amongst audiences as an effective way to share important information and to engage. The City's YouTube channel should be an avenue of future exploration with additional video opportunities. These may include timely program/project interviews with key City teammates/spokespeople, or community members.

Priority #3: Lead Strategic Communication Efforts

Work directly with Council, staff, and partners to ensure communication and outreach efforts, objectives, and outcomes align with the strategic goals of the City and promote community understanding.

STRATEGIES:

Create a better understanding of City Council’s goals and priorities. By clearly and consistently outlining the goals and vision for the City of Morgan Hill, residents will have a better understanding of why and how public policy decisions are made, and actions are implemented by the local government, and will trust that their suggestions and feedback are considered in policies, procedures, and programs.

Work directly with department directors and division leaders to ensure messaging and communication efforts support the City Council priorities. Just as City projects and initiatives should align with Council’s priorities and tie into the City’s long-range planning initiatives, all communication efforts should also reflect and support City goals. This could include internal communication initiatives for employees, external communication to community members, and communication shared with partner organizations. This coordination ensures consistency, strengthens strategic message delivery, and enhances mutual understanding.

TACTICS:

- | | |
|---|--|
| 1. Communicate "Who Does What?" | Foster a greater understanding of the region versus City roles through an information campaign. Distribution can be made via City teammates, community partners, Council Members and Commissioners, and media. Deliverables could include infographic showing operations and services by division, factsheet included in utility bills, stories from City teammates in different divisions, video series i.e., "Park Maintenance, We Do That." |
| 2. Celebrate Municipal Government | Humanize the City and build trust by aligning services with the teammates that deliver them. Create a visual campaign that showcases City teammates and their positive impact on the community, from police officers to utility workers. Too often teammates have limited opportunities to engage with external audiences on the critical and essential services they provide. |
| 3. Celebrate and Communicate Employee Accomplishments | As teams and individuals accomplish significant milestones, we will provide opportunities for the workforce and the community to understand and appreciate and celebrate these achievements. Engage in more frequent strategic storytelling that emphasizes our accomplishments; positive news stories that highlight not only City teammates, but residents and partners as well. |

4. Provide On-Site Engagement

Explore a “City Hall on wheels” to connect with the community by being in the community. Create an in-person presence, such as a tabletop or roll-up display to be set up and staffed at various key locations on a rotating basis. Many community partners and organizations host community events. Where time and resources allow, teammates should attend these events. This type of personal engagement and interest is critical to partnership building.

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Priority #4: Ensure a Well-Informed City Workforce

Keep City employees informed and involved in public dialogue so they can aid in telling the Morgan Hill story.

STRATEGIES:

Provide employees with regular opportunities to learn about the issues, challenges, and decisions affecting both the City's operations and the work environment. Communicate with employees as necessary ensuring employees receive consistent and timely information.

Empower employees to be good representatives of the City. Consider creating an employee group such as an Employee Engagement Committee to serve as liaisons among the employees. Every interaction a team member has with the public is an opportunity to tell the Morgan Hill story, whether it is through email, a phone call, or face-to-face interactions.

TACTICS:

- | | |
|--|---|
| 1. Share Timely Information with Employees | Develop and distribute regular employee newsletters, email blasts, and messages from the City Manager and other executive team members. |
| 2. Provide Employee Customer Service and Engagement Training | Every Council and community meeting is an opportunity for City employees to be on the record representing the City, and thus an opportunity for news media and community networks to quote them. Training for employees will strengthen their professional skills while improving their effectiveness as representatives. |
| 3. Hold Regular Meetings with City Teammates | To strengthen familiarity within the organization, the City Leadership Team must meet with employees, all-team meetings, awards events, and shift changes. At the same time, these are opportunities for employees to ask questions and get answers. All team meetings are an opportunity to talk about communications, get updates from all divisions, take questions from teammates, and to talk openly about challenges and opportunities. |
| 4. Quarterly Meetings with Departments | The Communications team will meet quarterly with each department to discuss the major issues and opportunities coming up in the next quarter and beyond, identify communication priorities and resources, and develop key messages and communication strategies. |
| 5. Leadership Team Meetings | In addition to reviewing and discussing upcoming City Council items, discuss upcoming projects and associated communications plan and overall communications gaps, needs, and priorities. |

Priority #5: Reinforce Brand Identity

Develop consistent messaging that builds and solidifies Morgan Hill's brand and tells the City's story with a unified voice.

STRATEGIES:

Develop and implement the City's brand. Our brand is more than our logo and style guide, it is how we are experienced by our community and the story we tell. Review and if needed, updated the City Style Guide. Provide training to teammates on how to use the City's Style Guide.

Work with employees, Commissioners, and Council Members to use the City brand correctly to tell the City's story with a unified voice. Employees can be empowered to help reinforce the City's brand by incorporating personal stories in media interactions and online engagements.

Implement effective strategies for increasing brand awareness through marketing and advertising. With the City's diverse demographics, the most communication impact will come from using both traditional and innovative digital communication tools. Reinforce the notion that the City brand is not the logo and tagline in-and-of themselves; it's our story, told in many ways over time.

TACTICS:

- | | |
|---|---|
| 1. Develop Our Brand | Through stakeholder and City teammate engagement, develop the City's brand. Develop a plan for implementation of the City's brand. In addition to brand, create the City's voice/tone. Develop writing style guidelines and establish personality through a voice and tone that engages and entices audiences. Refine core messages about the City to support staff and Council efforts to tell the Morgan Hill story. When possible, tie City messages back to the City's Sustainable Morgan Hill document. |
| 2. Brand Education for Employees | Train employees to use the City's brand and style guide. At least annually and as needed, offer training and education on the City's brand, brand pillars, and importance of brand consistency. |
| 3. Community Organizations to Market the City for Broader Awareness | Find common interests and collaborative ways to market the City of Morgan Hill and highlight all the great amenities and attractions the community has to offer. Example partners could include Morgan Hill Chamber of Commerce, Visit Morgan Hill, Downtown Association, and non-profit and public agencies. Partnering with these types of groups can add communication channels for the City to reach a broader audience. Reach out to industry or trade groups that reflect the Morgan Hill market to align storytelling efforts. |
| 4. City Messaging | Continue using the Weekly 411 email, Economic Development e-Newsletter, Monthly Event Calendar email, YouTube, Town Halls, and |

	social media to share information with the community and share our brand.
5. Media Training	Working with the media is an integral part of being an elected official. Train Council Members and City teammates on communication and media strategies to speak in a unified voice. Media needs local officials as informed sources. Interviews with local officials are an important source of information just as attending public meetings and reviewing agency documents.

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Measurements of Progress and Success

Track metrics using the key performance indicators to evaluate communication efforts and effectiveness to guide future communications programs and projects.

There are a variety of standard metrics, also known as key performance indicators, which will be used to track the success of the City's communication techniques. The City will evaluate these metrics on a regular basis and compare them to earlier statistics to understand what techniques are working well and which need improvements, refinement, or further implementation.

Less standard metrics that are quite a bit more challenging to monitor include changes in behavior, attitude, and awareness. These metrics are attached to considerable effort but may give a better picture of outreach effectiveness. The Community Engagement Team will continue to look for proven methods for monitoring these metrics.

Key Performance Indicators

As this Plan is implemented, the Communications Team will evaluate the various key performance indicators (KPI) listed below to determine which KPIs are most effective at tracking our progress and identifying areas to improve.

MEDIA COVERAGE

News Releases	The number of digital releases published by the media.
News Sentiment	The sentiment of mentions, articles, interviews, or letters to the editor published by the media.
Reach	The reach of advertisements both paid and unpaid and news stories in media outlets. Examples include ads and news stories in print and online and the number of people who saw it based on the number of publications printed or the number of people who visited the webpage where the content is located.

E-BLASTS / E-NEWSLETTERS

Subscribers	The number of people who have signed up to receive the communication.
Open Rate	The average percentage of recipients who open the email or notification.
Click-Through Rate	The average percentage of recipients who click on an active link within the email or publication.

WEBSITE

Unique Visits	The number of distinct individuals visiting the site.
Page Views	The number of times a page on the site has been viewed.
Top Pages	The pages that are visited most frequently – the top 5-10 should be tracked regularly.
Bounce Rates	The percentage of people that navigate away from the site after only viewing one page. A lower bounce rate, generally under 70%, means that people are exploring the page and finding the information they need.
Search Terms	The more frequently a term is searched, the more likely it is that visitors are not finding what they need and suggest it may need to be displayed more prominently.

SOCIAL MEDIA

Followers	The number of people who subscribe to, and follow, the City's pages.
Engagement	The number of people who take action by interacting with the City's pages including likes, comments, tags, or shares.
Reach	The number of people who saw the City's posts.
Quantity and Quality of Posts	Number of posts and metrics on content, including photos, videos, events, and polls.

PRINTED MATERIALS AND PAID ADVERTISEMENTS

Distribution Rates	The number of places a printed piece can be found – both physical and online – and the actual number of pieces distributed.
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OTHER METRICS

- Quantity of survey responses
- Council feedback
- Reduction in unsolicited inquiries to departments (demonstrating that the proactive messaging is working at effectively delivering the message)
- Video views
- Poll results that demonstrate community understanding and engagement
- Consistency in brand use across departments
- Number of materials translated to Spanish or another language
- Positive employee response to storyteller program

- Positive community or industry response to advisory groups (quantity and frequency of participation)
- Quantity of community complaints
- Event and forum attendance

To help the City determine the effectiveness of communications, engagement, and outreach efforts, teammates will regularly evaluate:

- Are we communicating as much as we can?
- Are we communicating the correct information - the most important and relevant information, the information the community wants, and the information necessary to form educated and informed opinions and feedback, allowing us to carry out our mission?
- Are we using the most effective tools to communicate?
- What can we communicate more proactively and consistently in form, visual presentation, and substance?
- What can we do to improve communications, engagement, and outreach overall?

Conclusion

The City of Morgan Hill's Communications, Outreach, and Engagement Plan is in place to provide means by which we can increase awareness of our programs and policies, encourage meaningful and productive two-way communication with the community, and generate heightened engagement of our community members. This Plan is meant to grow and change along with our community and the tools and technology available to us.

The City will achieve our goals by consistently providing current, accurate, and concise information to the community about City of Morgan Hill initiatives, city services, and local issues and events. We will foster an engaging environment with our community by soliciting and proactively implementing feedback we receive from constituents.

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Appendices

- A. Roles of City Council and City Leadership
- B. Social Media Guidelines for Elected Officials
- C. Digital Asset Overview

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Appendix A: Roles of City Council and City Leadership

ROLES AND RESPONSIBILITIES MATRIX

Role	Responsibility	Accountability
City Council Members	- Know and understand the City's Communications Plan, and City Council and Administrative Social Media Policies and Guidelines. - Respond to dis- or mis-information and share factual information about City projects, events, emergencies, etc.	- To the community - To each other - To City Manager and City Attorney - To the spirit of the Communications, Outreach, and Engagement Process
City Manager	- Ensure Dept. Directors develop communications strategies and plans for their areas of responsibility in consultation with the PIO. - Ensure Dept. Directors include the Communications team in City business that requires Outreach and Engagement throughout the process.	- To the City Council - To the community - To the City Attorney - To the spirit of the Communications, Outreach, and Engagement Process
City Attorney	- Ensure communications plans and strategies comply with all City policies, and county, state, and federal laws. - Ensure compliance with all outreach and engagement requirements of California Environmental Quality Act (CEQA) including those pertaining to CEQA case law.	- To the City Council - To the City Manager - To the spirit of the Communications, Outreach, and Engagement Process
Executive team Separate from Dept. Directors	- Develop the department communications strategies and plans along with department specific workflows by trigger in consultation with the PIO ensuring commitment to continuous improvement - Ensure department teammates act in accordance with the approved plans and strategies, in consultation with the communications team	- To the City Manager - To the Communications team - To the spirit of the Communications, Outreach, and Engagement Process - The Community
Teammates Responsible for Project Communications	- Develop project-specific outreach and communications plan based on the department workflows by trigger - Review and share communications outcomes to evaluate and adjust plans and strategies as needed.	- To Dept. Directors - To the Communications Team - The Community
PIO	Serves as the primary leader and manager of the City's community engagement efforts, as well as internal communications among City leadership.	- To the City Manager - To the community

	• Works with all Dept. Directors on communications and outreach projects and initiatives. • Develops, disseminates, and makes available clear, accurate, timely, and comprehensive information (across multiple channels) about the City's programs, services, policies, events, and major initiatives. • Cultivates relationships throughout the community to facilitate effective two-way communication between the City and residents/businesses of Morgan Hill.	○ To the spirit of the Communications, Outreach, and Engagement Process
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Social Media Guidelines for Elected Officials

Elected officials have a role at their agency that is inherently different from staff. Social media is a vital tool for developing direct communications with your stakeholders and creating informal opportunities to reach out beyond official web pages and publications. The extent to which an agency or individual uses social media varies. Before engaging you should assess your risk tolerance and make sure certain laws – such as the California Public Records Act and Brown Act – are followed.

Tips concerning the California Public Records Act and Brown Act

- DO not serial post – If a quorum of any public body merely comments on the same social media post, they could be in violation of open meeting laws.
- Be wary of deleting your own posts and those made by followers on your account – The First Amendment protects freedom of speech from government interference, and public agencies must be cautious about censoring an individual's right to free speech; if an elected official blocks a social media user, it could be argued that they are blocking future speech made by that person.

Clarifying Definitions

- Social media can include websites and applications that enable users to create and share content or to participate in social networking.
- A social platform is a web-based technology that enables the development, deployment, and management of social media solutions and services.
- A third-party system is any system maintained by another entity. This could include Twitter, Facebook, NextDoor, Instagram, WordPress, Google, phone carriers, and more.

Know When Social Media is a Public Record

It is essential to know when social media is a public record as determined by your agency's legal counsel. Retention of documents, including social media, is based on the content and not the platform.

Make a clear distinction between official accounts, campaign accounts, and personal accounts. One-way elected officials can clearly distinguish private social media accounts is by adding disclaimers on election and personal accounts. City accounts may not be used for campaign-related purposes.

To keep a personal account from becoming subject to public records, consider some basic precautions.

- Post a disclaimer on your accounts that identifies the account purpose and that the opinions you express are your own
- Limit the account content to the use identified in the disclaimer
- Understand and use privacy settings to manage the account
- Have a plan in place to respond to or forward City-related comments to the agency, including how the record is retained

Crisis/Emergency Situations

As a crisis begins to emerge, it is critical that elected officials are aware of and follow best practices during an incident and understand the importance of only posting verified communication on all platforms, whether official or personal.

Tips for Using Social Media Effectively and Responsibly during a Crisis

- Public vs. private is blurred – Personal posts by elected officials will be interpreted by many as official agency posts; it is essential to only post crisis-related information that has been verified by emergency response team or other appropriate sources.
- Link to official accounts – Elected officials can ensure that those affected receive verified information by linking to/sharing/reposting official agency social media accounts.
- Coordinate all crisis-related posts with the City Manager and PIO – “Rogue” and unconfirmed posting is one of the most frequent causes of misinformation and inaccurate rumors during a crisis.

Appendix C: Digital Asset Overview

Website

MorganHill.ca.gov

The City of Morgan Hill completed a website refresh in 2020. According to the website analytics, typical behavior for users of our site is to land on the homepage then select one of these pages and drill down (Top ten pages visited as of January 2022 - listed in order of popularity):

1. Vaccine & Testing Page
2. Centennial Recreation Center
3. COVID-19 Landing Page
4. Utilities
5. Police Department
6. Recreation Membership
7. Aquatics
8. Recreation Guide
9. Employment
10. Recreation Center Rates

Social Media

Followers/Subscribers (as of January 2022)

• City of Morgan Hill Engage Facebook 5,961 followers	• Aquatics Center Facebook 7,711 followers	• NextDoor 17,730 members
• Morgan Hill Police Department Facebook 18,302 Followers	• Senior Center Facebook 517 followers	• Twitter 1,585 followers
• Recreation Facebook 3,567 Followers	• CCC Facebook 3,363 followers	• YouTube 165 Subscribers
• Environmental Programs Facebook 609 followers	• Instagram 1,932 followers	

Website Notify Me

Notifications that are currently sent out include: City Council and Commission Agendas, Commission Recruitments, the Scoop, Upcoming events, Development Project Updates. This is not an exhaustive list.

Subscribers (as of January 2022)

• City Council Agendas 524	• The Scoop 93
• Commission Agendas (all 3 commissions) 975	• Upcoming Events 314
• Commission Recruitments 88	• Development Project Updates (various projects) 1,115

E-Communications

Emails that are currently sent out include: the Weekly 411, Monthly Event Calendar, Economic Development Newsletter, COVID Updates, City Project Updates, Special Project Updates, Development Project Updates, and Surveys. This is not an exhaustive list.

Subscribers (as of January 2022)

• General Interest 12,332	• Monthly Event Calendar 4,971
• Environmental Programs Updates 1,703	• Recreation Program and Event Updates 4,361
• Major City Maintenance Projects 709	• Información en Español 160

CITY OF MORGAN HILL
MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP
SALARY SCHEDULE

Effective: December 26, 2021

* Currently Unfunded Positions

Job Classification	Bottom of Range	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services *	\$15,495	\$20,361
Assistant City Manager for Development Services	\$15,495	\$20,361
Chief of Police	\$15,495	\$20,361
Public Services Director	\$15,495	\$20,361
Community Services Director *	\$14,760	\$19,436
Development Services Director	\$14,760	\$19,436
Economic Development Director	\$14,760	\$19,436
Engineering and Utilities Director *	\$14,760	\$19,436
Finance Director	\$14,760	\$19,436
Housing Director	\$14,760	\$19,436
Communications and Engagement Director*	\$12,736	\$16,736
Human Resources Director	\$12,736	\$16,736
Information Technology Director	\$12,736	\$16,736
Group 1-B: Middle Management		
Police Captain	\$12,989	\$17,066
Building Official	\$12,736	\$16,736
City Clerk/Public Information Officer	\$12,736	\$16,736
Deputy Director for Engineering	\$12,736	\$16,736
Deputy Director for Utilities Services	\$12,736	\$16,736
Housing Manager*	\$12,736	\$16,736
Planning Manager *	\$12,736	\$16,736
Program Administrator	\$12,736	\$16,736
Assistant City Attorney	\$11,934	\$15,655
Assistant to the City Manager *	\$11,934	\$15,655
City Clerk	\$11,934	\$15,655
Economic Development Manager*	\$11,259	\$14,769
Environmental Services Administrator	\$11,259	\$14,769
Principal Planner	\$11,259	\$14,769
Senior Civil Engineer	\$11,259	\$14,769
Senior Project Manager	\$11,259	\$14,769
Budget Manager	\$10,411	\$13,693
Building Manager *	\$10,411	\$13,693
Communications and Engagement Manager *	\$10,411	\$13,693
Community Services Manager *	\$10,411	\$13,693
Environmental Services Manager	\$10,411	\$13,693
Information Services Manager *	\$10,411	\$13,693
Maintenance Manager	\$10,411	\$13,693
Police Support Services Manager	\$10,411	\$13,693
Recreation Manager	\$10,411	\$13,693
Supervising Civil Engineer	\$10,411	\$13,693
Utility Systems Manager	\$10,411	\$13,693
Accounting Manager *	\$9,691	\$12,739
Financial and Policy Analyst *	\$9,691	\$12,739
Police Administrative Manager	\$9,691	\$12,739
Public Services Administrative Manager	\$9,691	\$12,739
Senior Planner	\$9,691	\$12,739
Community Services Supervisor	\$8,780	\$11,203
Council Services and Records Manager *	\$8,780	\$11,203
Deputy City Attorney *	\$8,780	\$11,203
Economic Development Coordinator	\$8,780	\$11,203
Emergency Services Coordinator	\$8,780	\$11,203
GIS / Land Use Data Administrator	\$8,780	\$11,203
Maintenance Services Coordinator	\$8,780	\$11,203
Older Adult Services Supervisor	\$8,780	\$11,203
Programmer Analyst	\$8,780	\$11,203
Senior Human Resources Analyst	\$8,780	\$11,203
Risk Management Analyst (.50 FTE)	\$4,185	\$5,491
Group 1-C: Confidential Exempt		
Administrative Analyst	\$8,369	\$10,982
Legal Specialist	\$7,530	\$9,907
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,676	\$8,761
Human Resources Technician	\$6,676	\$8,761
Human Resources Assistant *	\$5,228	\$6,839

***Monthly figures are rounded to the nearest \$1.00

CITY OF MORGAN HILL
MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP
SALARY SCHEDULE

CPI below 2% Increase is 2%
Effective: December 25, 2022

* Currently Unfunded Positions

Job Classification	Bottom of Range	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services *	\$15,805	\$20,768
Assistant City Manager for Development Services	\$15,805	\$20,768
Chief of Police	\$15,805	\$20,768
Public Services Director	\$15,805	\$20,768
Community Services Director *	\$15,055	\$19,825
Development Services Director	\$15,055	\$19,825
Economic Development Director	\$15,055	\$19,825
Engineering and Utilities Director *	\$15,055	\$19,825
Finance Director	\$15,055	\$19,825
Housing Director	\$15,055	\$19,825
Communications and Engagement Director*	\$12,991	\$17,071
Human Resources Director	\$12,991	\$17,071
Information Technology Director	\$12,991	\$17,071
Group 1-B: Middle Management		
Police Captain	\$13,249	\$17,408
Building Official	\$12,991	\$17,071
City Clerk/Public Information Officer	\$12,991	\$17,071
Deputy Director for Engineering	\$12,991	\$17,071
Deputy Director for Utilities Services	\$12,991	\$17,071
Housing Manager*	\$12,991	\$17,071
Planning Manager *	\$12,991	\$17,071
Program Administrator	\$12,991	\$17,071
Assistant City Attorney	\$12,173	\$15,968
Assistant to the City Manager *	\$12,173	\$15,968
City Clerk	\$12,173	\$15,968
Economic Development Manager*	\$11,485	\$15,065
Environmental Services Administrator	\$11,485	\$15,065
Principal Planner	\$11,485	\$15,065
Senior Civil Engineer	\$11,485	\$15,065
Senior Project Manager	\$11,485	\$15,065
Budget Manager	\$10,620	\$13,967
Building Manager *	\$10,620	\$13,967
Communications and Engagement Manager *	\$10,620	\$13,967
Community Services Manager *	\$10,620	\$13,967
Environmental Services Manager	\$10,620	\$13,967
Information Services Manager *	\$10,620	\$13,967
Maintenance Manager	\$10,620	\$13,967
Police Support Services Manager	\$10,620	\$13,967
Recreation Manager	\$10,620	\$13,967
Supervising Civil Engineer	\$10,620	\$13,967
Utility Systems Manager	\$10,620	\$13,967
Accounting Manager *	\$9,885	\$12,993
Financial and Policy Analyst *	\$9,885	\$12,993
Police Administrative Manager	\$9,885	\$12,993
Public Services Administrative Manager	\$9,885	\$12,993
Senior Planner	\$9,885	\$12,993
Community Services Supervisor	\$8,956	\$11,427
Council Services and Records Manager *	\$8,956	\$11,427
Deputy City Attorney *	\$8,956	\$11,427
Economic Development Coordinator	\$8,956	\$11,427
Emergency Services Coordinator	\$8,956	\$11,427
GIS / Land Use Data Administrator	\$8,956	\$11,427
Maintenance Services Coordinator	\$8,956	\$11,427
Older Adult Services Supervisor	\$8,956	\$11,427
Programmer Analyst	\$8,956	\$11,427
Senior Human Resources Analyst	\$8,956	\$11,427
Risk Management Analyst (.50 FTE)	\$4,269	\$5,601
Group 1-C: Confidential Exempt		
Administrative Analyst	\$8,536	\$11,201
Legal Specialist	\$7,680	\$10,105
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,810	\$8,936
Human Resources Technician	\$6,810	\$8,936
Human Resources Assistant *	\$5,333	\$6,976

***Monthly figures are rounded to the nearest \$1.00

CITY OF MORGAN HILL
MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP
SALARY SCHEDULE

CPI more than 2% Increase is 2.5%
Effective: December 25, 2022

* Currently Unfunded Positions

Job Classification	Bottom of Range	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services *	\$15,882	\$20,870
Assistant City Manager for Development Services	\$15,882	\$20,870
Chief of Police	\$15,882	\$20,870
Public Services Director	\$15,882	\$20,870
Community Services Director *	\$15,129	\$19,922
Development Services Director	\$15,129	\$19,922
Economic Development Director	\$15,129	\$19,922
Engineering and Utilities Director *	\$15,129	\$19,922
Finance Director	\$15,129	\$19,922
Housing Director	\$15,129	\$19,922
Communications and Engagement Director*	\$13,055	\$17,155
Human Resources Director	\$13,055	\$17,155
Information Technology Director	\$13,055	\$17,155
Group 1-B: Middle Management		
Police Captain	\$13,313	\$17,493
Building Official	\$13,055	\$17,155
City Clerk/Public Information Officer	\$13,055	\$17,155
Deputy Director for Engineering	\$13,055	\$17,155
Deputy Director for Utilities Services	\$13,055	\$17,155
Housing Manager*	\$13,055	\$17,155
Planning Manager *	\$13,055	\$17,155
Program Administrator	\$13,055	\$17,155
Assistant City Attorney	\$12,232	\$16,046
Assistant to the City Manager *	\$12,232	\$16,046
City Clerk	\$12,233	\$16,046
Economic Development Manager*	\$11,541	\$15,138
Environmental Services Administrator	\$11,541	\$15,138
Principal Planner	\$11,541	\$15,138
Senior Civil Engineer	\$11,541	\$15,138
Senior Project Manager	\$11,541	\$15,138
Budget Manager	\$10,672	\$14,036
Building Manager *	\$10,672	\$14,036
Communications and Engagement Manager *	\$10,672	\$14,036
Community Services Manager *	\$10,672	\$14,036
Environmental Services Manager	\$10,672	\$14,036
Information Services Manager *	\$10,672	\$14,036
Maintenance Manager	\$10,672	\$14,036
Police Support Services Manager	\$10,672	\$14,036
Recreation Manager	\$10,672	\$14,036
Supervising Civil Engineer	\$10,672	\$14,036
Utility Systems Manager	\$10,672	\$14,036
Accounting Manager *	\$9,934	\$13,057
Financial and Policy Analyst *	\$9,934	\$13,057
Police Administrative Manager	\$9,934	\$13,057
Public Services Administrative Manager	\$9,934	\$13,057
Senior Planner	\$9,934	\$13,057
Community Services Supervisor	\$8,999	\$11,483
Council Services and Records Manager *	\$8,999	\$11,483
Deputy City Attorney *	\$8,999	\$11,483
Economic Development Coordinator	\$8,999	\$11,483
Emergency Services Coordinator	\$8,999	\$11,483
GIS / Land Use Data Administrator	\$8,999	\$11,483
Maintenance Services Coordinator	\$8,999	\$11,483
Older Adult Services Supervisor	\$8,999	\$11,483
Programmer Analyst	\$8,999	\$11,483
Senior Human Resources Analyst	\$8,999	\$11,483
Risk Management Analyst (.50 FTE)	\$4,290	\$5,629
Group 1-C: Confidential Exempt		
Administrative Analyst	\$8,578	\$11,256
Legal Specialist	\$7,718	\$10,155
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,843	\$8,980
Human Resources Technician	\$6,843	\$8,980
Human Resources Assistant *	\$5,359	\$7,010

***Monthly figures are rounded to the nearest \$1.00

Effective 12/26/2021 (4% increase)									Monthly figures are rounded to the nearest \$1.00			
Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	\$ 7,623	\$ 43.98	\$ 8,004	\$ 46.18	\$ 8,404	\$ 48.49	\$ 8,824	\$ 50.91	\$ 9,266	\$ 53.46	\$ 9,730	\$ 56.13
Accounting Asst. I	5,040	29.08	5,292	30.53	5,557	32.06	5,835	33.66	6,127	35.35	6,433	37.11
Accounting Asst. II	5,275	30.43	5,539	31.96	5,816	33.55	6,106	35.23	6,411	36.99	6,731	38.83
Assistant Planner	7,623	43.98	8,004	46.18	8,404	48.49	8,824	50.91	9,266	53.46	9,730	56.13
Assistant Engineer	8,469	48.86	8,893	51.31	9,338	53.87	9,804	56.56	10,294	59.39	10,810	62.36
Associate Planner	8,206	47.34	8,617	49.71	9,047	52.19	9,499	54.80	9,974	57.54	10,473	60.42
Associate Engineer	9,838	56.76	10,330	59.60	10,846	62.57	11,389	65.71	11,958	68.99	12,556	72.44
Business Assistant	5,842	33.70	6,135	35.39	6,441	37.16	6,763	39.02	7,102	40.97	7,457	43.02
Building Inspector II	8,510	49.10	8,934	51.54	9,381	54.12	9,850	56.83	10,343	59.67	10,860	62.65
Building Inspector Supervisor	10,011	57.75	10,511	60.64	11,037	63.67	11,589	66.86	12,168	70.20	12,776	73.71
Code Compliance Officer	7,708	44.47	8,093	46.69	8,498	49.03	8,923	51.48	9,370	54.05	9,838	56.76
Communication and Engagement Coordinator	7,817	45.10	8,208	47.35	8,619	49.73	9,050	52.21	9,503	54.82	9,978	57.56
Community Services Coordinator	6,415	37.01	6,736	38.86	7,073	40.81	7,427	42.85	7,798	44.99	8,189	47.24
Council Services Assistant	5,804	33.48	6,093	35.15	6,399	36.92	6,719	38.76	7,055	40.70	7,407	42.73
Custodian	3,884	22.41	4,078	23.53	4,282	24.71	4,497	25.94	4,722	27.24	4,958	28.61
Development Services Technician	6,732	38.84	7,069	40.78	7,422	42.82	7,793	44.96	8,183	47.21	8,593	49.57
Electrician	8,019	46.26	8,420	48.58	8,842	51.01	9,283	53.56	9,748	56.24	10,236	59.05
Engineering Technician I	5,952	34.34	6,249	36.05	6,561	37.85	6,890	39.75	7,234	41.73	7,595	43.82
Engineering Technician II	6,581	37.97	6,910	39.87	7,256	41.86	7,618	43.95	7,999	46.15	8,400	48.46
Environmental Programs Coordinator	7,623	43.98	8,004	46.18	8,404	48.49	8,824	50.91	9,266	53.46	9,730	56.13
Exec. Asst. to the Chief of Police	5,952	34.34	6,249	36.05	6,561	37.85	6,890	39.75	7,234	41.73	7,595	43.82
Facilities Maintenance Specialist	6,415	37.01	6,736	38.86	7,073	40.81	7,427	42.85	7,798	44.99	8,189	47.24
Housing Program Coordinator	8,206	47.34	8,617	49.71	9,047	52.19	9,499	54.80	9,974	57.54	10,473	60.42
Information Services Technician	7,623	43.98	8,004	46.18	8,404	48.49	8,824	50.91	9,266	53.46	9,730	56.13
Junior Engineer	7,623	43.98	8,004	46.18	8,404	48.49	8,824	50.91	9,266	53.46	9,730	56.13
Maintenance Worker I	5,275	30.43	5,539	31.96	5,816	33.55	6,106	35.23	6,411	36.99	6,731	38.83
Maintenance Worker II	5,820	33.58	6,112	35.26	6,417	37.02	6,738	38.87	7,075	40.82	7,429	42.86
Maintenance Supervisor	8,454	48.77	8,876	51.21	9,320	53.77	9,786	56.46	10,275	59.28	10,789	62.24
Management Analyst	7,817	45.10	8,208	47.35	8,619	49.73	9,050	52.21	9,503	54.82	9,978	57.56
Multimedia Coordinator	5,842	33.70	6,135	35.39	6,441	37.16	6,763	39.02	7,102	40.97	7,457	43.02
Municipal Services Assistant	5,559	32.07	5,836	33.67	6,128	35.35	6,434	37.12	6,755	38.97	7,093	40.92
Office Assistant I	4,009	23.13	4,210	24.29	4,420	25.50	4,642	26.78	4,873	28.12	5,117	29.52
Office Assistant II	5,040	29.08	5,292	30.53	5,557	32.06	5,835	33.66	6,127	35.35	6,433	37.11
Plan Check Engineer	10,011	57.75	10,511	60.64	11,037	63.67	11,589	66.86	12,168	70.20	12,776	73.71
Plans Examiner	8,510	49.10	8,934	51.54	9,381	54.12	9,850	56.83	10,343	59.67	10,860	62.65
Police Analyst	8,620	49.73	9,052	52.22	9,504	54.83	9,979	57.57	10,478	60.45	11,002	63.47
Public Works Inspection Supervisor	10,011	57.75	10,511	60.64	11,037	63.67	11,589	66.86	12,168	70.20	12,776	73.71
Public Works Inspector	8,019	46.26	8,419	48.57	8,840	51.00	9,282	53.55	9,746	56.23	10,233	59.04
Recreation Services Coordinator	6,415	37.01	6,736	38.86	7,073	40.81	7,427	42.85	7,798	44.99	8,189	47.24
Senior Accountant	8,385	48.38	8,804	50.79	9,244	53.33	9,707	56.00	10,192	58.80	10,702	61.74
Senior Maintenance Worker	6,415	37.01	6,736	38.86	7,073	40.81	7,427	42.85	7,798	44.99	8,189	47.24
Senior Utility Worker	6,415	37.01	6,736	38.86	7,073	40.81	7,427	42.85	7,798	44.99	8,189	47.24
Senior Public Works Inspector	8,620	49.73	9,052	52.22	9,504	54.83	9,979	57.57	10,478	60.45	11,002	63.47
Support Services Supervisor	7,605	43.87	7,984	46.06	8,384	48.37	8,803	50.78	9,243	53.33	9,706	55.99
Unhoused Specialist	6,415	37.01	6,736	38.86	7,073	40.81	7,427	42.85	7,798	44.99	8,189	47.24
Utility Worker I	5,275	30.43	5,539	31.96	5,816	33.55	6,106	35.23	6,411	36.99	6,731	38.83
Utility Worker II	5,820	33.58	6,112	35.26	6,417	37.02	6,738	38.87	7,075	40.82	7,429	42.86
Utility Supervisor	8,593	49.57	9,022	52.05	9,473	54.65	9,947	57.38	10,443	60.25	10,966	63.26
Water Quality Specialist	7,086	40.88	7,440	42.93	7,812	45.07	8,202	47.32	8,612	49.69	9,042	52.17

Exhibit B	CPI under 2% Increase is 2%								Monthly figures are rounded to the nearest \$1.00			
Effective 12/25/2022 (2% increase)												
Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	\$ 7,775	\$ 44.86	\$ 8,164	\$ 47.10	\$ 8,572	\$ 49.46	\$ 9,001	\$ 51.93	\$ 9,451	\$ 54.53	\$ 9,924	\$ 57.26
Accounting Asst. I	5,141	29.66	5,398	31.14	5,668	32.70	5,952	34.34	6,249	36.05	6,562	37.86
Accounting Asst. II	5,381	31.04	5,650	32.59	5,932	34.22	6,228	35.93	6,539	37.73	6,866	39.61
Assistant Planner	7,775	44.86	8,164	47.10	8,572	49.46	9,001	51.93	9,451	54.53	9,924	57.26
Assistant Engineer	8,638	49.83	9,071	52.33	9,525	54.95	10,000	57.69	10,500	60.58	11,026	63.61
Associate Planner	8,370	48.29	8,789	50.71	9,228	53.24	9,689	55.90	10,174	58.69	10,683	61.63
Associate Engineer	10,034	57.89	10,536	60.79	11,063	63.83	11,617	67.02	12,197	70.37	12,807	73.89
Business Assistant	5,959	34.38	6,257	36.10	6,570	37.90	6,899	39.80	7,244	41.79	7,606	43.88
Building Inspector II	8,680	50.08	9,113	52.58	9,568	55.20	10,047	57.96	10,549	60.86	11,077	63.91
Building Inspector Supervisor	10,211	58.91	10,721	61.85	11,257	64.95	11,820	68.19	12,412	71.60	13,032	75.18
Code Compliance Officer	7,862	45.36	8,255	47.63	8,668	50.01	9,102	52.51	9,557	55.14	10,034	57.89
Communication and Engagement Coordinator	7,973	46.00	8,372	48.30	8,791	50.72	9,231	53.26	9,693	55.92	10,177	58.71
Community Services Coordinator	6,543	37.75	6,871	39.64	7,215	41.62	7,575	43.70	7,954	45.89	8,352	48.19
Council Services Assistant	5,920	34.15	6,215	35.86	6,527	37.65	6,853	39.54	7,196	41.51	7,555	43.59
Custodian	3,962	22.86	4,160	24.00	4,368	25.20	4,587	26.46	4,816	27.79	5,058	29.18
Development Services Technician	6,867	39.62	7,210	41.60	7,571	43.68	7,949	45.86	8,347	48.15	8,765	50.56
Electrician	8,179	47.19	8,589	49.55	9,018	52.03	9,469	54.63	9,943	57.36	10,440	60.23
Engineering Technician I	6,071	35.03	6,374	36.77	6,693	38.61	7,027	40.54	7,378	42.57	7,747	44.70
Engineering Technician II	6,713	38.73	7,049	40.67	7,401	42.70	7,771	44.83	8,159	47.07	8,568	49.43
Environmental Programs Coordinator	7,775	44.86	8,164	47.10	8,572	49.46	9,001	51.93	9,451	54.53	9,924	57.26
Exec. Asst. to the Chief of Police	6,071	35.03	6,374	36.77	6,693	38.61	7,027	40.54	7,378	42.57	7,747	44.70
Facilities Maintenance Specialist	6,543	37.75	6,871	39.64	7,215	41.62	7,575	43.70	7,954	45.89	8,352	48.19
Housing Program Coordinator	8,370	48.29	8,789	50.71	9,228	53.24	9,689	55.90	10,174	58.69	10,683	61.63
Information Services Technician	7,775	44.86	8,164	47.10	8,572	49.46	9,001	51.93	9,451	54.53	9,924	57.26
Junior Engineer	7,775	44.86	8,164	47.10	8,572	49.46	9,001	51.93	9,451	54.53	9,924	57.26
Maintenance Worker I	5,381	31.04	5,650	32.59	5,932	34.22	6,228	35.93	6,539	37.73	6,866	39.61
Maintenance Worker II	5,937	34.25	6,234	35.96	6,545	37.76	6,873	39.65	7,217	41.64	7,578	43.72
Maintenance Supervisor	8,623	49.75	9,053	52.23	9,507	54.85	9,982	57.59	10,480	60.46	11,005	63.49
Management Analyst	7,973	46.00	8,372	48.30	8,791	50.72	9,231	53.26	9,693	55.92	10,177	58.71
Multimedia Coordinator	5,959	34.38	6,257	36.10	6,570	37.90	6,899	39.80	7,244	41.79	7,606	43.88
Municipal Services Assistant	5,670	32.71	5,953	34.34	6,250	36.06	6,563	37.86	6,890	39.75	7,235	41.74
Office Assistant I	4,090	23.59	4,294	24.77	4,509	26.01	4,735	27.31	4,971	28.68	5,219	30.11
Office Assistant II	5,141	29.66	5,398	31.14	5,668	32.70	5,952	34.34	6,249	36.05	6,562	37.86
Plan Check Engineer	10,211	58.91	10,721	61.85	11,257	64.95	11,820	68.19	12,412	71.60	13,032	75.18
Plans Examiner	8,680	50.08	9,113	52.58	9,568	55.20	10,047	57.96	10,549	60.86	11,077	63.91
Police Analyst	8,792	50.73	9,233	53.26	9,694	55.93	10,178	58.72	10,687	61.66	11,222	64.74
Public Works Inspection Supervisor	10,211	58.91	10,721	61.85	11,257	64.95	11,820	68.19	12,412	71.60	13,032	75.18
Public Works Inspector	8,179	47.19	8,588	49.54	9,017	52.02	9,468	54.62	9,941	57.35	10,438	60.22
Recreation Services Coordinator	6,543	37.75	6,871	39.64	7,215	41.62	7,575	43.70	7,954	45.89	8,352	48.19
Senior Accountant	8,553	49.34	8,980	51.81	9,429	54.40	9,901	57.12	10,396	59.98	10,916	62.98
Senior Maintenance Worker	6,543	37.75	6,871	39.64	7,215	41.62	7,575	43.70	7,954	45.89	8,352	48.19
Senior Utility Worker	6,543	37.75	6,871	39.64	7,215	41.62	7,575	43.70	7,954	45.89	8,352	48.19
Senior Public Works Inspector	8,792	50.73	9,233	53.26	9,694	55.93	10,178	58.72	10,687	61.66	11,222	64.74
Support Services Supervisor	7,757	44.75	8,144	46.98	8,551	49.33	8,979	51.80	9,428	54.39	9,900	57.11
Unhoused Specialist	6,543	37.75	6,871	39.64	7,215	41.62	7,575	43.70	7,954	45.89	8,352	48.19
Utility Worker I	5,381	31.04	5,650	32.59	5,932	34.22	6,228	35.93	6,539	37.73	6,866	39.61
Utility Worker II	5,937	34.25	6,234	35.96	6,545	37.76	6,873	39.65	7,217	41.64	7,578	43.72
Utility Supervisor	8,765	50.56	9,202	53.09	9,662	55.74	10,146	58.53	10,652	61.46	11,185	64.53
Water Quality Specialist	7,228	41.70	7,589	43.78	7,968	45.97	8,366	48.27	8,784	50.68	9,223	53.21

Exhibit C	CPI more than 2% Increase is 2.5%								Monthly figures are rounded to the nearest \$1.00				
Effective 12/25/2022 (2.50% increase)													
Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly	
Accountant I	\$ 7,814	\$ 45.08	\$ 8,204	\$ 47.33	\$ 8,614	\$ 49.70	\$ 9,045	\$ 52.18	\$ 9,498	\$ 54.79	\$ 9,973	\$ 57.54	
Accounting Asst. I	5,166	29.80	5,425	31.30	5,696	32.86	5,981	34.51	6,280	36.23	6,594	38.04	
Accounting Asst. II	5,407	31.19	5,677	32.75	5,961	34.39	6,258	36.11	6,571	37.91	6,900	39.80	
Assistant Planner	7,814	45.08	8,204	47.33	8,614	49.70	9,045	52.18	9,498	54.79	9,973	57.54	
Assistant Engineer	8,680	50.08	9,116	52.59	9,572	55.22	10,049	57.98	10,552	60.88	11,080	63.92	
Associate Planner	8,411	48.52	8,832	50.95	9,273	53.50	9,737	56.17	10,224	58.98	10,735	61.93	
Associate Engineer	10,084	58.17	10,588	61.08	11,117	64.14	11,674	67.35	12,257	70.71	12,870	74.25	
Business Assistant	5,988	34.55	6,288	36.28	6,602	38.09	6,933	40.00	7,279	42.00	7,643	44.09	
Building Inspector II	8,723	50.32	9,158	52.83	9,615	55.47	10,096	58.25	10,601	61.16	11,131	64.22	
Building Inspector Supervisor	10,261	59.20	10,774	62.16	11,313	65.26	11,878	68.53	12,472	71.96	13,096	75.55	
Code Compliance Officer	7,901	45.58	8,296	47.86	8,711	50.26	9,146	52.77	9,604	55.41	10,084	58.17	
Communication and Engagement Coordinator	8,012	46.22	8,413	48.54	8,835	50.97	9,277	53.52	9,740	56.19	10,227	59.00	
Community Services Coordinator	6,575	37.93	6,904	39.83	7,250	41.83	7,612	43.92	7,993	46.12	8,393	48.42	
Council Services Assistant	5,949	34.32	6,246	36.03	6,559	37.84	6,887	39.73	7,231	41.72	7,592	43.80	
Custodian	3,982	22.97	4,180	24.12	4,390	25.32	4,610	26.59	4,840	27.92	5,082	29.32	
Development Services Technician	6,901	39.81	7,245	41.80	7,608	43.89	7,988	46.08	8,388	48.39	8,807	50.81	
Electrician	8,219	47.42	8,631	49.79	9,063	52.28	9,516	54.90	9,992	57.64	10,492	60.53	
Engineering Technician I	6,101	35.20	6,406	36.95	6,725	38.80	7,062	40.74	7,415	42.78	7,785	44.91	
Engineering Technician II	6,745	38.92	7,083	40.86	7,437	42.91	7,809	45.05	8,199	47.30	8,610	49.67	
Environmental Programs Coordinator	7,814	45.08	8,204	47.33	8,614	49.70	9,045	52.18	9,498	54.79	9,973	57.54	
Exec. Asst. to the Chief of Police	6,101	35.20	6,406	36.95	6,725	38.80	7,062	40.74	7,415	42.78	7,785	44.91	
Facilities Maintenance Specialist	6,575	37.93	6,904	39.83	7,250	41.83	7,612	43.92	7,993	46.12	8,393	48.42	
Housing Program Coordinator	8,411	48.52	8,832	50.95	9,273	53.50	9,737	56.17	10,224	58.98	10,735	61.93	
Information Services Technician	7,814	45.08	8,204	47.33	8,614	49.70	9,045	52.18	9,498	54.79	9,973	57.54	
Junior Engineer	7,814	45.08	8,204	47.33	8,614	49.70	9,045	52.18	9,498	54.79	9,973	57.54	
Maintenance Worker I	5,407	31.19	5,677	32.75	5,961	34.39	6,258	36.11	6,571	37.91	6,900	39.80	
Maintenance Worker II	5,966	34.42	6,265	36.14	6,577	37.95	6,907	39.85	7,252	41.84	7,615	43.93	
Maintenance Supervisor	8,665	49.99	9,098	52.49	9,553	55.11	10,031	57.87	10,532	60.76	11,059	63.80	
Management Analyst	8,012	46.22	8,413	48.54	8,835	50.97	9,277	53.52	9,740	56.19	10,227	59.00	
Multimedia Coordinator	5,988	34.55	6,288	36.28	6,602	38.09	6,933	40.00	7,279	42.00	7,643	44.09	
Municipal Services Assistant	5,698	32.87	5,982	34.51	6,281	36.24	6,595	38.05	6,924	39.95	7,270	41.94	
Office Assistant I	4,110	23.71	4,315	24.90	4,531	26.14	4,758	27.45	4,995	28.82	5,245	30.26	
Office Assistant II	5,166	29.80	5,425	31.30	5,696	32.86	5,981	34.51	6,280	36.23	6,594	38.04	
Plan Check Engineer	10,261	59.20	10,774	62.16	11,313	65.26	11,878	68.53	12,472	71.96	13,096	75.55	
Plans Examiner	8,723	50.32	9,158	52.83	9,615	55.47	10,096	58.25	10,601	61.16	11,131	64.22	
Police Analyst	8,836	50.97	9,278	53.53	9,741	56.20	10,228	59.01	10,740	61.96	11,277	65.06	
Public Works Inspection Supervisor	10,261	59.20	10,774	62.16	11,313	65.26	11,878	68.53	12,472	71.96	13,096	75.55	
Public Works Inspector	8,219	47.42	8,630	49.79	9,061	52.28	9,514	54.89	9,989	57.63	10,489	60.51	
Recreation Services Coordinator	6,575	37.93	6,904	39.83	7,250	41.83	7,612	43.92	7,993	46.12	8,393	48.42	
Senior Accountant	8,595	49.58	9,024	52.06	9,476	54.67	9,949	57.40	10,447	60.27	10,970	63.29	
Senior Maintenance Worker	6,575	37.93	6,904	39.83	7,250	41.83	7,612	43.92	7,993	46.12	8,393	48.42	
Senior Utility Worker	6,575	37.93	6,904	39.83	7,250	41.83	7,612	43.92	7,993	46.12	8,393	48.42	
Senior Public Works Inspector	8,836	50.97	9,278	53.53	9,741	56.20	10,228	59.01	10,740	61.96	11,277	65.06	
Support Services Supervisor	7,795	44.97	8,184	47.21	8,593	49.58	9,023	52.05	9,474	54.66	9,948	57.39	
Unhoused Specialist	6,575	37.93	6,904	39.83	7,250	41.83	7,612	43.92	7,993	46.12	8,393	48.42	
Utility Worker I	5,407	31.19	5,677	32.75	5,961	34.39	6,258	36.11	6,571	37.91	6,900	39.80	
Utility Worker II	5,966	34.42	6,265	36.14	6,577	37.95	6,907	39.85	7,252	41.84	7,615	43.93	
Utility Supervisor	8,807	50.81	9,247	53.35	9,709	56.02	10,195	58.82	10,705	61.76	11,240	64.84	
Water Quality Specialist	7,263	41.90	7,626	44.00	8,008	46.20	8,408	48.50	8,827	50.93	9,269	53.47	