



Special-Regular Meeting Agenda
City Council

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

Wednesday, April 20, 2022 5:30 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 5:30 p.m. for the purpose of conducting a workshop and a closed session.

SPECIAL MEETING

5:30 p.m. Citywide Transportation Planning Workshop

6:00 p.m. Closed Session

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CITYWIDE TRANSPORTATION PLANNING WORKSHOP

City staff will provide the City Council and Community with an update on the City's programs related to traffic congestion, traffic safety, and transportation management. The Council will discuss future transportation needs and the development of a transportation master plan for the City.

Caltrans will have a representative to provide an update on City of Morgan Hill Transportation.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

Conference with Legal Counsel – Existing Litigation
(Government Code § 54956.9) Tate et al., v. City of Morgan Hill, et al.
Santa Clara County Superior Court, Case No. 22CV396857

REGULAR MEETING

7:00 p.m.

RECOGNITIONS

Outgoing Commissioners - Ronald Locicero and Neil Berman

PROCLAMATIONS

Proclaiming April 22, 2022 as Earth Day

Proclaiming April, 29, 2022 as National Arbor Day

PRESENTATIONS

Youth Action Council (YAC) - Asset #38 Self Esteem

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. (See additional noticing at the end of this agenda)

Public Comment 1

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **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.

2. **ADOPT RESOLUTION APPROVING FY2022-23 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SENATE BILL (SB) 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT**

Recommendation:

Adopt resolution approving a list of street rehabilitation projects funded by SB 1, The Road Repair and Accountability Act of 2017.

3. **ADOPT ORDINANCE 2331, 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)**

Recommendation:

Waive the reading, adopt Ordinance No. 2331, 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. **ADOPT RESOLUTION RESCINDING RESOLUTION 21-016: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, SUBMITTING TO THE VOTERS OF THE CITY AN INITIATIVE ORDINANCE CHANGING ZONING REGULATIONS THROUGHOUT THE CITY OF MORGAN HILL TO PROHIBIT CERTAIN NEW STORAGE AND DISTRIBUTION USES IN ALL AREAS OF THE CITY AND AMENDING THE REVIEW PROCESS FOR LARGE-SCALE DEVELOPMENT PROJECTS**

Recommendation:

Adopt resolution rescinding Resolution 21-016: A resolution of the City Council of the City of Morgan Hill, California, submitting to the voters of the City an initiative ordinance changing zoning regulations throughout the City of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects.

5. **ADOPT RESOLUTION AUTHORIZING AN APPLICATION FOR THE CALIFORNIA CLIMATE INVESTMENTS-DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S (CAL FIRE) FIRE PREVENTION GRANT PROGRAM.**

Recommendation:

Adopt resolution authorizing an application for the California Climate Investments-Department of Forestry and Fire Protection's (CAL FIRE) Fire Prevention Grant Program for the purchase of a radio controlled slope mower.

6. **APPROVE AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MORGAN HILL GRANTING PROGRAM FUNDS FOR THE 2021 STATE HOMELAND SECURITY GRANT PROGRAM**

Recommendation:

Adopt a Resolution to:

1. Accept grant funds from the Santa Clara County Office of Emergency Management via the Department of Homeland Security up to the amount of \$17,558 for the purchase of a Long-Range Acoustic Device (LRAD);
2. Amend the adopted Fiscal Year (FY) 2021-2022 budget to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$17,558 in the Police Department budget for the capital expenditures; and
3. Authorize the City Manager to execute the Agreement and approve the purchase up to the amount of \$17,558 for an LRAD system from Genasys.

7. **APPROVE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY FOR THE 2021 EMERGENCY MANAGEMENT PERFORMANCE GRANT**

Recommendation:

1. Authorize the City Manager to execute the Memorandum of Understanding with the County of Santa Clara for the 2021 Emergency Management Performance Grant (EMPG); and
2. Recognize grant revenue in an amount not to exceed \$19,000 for the purchase of Emergency Operations Center (EOC) Technology.

8. **APPROVE FIRST AMENDMENT TO SOLID WASTE DISPOSAL CONTRACT**

Recommendation:

Authorize the City Manager to execute the First Amendment to the Solid Waste Disposal Contract.

9. **APPROVE FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM**

Recommendation:

Authorize the City Manager to execute the First Amendment to the Agreement for Countywide Household Hazardous Waste Collection Program.

10. **APPROVE SECOND AMENDMENT TO GILROY STAFF SERVICES AGREEMENT**

Recommendation:

Authorize the City Manager to execute the Second Amendment to the Gilroy

Staff Services Agreement for Stormwater Permitting Requirements and Environmental Management Services.

11. APPROVE FINAL MAP FOR APPLE TREE - TRACT NO. 10523 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with 18755 OLD MONTEREY LLC, a California Limited Liability Company; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

12. APPROVE FOURTH AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Fourth Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$240,980 over 7 years.

13. AWARD EAST DUNNE AVENUE REHABILITATION PROJECT AND APPROVE CONSULTANT AGREEMENT WITH CSG CONSULTANTS, INC. FOR FEDERAL-AID PROJECT SUPPORT AND CONSTRUCTION INSPECTION SERVICES

Recommendation:

1. Approve the East Dunne Avenue Rehabilitation Project plans and specifications;
2. Award contract to A. Teichert & Son, Inc. DBA Teichert Construction for the East Dunne Avenue Rehabilitation Project in the amount of \$2,153,195;
3. Authorize the expenditure of construction contingency funds not to exceed \$430,639;
4. Authorize the City Manager to execute and administer the construction contract with A. Teichert & Son, Inc. DBA Teichert Construction; and
5. Approve and authorize the City Manager to execute and administer a consultant agreement with CSG Consultants, Inc. in the amount of \$175,000 for Federal-Aid project support and construction inspections.

PUBLIC HEARINGS

14. 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

15. APPROVE DONATION OF MONUMENT SIGNS FROM LEADERSHIP MORGAN HILL

Recommendation:

1. Review new City of Morgan Hill monument signs proposed by Leadership Morgan Hill;
2. Approve installation of monument signs at proposed locations;
3. Approve the design of the monument signs; and
4. Authorize the Public Services Director to execute agreements as needed with Leadership Morgan Hill and associated contractors to complete the installation.

Estimated Time: 30 Minutes

16. PROVIDE POLICY DIRECTION FOR FY 22-23 COMMUNITY FUNDING REQUESTS

Recommendation:

Provide policy direction regarding requests for community funding.

Estimated Time: 30 minutes

17. INTRODUCE AN ORDINANCE ESTABLISHING ENFORCEMENT EFFORTS FOR SIDESHOW PARTICIPANTS AND SPECTATORS

Recommendation:

1. Waive first and second reading of the ordinance; and

2. Introduce an ordinance establishing a process to prohibit spectators from participating in illegal speed contests, exhibitions of speed or reckless driving exhibitions.

Estimated Time: 5 Minutes

18. RECEIVE MONTHLY BUDGET UPDATE; MARCH 2022 FINANCIAL AND INVESTMENT REPORTS; AND CITY MANAGER AUTHORITY REPORT

Recommendation:

Accept and file report.

Estimated Time: 10 minutes

19. 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

PUBLIC HEARING

20. 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;
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

21. ADOPT RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO

IMPLEMENT THE EMPLOYEE SHARE OF EMPLOYER CONTRIBUTION IN ACCORDANCE WITH SECTION 20516 OF THE CALIFORNIA GOVERNMENT CODE

Recommendation:

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement the pension cost share provision in accordance with California Government Code section 20516;
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce the ordinance.

Estimated Time: 5 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 20, 2022
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APRIL DEVELOPMENTAL ASSET #38 - Self-Esteem

Young person reports having high self-esteem



Kalena Santillanes, YAC Active Member

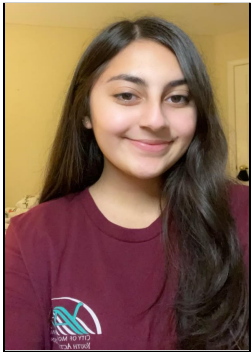
Having high self-esteem is something that is difficult for many people, especially youth, because we are always comparing ourselves to others. I sometimes find myself basing my self-worth on others' achievements instead of my own personal goals. Like many, I experienced self-doubt during my college applications, constantly wondering if my application was good enough to get accepted and thinking about the other thousands of applicants who may have been better qualified than me or had submitted better essays than mine. However, I realized that this did not matter. All that mattered was that I put in the effort and tried my hardest, and put my best foot forward.

Recently I got accepted into one of my top schools, the University of San Francisco. Although it is not a well-known elite school such as Harvard or Stanford, I was ecstatic when I received my acceptance letter and my self-esteem was through the roof. I was so proud of myself and all the hard work I had put in to apply. I was also so happy to have received a great scholarship provided by the school. It was one of the best feelings in the world, I felt confident and immensely proud of myself.



Julianna Bristol, YAC Active Member

Having self-esteem, let alone high self-esteem is something that I struggled a lot with during middle school. I think that this is something that a lot of people my age struggle with. In this day and age, with social media and constantly comparing ourselves with other people, it is definitely harder to have high self-esteem. Fairly recently, I learned that only my own view of myself matters, and coming to this realization has greatly boosted my self-esteem. I am very grateful that I am able to see myself in a positive light. I know that I won't always be able to please everybody so it's important to feel good about myself and what I do. Having healthy self-esteem is something I consistently work on because I know that low self-esteem can lead to actions or decisions that can sometimes be unhealthy.



Aahana Singh, YAC Active Member Love this story and example! Well done Aahana!

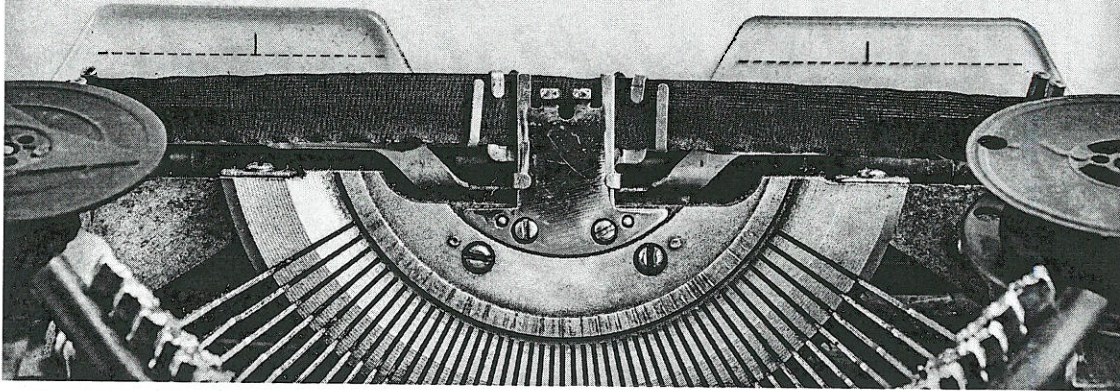
Having self-esteem in certain situations is the best feeling you could ever feel, along with dopamine getting released in your body. Going back to eighth grade, I decided to be a part of a play in my school. To get a role, each person had to do a solo audition and this would have been my first time performing alone in front of people. Naturally, I was very nervous with having little to no experience in acting. Being the main character in movies my brother and I directed counts, then I had a lot of experience. Leading up to my audition day I was trying my absolute best to give my 100 percent. In addition, I kept in mind that once it was over I would be very proud of myself. With the help of my brother, I slowly started to feel prepared. Although, there was a part of me thinking, "What if I do terrible?" After all of the hard work, it was time for me to go up on the stage and work my magic. I remember at that moment I was telling myself all of these positive thoughts and how I was going to do amazing. I was thinking highly of myself and telling myself not to care about what other people think about my performance. It was safe to say that I had the most self-esteem during my audition and I was feeling very accomplished. It was one of those situations where I just had to believe in myself. Thankfully, it paid off.

Chiquy Mejia

Youth Development Coordinator

I LOVE MY JOB!

LETTER TO THE EDITOR



Featured Opinion Letters

Letter: Speak up on High Speed Rail impacts

By: **LESLEY MILES** 📅 April 4, 2022

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I have been a community member of the High Speed Rail working group (CWG) for the past almost 5 years. During that time, the project has gone from a potential overhead and separate rail line to a complete at-grade rail line on the existing Union Pacific line. This is the railroad track that goes through the middle of town.

I know that we have all been hoping and assuming that this is not going to come to pass; however, one should never assume. As we all know, the past two years are an example of what I never could have imagined would have happened – pandemic, cold war, etc.

The accepted plan by the HSR Environmental Impact Report (EIR), indicates in Morgan Hill, there will be only at-grade crossings other than at Cochrane Road. An at-grade crossing means that it will be like it is now but with the addition of the high speed train traveling at 110 mph through Morgan Hill. There will only be Quad Gates similar to the current arms but larger, for the limited crossings that will be available: Live Oak, Tilton, Main, Dunne, San Pedro and Tennant. The idea of a train going through Morgan Hill at 110 mph and getting stuck in your car within the barricades due to traffic is not far-fetched.

Additionally, more horns and more wheel vibration noise are noted as significant “unmitigated” issues. Unmitigated means that they are issues that have been identified but no effort has been made to resolve those issues.

As we know, the overall project cost is significant and many of us think that it will not come to pass due to that. However, we are in an area that could best be characterized as the “low hanging fruit.” The San Jose to Gilroy stretch is pretty straight and reasonably inexpensive to build, particularly because there are no main overpasses and all the tracks are at grade and follow the existing right of way. There are no expensive

DEAR LESLEY
+
HSR
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acquisitions. As we have seen in the Central Valley, if there is any amount of funding, it will be built regardless of final connections.

Many of us have chosen to just say "No." That is not helpful. Instead, we need to come out in force as a community and require that additional grade separations be required to ensure community safety.

Alternative 4 (at grade) is the accepted alternative because it is the cheapest alternative. Please realize that those parameters for Alternative 4 are the only ones that we may have some minor ability to change or mitigate. There is no point in suggesting it go along 101 – that ship has sailed.

I encourage you to review the final EIR on the HSR website. It is accepted, so that is what will be constructed: <https://hsr.ca.gov>. On the front page of the site is the link to the San Jose to Merced Final EIR/EIS. As you peruse the document, section 3 will lead you to the appendices and then review only Alternative 4.

The City of Morgan Hill wrote a letter to the HSR agency in October of 2021 clearly identifying the areas of concern and requesting that three more grade separations must be constructed at Tilton, East Dunne and Tennant.

A comment period for the overall Business Plan that includes the final EIR will end at 5pm Apr 11. Cost drives everything and the community needs to speak up and clearly identify the need for unhindered access across the tracks either above or below for emergency vehicles and movement of traffic. See potential comment below.

"I am a member of the Morgan Hill community and have grave concerns regarding the safety of our community. The HSR will travel through our town at a rate of speed of 110 mph, essentially bisecting the community with no access from one side to another. Fire, public safety and medical emergencies will be impacted. I respectfully request the addition of three additional grade separations at Tilton, East Dunne and Tennant to mitigate this clear danger."

Comments on the Draft 2022 Business Plan can be submitted at this link: <https://tinyurl.com/m9ayrkcc>.

There is a form on the page where you can submit comments on the Draft 2022 Business Plan by scrolling down.

You can also send your comments the following ways:

- To this email address: DraftBP2022@hsr.ca.gov
- By attending the virtual meeting on March 17: <https://hsr.ca.gov/about/board-of-directors/schedule/>
- By US Mail:

California High-Speed Rail Authority

Attn: Draft 2022 Business Plan

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February 16, 1996

**The Honorable Quentin Kopp
CALIFORNIA STATE SENATE
2057 Capitol Building
Sacramento, CA 95814**

Re: California Transportation Policy

Dear Senator Kopp,

While the need for high speed passenger trains in California, and the entire Nation, is obvious to any student of transportation, it appears to me that the HSR Commission is completely ignoring the only viable alternative to providing them.

Instead of using the existing railroads, staying with private enterprise, which past generations bequeathed to us, the Commission seems to be hypnotized by socialism. At a time when privatization around the world is correcting the mistakes of publicly-owned transportation, e.g., Australia, Canada, New Zealand, England, Western Europe, etc., the Commission seems to be falling under the fatal attraction of a ruinous fiscal belief that cost does not matter.

Do we have the ability to learn from our history? Will we ignore it and be condemned to follow the course of the Soviet Union? HSTPS Executive Director Ron Diridon, addressing the students at SJS, said that transportation decisions hinge on three things, "Finance, finance, finance." Rather, I believe it hinges on policy, because the latter predetermines the former.

The legislative findings in SCR 6 are undoubtedly true, but the solution currently being proposed by the Commission is a nightmare, which, if brought into existence, will certainly plunge us down the path followed by the Soviet Union.

Why not consider changing policy to attain the same goal? Why seek to ruin California's economy in a search for "finance," when by adherence to the nation's transportation policy, and its rail transportation policy, we could have bullet trains without spending tax dollars? If this country had adhered to these national policies since the end of WWII, would we have seen thousands of miles of

Hon. Quentin Kopp
February 16, 1996
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track abandoned? Would we have invested untold billions in the creation of the interstate highway system? Would we be addicted to automobiles today? Are we in denial about our addiction, which blinds us to our violation of our own national transportation policies?

If the law said: (1) freeze truck lengths, (2) prohibit triples, (3) return weight limits to something that would not break concrete freeways, (4) reverse the intercity freight trend since WWII, then how much less money would we need for such things as: (1) highway maintenance, (2) fuel, (3) injury, death, property damage expenses? If policy were made by wiser men than we seem to have had in charge since the end of WWII, would we have (1) cleaner air, (2) less highway congestion, (3) lower health care costs?

If the government is in control, why not set transportation policy and tell each mode what it was going to do based on decisions favorable to the people? If we can move freight profitably, but not passengers, then why not mix the two in one revenue stream to attain satisfactory corporate profit levels? Divorcing rail passenger from rail freight in 1970 was a big policy mistake, and some in Congress seem to have recognized that now by enacting legislation requiring Amtrak to break-even in seven years. Of course, without the freight revenues it can never do so in the face of highway and airline competition, and the vast federal subsidies given to those modes.

The solution lies in equal treatment by government of the different modes, and in freight revenue subsidizing the unprofitable passenger fares, just as earlier generations, who faced these same decisions, learned. While it might come as a shock to the Commission's staff and members, we have railroads. The trouble is that we ignore them and have favored their competitors with billions of dollars of subsidies. Our policy makers apparently prefer our citizens to use four times as much fuel to move our freight, and to sit on congested freeways, rather than establish transportation policy which capitalizes on the inherent advantages of the railroads. Amazingly, the stated policy is already in the statutes, but in practice we do not follow it! Why?

The Commission's current study suffers from myopic concentration on a fantasy, rather than realistic appreciation for the wisdom of earlier generations. Why are the Commissioners not investigating the obvious solution of using our railroads to accomplish this goal? French and Japanese transit systems, like

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those in this Country, operate at a huge loss, requiring taxpayer subsidies of ever more scarce tax dollars.

Instead of trying to imagine millions and billions of dollars, this needs to be put in terms that are understandable, and revealed to the voters for what it is. For example, when Amtrak was formed in 1970 it was cheaper to send a passenger from LA to NY by taxi, and pay the cabby a \$100 tip, than to send him by Amtrak. When METRO was built in Washington, D.C., it was cheaper for each rider to be furnished with a Mercedes than to ride public transit. For BART, the riders could have two BMW's and the taxpayers were better off.

Of course, these solutions are just as stupid as the ones our decision makers and planners gave us. The arrogance of today is to forget the wisdom of the past. Who gained by selling those cars, building those interstate highways?

Harvey Levine's seminal work, National Transportation Policy: A Study of Studies, ought to be required reading for both the Commissioners and the staff, not to mention our decision makers.

When we needed a transcontinental railroad, did we opt for government-owned railroads? Whenever WWI's demands caused nationalization of the railroads, did we keep them that way? Does government owned business work in the long run? Do we want to go the same way as the Soviet Union?

No!

When I testified 2/2/96 before the Commission in Fresno, I showed them the Harvard doctoral dissertation by John D. Donahue, The Privatization Decision (1989), and reminded them of the Wall Street Journal special edition on privatization that was published in October. I said that if they were a board of directors of a corporation then they would have been terminated. They did not effectively cross-examine the experts brought before them by their own staff. They did not realize that the "profits" displayed by the French Officials were for a trunk line route, and that the truth is that system-wide the French experience is no better than that of the best American public transit system. They are considering borrowing billions to create a line that will require \$800 million annually just to service the debt (bonds) it creates! There can be no doubt that Big Brother's slogan pales in comparison with this proposal: "WAR IS PEACE, FREEDOM IS SLAVERY, IGNORANCE IS STRENGTH."

Hon. Quentin Kopp
February 16, 1996
page 4

As I said to Mr. Mineta, we are, I believe, about half nationalized and half free-enterprise in transportation. Can this situation last? It is not unlike an earlier period in our history:

"If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed.

A house divided against itself cannot stand."

At this point, too, we are at a crucial stage of evolution in the nation's history: We are a house divided.

The Lincoln administration decided that our railroads would be privately owned, with construction financed by government-backed securities. Today we appear to have rejected the policy of free-enterprise ownership because we continually create "authorities" and "agencies" to own and operate our rail passenger mode. The same is true with bus transportation. Now I hear that Amtrak will be moving freight. We have abandoned not only thousands of miles of rail, but as a nation we have also abandoned the policy of private ownership of transportation. Our elected officials boast about what they have done, but not one of them will tell you how much it costs per passenger (or per passenger-mile) to transport people by bus or rail. Deregulation during the past 15 years has rendered the private transportation sector a virtual graveyard. So where are we, and where are we going? How can we have nationalized industry and reduce the budget deficit?

To paraphrase Mr. Lincoln, if we could first know where we are, and "whither we are tending," we could better judge what to do, and how to do it. Our national transportation policy was initiated with the "avowed object" and confident promise of creating a sound national transportation system. Under the operation of that policy,

one national goal is to make the county competitive on the global arena. In my opinion, it will not happen until a crisis shall have been reached and passed.

Today we are at a point where we are half slave to public ownership of transportation, and half free-enterprise. The trend, however, runs counter to private ownership. Reversing the trend becomes increasingly difficult as we commit vast resources of our society to nationalized modes.

Again to paraphrase, I believe that the nation's transportation system "cannot endure permanently half slave and half free." I do not expect the nation will be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of nationalization will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike in all modes of transportation.

We will then have arrived at the stage of development, and an experience similar to that of the demise of the Soviet Union must ultimately follow because government-owned industry does not work in the long-run. Great Britain and other western European countries, Canada, Australia and New Zealand are all privatizing previously nationalized industries because they have realized the truth in this. Nevertheless, our elected representatives push for more government-owned transportation modes each passing year.

Today we could send six passengers by limousine from Gilroy to San Jose cheaper than it costs us to send them on Caltrain. Yet if private industry moved those passengers and a fair share of the available freight tonnage, the burden on the taxpayers would lessen, road congestion, health care costs, and air pollution would decline. Local government would enjoy another source of tax revenue.

Since WWII, creation of the interstate highway system has diverted a greater percentage of intercity freight traffic away from the rails each passing year. Separating freight from passengers on the railroads was a decision rejecting earlier generations' investments, and plunging us along a course toward Soviet-style industry, and we know how well that system worked. I

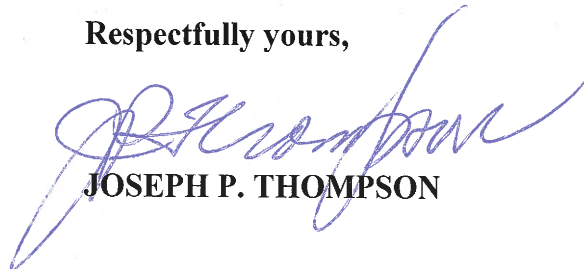
Hon. Quentin Kopp
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page 6

keep asking our elected officials: If government ownership of industry failed in the Soviet Union, then why are we trying it? promoting it? How can America compete in "global markets" if it is saddled with deadweight nationalized transportation modes?

The Emperor has no clothes! We cannot afford to borrow billions to build a rail passenger line that loses millions each year. This is especially true when we have an existing alternative that will not cost the taxpayers any money at all. All it takes is someone strong enough to enforce the nation's transportation policies that are already on the books. We need not reinvent government to accomplish this goal, but rather, merely keep this a government of, by, and for the people.

Thank you for giving me an opportunity to make this comment. My formal response to the Commission will follow as soon as I complete it.

Respectfully yours,



JOSEPH P. THOMPSON

Encl.

cc: Hon. Henry Mello
cc: Hon. Dean R. Dunphy
cc: Hon. Peter Frusetta
cc: Commissioners
cc: Executive Director Daniel S. Leavitt
cc: Rod Diridon, IISTPS

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January 20, 1998

TELECOPIER: 916-323-5440

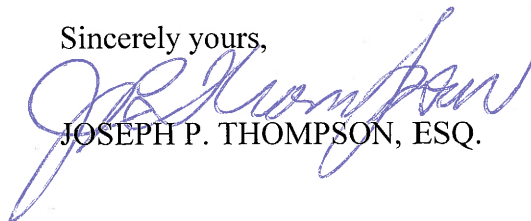
Mr. Daniel S. Leavitt, Executive Director
High Speed Rail Authority
P. O. BOX 942874, MS-74
Sacramento, CA 94274-0001

Re: Transportation Policy & California HSR

Dear Mr. Leavitt,

Thank you for the letter dated Jan. 8, 1998 addressed "Stakeholder," regarding the HSRA's meetings tomorrow 1/21 and 1/22/98. Unfortunately, due to previous litigation burdens I am not able to attend, but I would like to continue to receive notice of future meetings. As a "stakeholder," and an interested transportation student, who attended three of the HSRC's public meetings and spoke during the "public outreach" sessions, please convey my message to all the members of the HSRA, especially the Chairman, and assure them that I believe that their work to be of unparalleled importance for the future of this State. I pray that the HSRA members will adhere to Governor Wilson's private sector philosophy espoused in his new book, *California Competes*. Even though I cannot be at your meeting, I would like to have my recent articles from *Transportation Lawyer* and the University of Denver's *Transportation Law Journal* included in the public outreach response. I have previously furnished a copy of the shorter one to you and to Senator Kopp, and another copy is being mailed to you today. Thank you for giving me this opportunity to participate in your vital endeavor for California's future. Caveat Viator!

Sincerely yours,



JOSEPH P. THOMPSON, ESQ.

Encl.

TO: LESLIE MILES, MORGAN HILL, HSR WORKING GROUP:—per your request: see attached:
Editor: this was published in Orange County Register Wednesday, June 14, 2006. Please publish again for Gilroy & Morgan Hill raped taxpayers, about to be re-screwed by utopian insanity by Bullet Train. The author is one of the Nation's top transport policy men.

Joe Thompson

Gilroy

(408) 848-5506

1. Taking taxpayers for a ride California focus

Proposed state high-speed rail system would cost too much to do too little

There has been considerable discussion about the proposed California High Speed Rail project. California taxpayers are being subjected to grandiose claims about reduced traffic congestion and cost-effective alternatives to flying and driving.

The HSR system, which would connect Los Angeles, San Francisco, San Diego, Sacramento and areas in between, would require as a down payment a \$10 billion bond issue that voters may consider as soon as November. The California High Speed Rail Authority says the system could cost much more – \$37 billion. Reality is more like \$75 billion.

Luckily, the Assembly last month passed a bill that would delay the bond election until 2008. That bill is now in the Senate Appropriations Committee, where there is no clear indication whether it will come to a vote anytime soon. However, there is evidence the Assembly's caution is justified, and the Senate should follow its lead.

First, the HSR system is likely to cost much more than advertised. Cost projections for large transportation projects are notoriously inaccurate. Boston's two-decade "Big Dig" racked up three times its projected cost, even after accounting for inflation. Across the country, transit megaprojects have escalated in cost after approval; these are not isolated cases.

What's more, it appears these overruns are not accidental. Research by Bengt Flyvbjerg of the University of Aalborg (Denmark) published in the Journal of the American Planning Association demonstrates these projects routinely surpass estimated costs due to "strategic misrepresentation." Planners and proponents underestimate costs in hopes of obtaining project approvals that would otherwise be impossible.

As a Los Angeles County transportation commissioner, I witnessed costs escalate for the Blue Line light rail from Los Angeles to Long Beach eventually exceeding three times original projections (inflation-adjusted). At no point did anyone seriously question the increases, because the taxpayers had already committed to the project. There was simply no incentive to keep costs down. Why should we expect the HSR project to be any different?

Flyvbjerg and others also have found that ridership estimates tend to be overstated. The Los Angeles Red Line subway even today carries less than one-half the ridership that was projected when we approved it.

Ridership is important because the California high-speed rail system is advertised as not needing its operations subsidized by taxpayers. But this claim is likely based on an overestimation of the ridership and an underestimation of the operating costs. Amtrak's high-speed Acela service between Washington, D.C., and New York City carries little more than one-tenth the passengers that proponents promise for the California system, despite serving a larger market. So it is likely taxpayers will need to keep their checkbooks open indefinitely to subsidize HSR operation.

All this would be irrelevant if we needed such a system. The California HSR has been touted as a strategy for reducing highway congestion. In fact, projections indicate that traffic congestion along the rail corridors will still increase 26 percent by 2020, even with the high-speed trains. Without them the increase by 2020 would be 31 percent.

Claims of reduced air traffic congestion are similarly flawed. Most air travel between the San Francisco Bay Area and Southern California already avoids the busy San Francisco International and Los Angeles International airports, and their share of travel is declining. Planners delude themselves into believing HSR will take away half of air traffic volume. But last year Amtrak said its New York-to-Washington high-speed service lost ridership to stronger airline competition. Planners assume airlines will stand idly by as their customers jump on the train. In fact, airlines will compete, and compete hard.

Much has been made of HSR's purported cost-effectiveness, with claims that highway improvements would cost more than twice as much as the rail project. But the highway alternative would produce four times the congestion relief, making it twice as cost-effective, even without the inevitable cost escalations for high-speed rail.

Thus, for California, the question is not whether high-speed rail would be nice – it would be. The fundamental question is whether it is worth the tens of billions it could cost. At this point, there is every reason to believe this project would be, quite simply, a waste of money.

EDITOR: Please publish this letter that I sent to you on 3/2/03:

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March 2, 2003

Editor

The *Dispatch*

6400 Monterey Road

Gilroy, CA 95020

Re: Downtown Gilroy and Soviet-Style Transportation Policy

Dear Editor,

Could it be that our government intends to oust UP from its right-of-way through downtown Gilroy, supplanting it with Soviet-style Bullet Train and Son-of-Amtrak Caltrain? With VTA's Ministry of Truth touting Gilroy as its newest land-use planning (i.e., Sovietized) poster child, will we see an end to the history of private-sector railroads here? How many jobs will that kill-off? How much commerce will we lose if the VTA-led socialist-communist scheme is crammed down on us? The malignant tumor of socialism-communism is being stimulated by Politico-Transit Alliance advocates in our local government, our County government, and our State government, so will small business owners be able to stop this socialistic train wreck? We've seen the canneries go bankrupt and close their gates. The Black Hole Frankenstein "transit hub," where empty buses stop so public-sector union drivers can rest from the tedium of transporting empty seats around town, is growing—who knows where the socialist policy will stop? If we don't stop runaway government now, how will our children or grandchildren ever stop it? Where is an elected leader with the guts to fight back for us? I believe that it is time for us to retake our government away from the socialist small business killers. *Caveat viator!*

Very truly yours,

JOSEPH P. THOMPSON

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section Santa Clara County Bar Assn.

Member, Legislation Committee, Transportation Lawyers Assn.

Member, Association for Transportation Law, Logistics & Policy

Member, SBC Citizens Rail Advisory Committee

Candidate, American Society of Transportation & Logistics

Winner, AST&L's Best Research Paper Award 1997

Past-President, Gilroy-Morgan Hill Bar Assn.

M.H. WORKING GROUP:

gpt

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January 15, 2003

FAX (916) 653-2134

Honorable R. Kirk Lindsey, Chairman

California Transportation Commission

1120 N Street, P.O. Box 942873 (MS-52)

Sacramento, CA 94273-0001

Re: Transportation Funding Crisis Workshop Jan. 17, 2003

Dear Mr. Lindsey,

Thank you for sending notice of the CTC's funding issues workshop and for inviting public comment regarding the State's fiscal "crisis." It was a pleasure meeting you at the CTC's meeting in San Jose at the Fairmont Hotel last month. Congratulations on becoming Chairman of the CTC. One cannot help but sense the irony in a trucking company CEO being CTC's chairman when our chickens are coming home to roost. At Mr. Lawrence's invitation I addressed the CTC in December 2001 at the PUC in San Francisco on the subject of intermodal transportation infrastructure improvements for the State, and although I cannot attend the workshop on the 17th of this month, I would like to offer my recommendations.

1. Author. I have 39 years experience in transportation industry (trucking and railroad). I am a post-doctoral student of transportation law and policy. I am a member of the Transportation Lawyers Association, and serve on TLA's legislation, intermodal, arbitration and freight claims committees. I am also a member of the Association for Transportation Law, Logistics & Policy, and a candidate for the American Society of Transportation & Logistics.

2. Background. For additional background, please refer to my paper that I presented to the CTC and handed to Mr. Remen at the CTC's meeting at the PUC in San Francisco, December, 2001.

3. Official Record. Will you please direct your staff to include these remarks as part of CTC's official records.

4. Summary. In response to your call for public comment on the current "funding crisis", I once again give my conclusions reached six years ago during debate on ISTEA reauthorization. See, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*,

Recommendations to CTC Re:
Transportation Funding "Crisis"

pp. 87-*et seq.* (1997), and “ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities,” *Transportation Lawyer* (Dec. 1997). A copy of the former is enclosed for your ready review, although I previously submitted it to you in December 2001.

5. Recommendations. The CTC should first frame the fundamental issue facing it, which was identified by Transportation Secretary Mineta while he was serving as Chairman of the Surface Transportation Committee in the House of Representatives: *“The crucial question in transportation today is: What should government do and what should it leave to others?”*

Governor Davis’ call for “structural reform” should focus CTC on Secretary Mineta’s “crucial question.” The answer that CTC gives to Governor Davis and Secretary Mineta will shape the solution for our transportation “funding crisis,” and the future of transportation in California.

These issues are also pending in the 108th Congress as it takes up the subject of reauthorization legislation for Transportation Equity Act for the 21st Century (TEA-21). Please refer to my recommendations to USDOT dated 8-23-02 on this issue (see copy enclosed).

Rather than a band-aid approach to the “funding crisis,” I recommend that CTC strive to achieve “structural reform” in the basic approach that we take to the for-hire carriage of passengers. I believe that CTC should have no “sacred cows” immune from this search and rescue mission. Like waking-up with a hangover, California must swear-off its former excesses.

The Emperor Transit First is stark naked. Unremunerative fares yield insolvent carriers, of both passengers and freight. Deficits piled on top of deficits bring predictable results. Farebox recovery rates that fail to cover fully allocated costs produce a result which does not surprise transportation students or history students. Such public-sector transit systems are not “going broke” in California (or elsewhere), they were conceived insolvent, born bankrupt, and kept operating only with massive blood transfusions from the taxpayers. No member of CTC should be surprised at the present “funding crisis” because we have intentionally navigated the State to this destination, one in which California’s deficit exceeds that of all other States’ combined deficits. We asked for it; we demanded it, even if it meant damning future generations into decades of debt. Bankrupt operations, bankrupt carriers, bankrupt policies, are the result of our myopia. Increasing insolvent transit systems’ operations undermine our financial capability to build and repair transportation infrastructure. Their growing demands have reached a predictable breaking point. We must look into the mirror and recognize the problem staring back at us.

There has been occurring a world-wide “privatization revolution” as described by the *Wall Street Journal*, special edition 10-2-95, yet we have steered a contrary course of nationalization, statism, and public-ownership. Only a hypocrite would feign surprise at arriving at our present destination of fiscal “crisis.”

*Recommendations to CTC Re:
Transportation Funding “Crisis”*

CTC and California must ask itself this question if it wants to be cured: “Why did Canada, Mexico, Great Britain, Australia, New Zealand, and many other nations denationalize their publicly-owned transportation industries during the past 25 years?”

We must ask ourselves, if we truly want to bring permanent relief to this and future generations of Californians: “If all of the USSR’s Five Year Plans were such raving successes, then why did the USSR collapse in revolution?”

Why should we adopt the Marx-Engels-Lenin-Trotsky-Stalin theory of government when our Founders placed its foundations on Adam Smith’s theory? Did the USSR win the Cold War, or did we win it? If we defeated the USSR, then why should we adopt their failed economic philosophy?

Answering Governor Davis’ “structural reform” challenge, answering Secretary Mineta’s “crucial question,” learning the lessons of the history of the past century, CTC and California must recognize the error of our policies, unless we have no intention of solving the “funding crisis.” Phony efforts of “reform” will just be wheel-spinning in mud—wasted motion. Genuine “reform” means going back to American free-enterprise in transportation, personal responsibility, not transit welfare. Our galley slaves, i.e., taxpayers, are beyond the breaking point. Our policies have burdened the taxpayers under unsustainable loads. Like overloaded trucks, our axles are breaking. Bankruptcies are at historic highs, both business and individual. Small business failure rates are at 80% on average during the first five years. *Traffic World*’s report that more than 10,000 trucking companies (with 20 or more trucks) either filed for bankruptcy protection or closed during the last two years illustrates what plight business owners are bearing from our ill-conceived government policies. Did you ever think you’d live to see PG&E, United Airlines, and Consolidated Freightways in bankruptcy? We are killing the goose to steal her eggs, but what will our children eat?

The fallacy in our current transport policy can be shown by comparing fares paid to move a 200 pound box with fares paid to move a 200 pound man. The shipper of the former pays 100% of his carrier’s fare; but a passenger on public-sector transit (bus or rail) pays only for the first two pounds, and the taxpayers are expected to pay for 198 pounds (applying generally accepted accounting principles, not the Enron-style accounting method our Legislature authorized for transit agencies’ financial reporting).

“Structural reform” of this unsound policy must be approached in the same manner as Great Britain accepted under the administration of Margaret Thatcher—privatization of nationalized industry. Keeping the *status quo* will only mire us further in misery. Flatboats, bullet trains, rickshaws, lunar escalators, i.e., any mode of transport, must charge user fees (fares) that are remunerative, unless we want to see it fail in the long run. Refer to my letter to HSRA’s former Chairman enclosed.

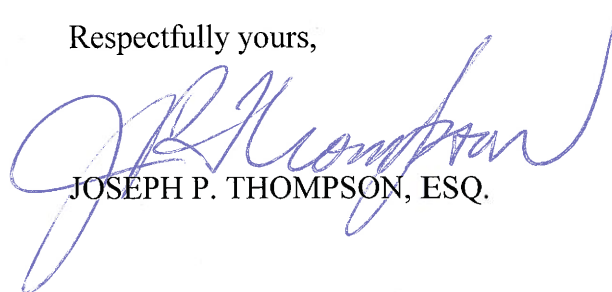
***Recommendations to CTC Re:
Transportation Funding “Crisis”***

William Jennings Bryan and the Populists were wrong, just as Marx & Engels were, as government nationalization of the railroads proved during World War I.

Neither CTC nor California should be surprised by the “crisis” resulting from this fallacy (or lunacy) in our transport policy. Do we have the will power to reform our policy, or will we take the same route as did the USSR? I pray that God will give you and your fellow Commissioners the wisdom and courage to make a course correction for California now, before it is too late.

Caveat Viator!

Respectfully yours,



JOSEPH P. THOMPSON, ESQ.

Encl. [Article; Letters]

***Recommendations to CTC Re:
Transportation Funding “Crisis”***

EDITOR: Please publish this letter that I sent to you on 8/24/07:

JOSEPH P. THOMPSON

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August 24, 2007

Editor

Email: editor@garlic.com, editor@gilroydispatch.com

The ***Dispatch***

6400 Monterey Road

Gilroy, CA 95020

Re: **Bullet Train: Tourists' Panacea, Taxpayers' Hell**

Dear Editor,

The proposal to build the Bullet Train in California is proof that socialists have taken over our government. Based on past cost overruns, the price tag on this extreme boondoggle is about \$75-\$80 billion in today's dollars. Paid back interest on these bonds will also burden our children and grandchildren and great-grandchildren will billions more. Annual operating losses will exceed those of all Lite Rails combined. Fares won't cover 1% of operating expenses, estimated at \$1 billion/year. Bond debt will bury us.

Technology exists to build it, but how do we pay the construction costs, and operating costs?

It's technologically incompatible with existing railroads, so it will need BART-like right-of-way. Eminent domain power, included in the legislation creating it, ensures that it will plow through Gilroy and Morgan Hill and any other place, regardless of opposition. But it cannot cross the UPRR's tracks because the Class I railroads' eminent domain trumps Bullet Train's eminent domain power, according to UP's top commerce counsel on the West Coast. Tourists will ride it, but enjoy a 99% taxpayer subsidy for rides that will cost more than those on the Concorde Supersonic Jets. Local small business owners will pick-up the tab, maybe getting 10% back from tourist dollars if we're lucky.

In 1970 Congressmen stood up in Congress and proclaimed that Amtrak would be "self-sufficient in three years." Yeh. By 9/11/01 taxpayers had thrown about \$30 billion in subsidies down that black hole, but did we have adequate airport security?

In 1863 General Granville Dodge, who was later UPRR's top civil engineer, and who discovered the Sherman Pass over the Continental Divide, was summoned to the White House.

When will we ever learn?

He later said that he told the President that the government should own and operate the transcontinental railroad. Lincoln, who as a young member of the Illinois Legislature had seen government owned railroads in Eastern and Midwestern States go bust and shutdown operations in the 1830's and 1840's, said no. He said that private enterprise must do it, although the government would assist with development incentives (my words, not his). They did it. And what did taxpayers receive in the deal? They got about \$460 million (measured in 1940 dollars) more than the value of the land granted to the railroad corporations because of Section 22 in the original Interstate Commerce Act (lower freight rates for government shipments).

A hundred years ago the Progressive Movement, led by William Jennings Bryan, sought nationalization of the railroads and other industries, but their passion was rejected by voters.

When the railroads were nationalized in 1917 during the Administration of Woodrow Wilson, government genius so botched-up shipping that rail traffic came to a standstill. That experiment failed, just as Lincoln predicted it would. In the Transportation Act of 1920 the railroads were de-nationalized, and came to be the envy of the world's nations today; the backbone of our nation's commerce.

Instead of making taxpayers pay for Bullet Train, like we pay for County Transit, Caltrain, Amtrak, Lite Rail, etc., etc., while motorists are paying 100% of their own transport costs, seeing our politicians rewarding transit wastefulness, why not use the unlimited power of capitalism? Have you been on I-5 lately to see the uninterrupted 24-7 tonnage flowing North-South in California? I appeared before the Bullet Train commission five times over the last decade and told them that if they put enough UPS, Fedex and Postal Service tonnage on their trains, then they would not need to ask the taxpayers for a dime. Did they listen?

Like Amtrak's promoters, their pie-in-the-sky predictions show that they did not listen, nor did they learn from history, either United States or world history in the last century and one-half. So, hold on for the ride, and warn your children and grandchildren, our leaders will strap taxpayers to the rocket to Hell. We'll be paying unimaginable sums to attempt what Lenin, Trotsky, Stalin and the USSR failed to achieve, despite all their promises to their citizens that socialism could bring utopia. If they fund it with gas taxes, be prepared to see \$10/gallon for gas at the pumps. They'll tax motorists out of their cars, leaving them to ride our Trojan Horses, and bike or walk the rest of the way. *Caveat Viator!*

Respectfully yours,
JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA
Member, Legislation Committee, Transportation Lawyers Assn.
Member, Association for Transportation Law, Logistics & Policy
Candidate, American Society of Transportation & Logistics
Winner, AST&L's Best Research Paper Award 1997
Past-President, Gilroy-Morgan Hill Bar Assn.

When will we ever learn?

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August 24, 2007

Editor

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The ***Dispatch***

6400 Monterey Road
Gilroy, CA 95020

Re: Bullet Train: Tourists' Panacea, Taxpayers' Hell

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When will we ever learn?

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A hundred years ago the Progressive Movement, led by William Jennings Bryan, sought nationalization of the railroads and other industries, but their passion was rejected by voters.

When the railroads were nationalized in 1917 during the Administration of Woodrow Wilson, government genius so botched-up shipping that rail traffic came to a standstill. That experiment failed, just as Lincoln predicted it would. In the Transportation Act of 1920 the railroads were de-nationalized, and came to be the envy of the world's nations today; the backbone of our nation's commerce.

Instead of making taxpayers pay for Bullet Train, like we pay for County Transit, Caltrain, Amtrak, Lite Rail, etc., etc., while motorists are paying 100% of their own transport costs, seeing our politicians rewarding transit wastefulness, why not use the unlimited power of capitalism? Have you been on I-5 lately to see the uninterrupted 24-7 tonnage flowing North-South in California? I appeared before the Bullet Train commission five times over the last decade and told them that if they put enough UPS, Fedex and Postal Service tonnage on their trains, then they would not need to ask the taxpayers for a dime. Did they listen?

Like Amtrak's promoters, their pie-in-the-sky predictions show that they did not listen, nor did they learn from history, either United States or world history in the last century and one-half. So, hold on for the ride, and warn your children and grandchildren, our leaders will strap taxpayers to the rocket to Hell. We'll be paying unimaginable sums to attempt what Lenin, Trotsky, Stalin and the USSR failed to achieve, despite all their promises to their citizens that socialism could bring utopia. If they fund it with gas taxes, be prepared to see \$10/gallon for gas at the pumps. They'll tax motorists out of their cars, leaving them to ride our Trojan Horses, and bike or walk the rest of the way.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA

Member, Legislation Committee, Transportation Lawyers Assn.

Member, Association for Transportation Law, Logistics & Policy

Candidate, American Society of Transportation & Logistics

Winner, AST&L's Best Research Paper Award 1997

Past-President, Gilroy-Morgan Hill Bar Assn.

Post-Doctoral Student, Transportation Law & Policy

When will we ever learn?

EDITOR:

THE CITY MANAGER'S RESPONSE AT THE LAST GOVERNMENT REVIEW COMMITTEE MEETING AT THE GILROY CHAMBER OF COMMERCE TO MY QUESTION ABOUT SPENDING ANOTHER \$400,000 OF TAXPAYERS MONEY TO STUDY THE "DOWNTOWN ROUTE" FOR THE BULLET TRAIN BEING A WASTE OF THE TAXPAYERS' MONEY WAS MADE IN ERROR. HE SAID THAT UPRR HAD NEVER PROTESTED AGAINST BULLET TRAIN USING ITS PROPERTY. JUST THE CONTRARY, UPRR HAS FROM THE OUTSET OF THE BOONDOGGLE PLANNING BY THE RADICAL SOCIALISTS ADAMANTLY ASSERTED ITS PROPERTY RIGHTS TO PROHIBIT TRESPASSERS. AND SINCE UPRR'S EMINENT DOMAIN AUTHORITY TRUMPS THE BULLET TRAIN'S EMINENT DOMAIN AUTHORITY, PLANNING TO TRESPASS ON UPRR'S PROPERTY IS A CONSPIRACY TO COMMIT A CRIME. IT'S ALSO LUNATIC EVIDENCE THAT THE WASTRELS WHO ARE PISSING-AWAY OUR MONEY ON MARXIST-LENINIST-STALINIST SCHEMES ARE RUINING OUR STATE. WHERE IS THE OUTRAGE FROM GRC AND CHAMBER LEADERSHIP ABOUT THIS GANG-RAPE OF THE TAXPAYERS? FOR US TO SPEND \$400,000 TO PAY BULLET TRAIN FOR THE FURTHER STUDY OF THE "DOWNTOWN ALIGNMENT" MEANS THAT WE MUST PAY 9.9 TIMES \$400,000 = \$3,960,000 TO SACRAMENTO TO GET THE \$400,000 BACK TO PAY BULLET TRAIN. THE SMOKE-SCREEN RAISED BY COMMUNISTS AT VTA-COG TO CONCEAL THIS GANG-RAPE OF TAXPAYERS IS TOLERATED AND ACCEPTED BY LOCAL GOVERNMENT LEADERS, WHO OUGHT TO BE RECALLED FROM OFFICE FOR ALLOWING THIS ABUSE TO CONTINUE. PLEASE LET YOUR READERS KNOW THE TRUTH IN TRANSPORT.
JPT

JOSEPH P. THOMPSON

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October 4, 2008

Editor editor@freelancenews.com

The *Hollister Free Lance*

Hollister, CA 95023

Re: Prop. 1A November Ballot: Bullet Train or Trojan Horse?

Dear Editor,

A new, independent study of the Bullet Train proposal concludes that the annual operating deficit will be \$4.17 billion, which will be another tax burden on the backs of taxpayers whose backs are already broken. Bond debt service will be extra on top of that.

Passenger rail service does not reduce highway congestion. Freight rail service does.

Generating electricity for Bullet Train will cause more pollution than traffic reduction it produces.

We don't have Japan's density. We don't want and can't afford French socialism. It is folly to attempt their countries' "solutions" which won't work here in USA.

Why can't we learn from history? Do we really want to believe the liars' false predictions, again? Amtrak is a failed experiment, except to subsidy recipients who don't pay for their rides (99% of total costs), while motorists pay 100% of their own costs, and subsidize the Amtrak riders.

When Amtrak was formed in 1970, Congressmen promised that it would be profitable in three years. Well, after 38 years, taxpayers have paid \$40++ billion in subsidies, with no end in sight. As *Traffic World* reported, that is a stack of \$100 bills higher than the World Trade Center stood. Supporters of the Bullet-in-the-Brain train will make profit building and operating it, just as VTA does operating Black Hole Lite Rail. However, taxpayers will be the losers. The galley slaves will need to quicken their strokes so that the recipients of their labors will enjoy their rides. Will Rod be successful in converting us to a socialist society, living in concrete high-rise Dirodonominiums like the USSR's "affordable housing"? Until Rod was appointed to HSRA, they had projected a \$900 million annual operating loss (truth probably doubles their estimate), but now they project a profitable operation. "Profitable" in the same definition of VTA's "profit." I do not swallow this big lie. Do you? It would be cheaper for taxpayers if we bought an airline. We could buy all outstanding stock of both American Airlines and Continental Airlines for less than the Prop. 1A bond principal. We could buy Southwest Airlines stock for less. If we did then we'd have lower budget deficits; transport less harmful to the environment and less burdensome for crushed to smithereens California taxpayers.

As their financial reports show with Caltrain, Lite Rail, and Amtrak, taxicabs and limousines would be cheaper for the taxpayers than paying rail passenger service. But have we learned anything from the history of the last Century? If we defeated the USSR, then why are we adopting their philosophy?

I appeared before the High Speed Rail Commission (before it became an "authority") five times and told the commissioners that if they put enough Fedex, UPS, and Postal Service tonnage on their train, then they would not need to ask the taxpayers for a dime. Instead of following a capitalist model, they insist (with Bechtel Corporation's—the builder—support) that California must have a Soviet-style horizontal elevator. Well, if voters believe that B.S., then they deserve to wear this albatross around their necks. But ask yourselves, do our children and grandchildren deserve the consequences of our compulsive spending disorder? Are we building the future for them, or welcoming a monster Trojan Horse?

Vote "NO" on Soviet-style Bullet Train—we cannot afford it. *Caveat viator.*

Very truly yours,
JOSEPH P. THOMPSON

Member: SBCCOG Citizens Rail Advisory Committee

Candidate: American Society of Transportation & Logistics

Member: Legislation Committee, Transportation Lawyers Assn.

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March 23, 2009

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letter to you dated 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see copies enclosed).

Summary. The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should government do, and what should it leave to others."¹ The sound, sustainable answer to Secretary Mineta's "crucial question" lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail's owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

¹Joseph P. Thompson, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997).

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

The north-south tonnage flows in California, on Hwy. I-5, US 101, and Hwy. 99, represent a source of funding that could, in a private-sector model, duplicate and exceed taxpayers’ subsidies in the public-sector model as proposed in the EIR. The French government has announced that it will have Fedex freight transported by that nation’s HSR starting next year, so those with experience in operating HSR in Europe have apparently resorted to freight revenue as a source of funding. We could reduce air pollution, traffic congestion, and road and bridge support deterioration and maintenance expenses if we diverted some of that tonnage onto HSR. I have said this to the HSRA since before its creation when it was a Commission.

I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

As the LAO’s Report states (page 5), the HSR service should “not require an operating subsidy.” A feasible “funding source . . . for future years . . .” (page 6, LAO’s Report) exists now and will exist into the future: freight revenue. As with freight moving in the bellies of airliners, HSR can transport freight, thereby decreasing air pollution because the fuel savings per ton/mile is about 75% compared with rubber tires hauling freight on concrete or asphalt. The profit made moving freight can offset the losses sustained transporting passengers. Overnight shipments between Northern and Southern California can be transported without interfering with daytime, commute hours.

Comment: UP’s Property Rights.

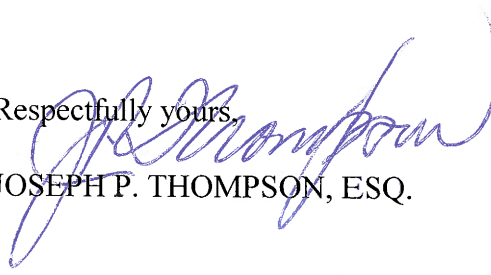
In addition to those aspects identified by Cox and Moore (“Reason Report”), the UP’s Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its own, for its shareholders’ benefit. The Nation’s national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP’s tracks in the SF Peninsula, San Jose, and South Bay

Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!

Respectfully yours,


JOSEPH P. THOMPSON, ESQ.

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January 5, 2010

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

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Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letters to you dated 3/23/09 and 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see attached to my letter to you 3/23/09).

Summary. Lenin convinced his fellow countrymen that Marx & Engels were right, with Trotsky's help, and Stalin's "persuasion" tactics. Did that make his philosophy right? No. Just like Lenin, CAHSRA's proponents are wrong. You remind me of heroin addicts who refuse to admit their addiction. Revelations since the election show what a disastrous idea you have proposed for this sad State, dominated by radical socialists in our Legislature, the League of California Cities, and the California State Association of Counties, and the public transit agencies and their public-sector unions. I think that history will be just as kind to the CAHSRA's proponents as it's been to Lenin. The people of California will rue the day that the Trojan Horse was approved in the guise of the Bullet Train.

As I said before, "The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should

government do, and what should it leave to others.”¹ The sound, sustainable answer to Secretary Mineta’s “crucial question” lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail’s owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

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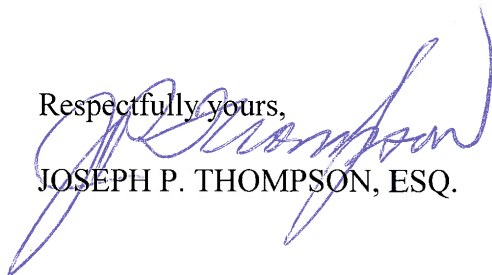
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Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!"

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.



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Fax (408) 842-2206
Editor and Editorial Board
The *Dispatch*
6400 Monterey Road
Gilroy, CA 95020

February 18, 2010

Re: MyBulletTrain: Profitable for who?

Dear Editor,

Bullet Train blietzkrieg, multi-million dollar campaign, using taxpayers' money to sell them on the boondoggle claims that it will be profitable. Yeh, but for whom? The planners, consultants, ad men, bond salesmen, foreign equipment manufacturers. The bankruptcy of all State-owned railroads in the USA in 1830's ought to tell us something about the right way to build a railroad. The American experience with nationalization of the railroads in 1918, the collapse of the USSR, and the world-wide privatization revolution of the 1990's should teach us a valuable lesson in railroad building. The insolvency of Amtrak, Caltrain. The bankruptcy last month of the Las Vegas Monorail, etc.-lessons abound from our history, but will we learn from them?

Sustainable rail transport hinges on the bottom line on the balance sheet; do revenues exceed costs? If we use VTA government-style accounting methods, like Enron did, like Bernie Madoff did, we won't see an unsustainable Bullet Train—we'll be given a snow job like County Transit snow jobs, concealing the truth about their insolvency.. We must use the same accounting used by the world's most successful railroads, UP, BNSF, CSX, etc., America's Class One Railroads. If you lose money moving passengers, then you have to make-up your losses by moving freight. Intermodal tonnage on Bullet Trains, moved on separate trains during non-peak commute hours, is how I've told the California High Speed Rail Commission, now High Speed Rail Authority, to do it. If the taxpayers purchase the infrastructure for the Bullet Train's owners, it will be like financing the Interstate Highway System, and the State Highways, for the trucking industry.

Transport me as a tourist, and I'll need a 99% fare subsidy. But transport me as a deceased traveller, and my estate, or relatives, have to pay 100% of the cost of moving the dead freight. So, to create a sustainable Bullet Train, you have to think like railroaders, not horizontal elevators in communist nations. ***Caveat Viator!***

Why do our leaders want to grow bigger government, when common sense people, e.g., Editorial Board of Gilroy Dispatch, say we should be doing just the opposite? Do we have leaders who give a damn about the harm their decisions inflict? Why do we tolerate such hypocrites?

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA

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Member, Association for Transportation Law, Logistics & Policy

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Winner, AST&L's Best Research Paper Award 1997

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January 6, 2012

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Re- Revised Environmental Impact Report SF-San Jose-Gilroy-Merced

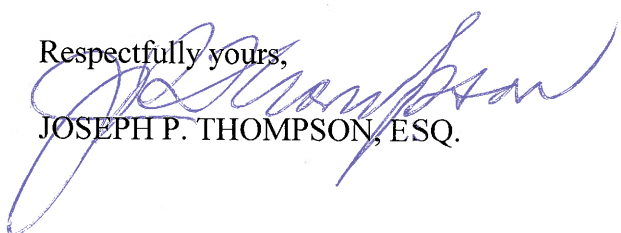
Dear Mr. Morshed,

Referring to my letters to you (copies enclosed), why are you ignoring truth in transportation? Why are you ignoring sound railroading? Why are you ignoring history? Why are you ignoring the will of the voters of California? Why are you ignoring the legislation from our State Legislature signed into law by our State Governor?

Please include these remarks as part of your official record of proceedings and these enclosed supplemental remarks about the re-revised EIR for the SF-San Jose-Gilroy-Merced Segment.

You remind me of the public sector transit advocates and supporters who cram taxpayer-funded transit down our throats so that public sector transit welfare recipients and public sector union employees and joint power authorities staff can enjoy our blood regardless of the damage that it does to our State. Like addicts who refuse to admit their addiction, you seem Hell-bent on your Leninism even thought history, both world-wide and American and North American railroad history proves that your concept is fatally flawed and is not sound nor sustainable. I repeat what I said to the High Speed Rail Commission and then State Senator Quinten Kopp: High Speed Rail can only work in the private-sector. Otherwise, you'll just stick another blood-sucking leech on us like Amtrak, Caltrain, Lite Rail, and other public-sector boondoggles that fail every place, and every time that they've been tried around the world.

Respectfully yours,


JOSEPH P. THOMPSON, ESQ.

Encl.

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November 10, 2010

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Referring to my letter to you (copy enclosed), I am enclosing my supplemental remarks about the EIR for the SF-San Jose-Gilroy-Merced Segment.

Will you please add this supplement to the official record of these proceeds.

Future generations must know that you were warned.

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

*See My Testimony before the
Assembly Transportation
Committee in support of legislation
to defend the Bullet Train
on YouTube*



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SHORT VERSION:

Joe Thompson is a graduate of the Santa Clara University School of Law. He is admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the Ninth Circuit, all U.S. District Courts in California, and before the California Supreme Court. He is past-president (twice) of the Gilroy--Morgan Hill Bar Assn.

LONG VERSION:

Joe Thompson is a member of the Transportation Lawyers Assn., and serves on TLA's legislation (past Chair), intermodal, arbitration, and freight claims committees. He is a member of Transportation & Logistics Council, Inc. He has served on the Executive Committee of the Santa Clara County Bar Assn.'s Debtor-Creditor-Commercial Law Section. He was a member of the Association for Transportation Law, Logistics & Policy, and a candidate for the American Society for Transportation and Logistics. He served on the Government Review Councils of the San Benito County and Gilroy Chambers of Commerce, and was a member of the Gavilan Employers Advisory Council. He was appointed to the San Benito County Citizens Rail Advisory Committee, San Benito County Citizens Transit Task Force, and served on the Steering Committee of the Safe Kids Coalition. He was a member of Citizens for Reliable and Safe Highways, and the Conference of Freight Counsel. He received the National Directors Award for the best transportation research paper in the U.S. in 1997 from the AST&L. During Governor Pete Wilson's administration, he participated three years in the Regulatory Reform Roundtable. He is a 1966 graduate of the Motor Carrier Fleet Safety Supervisor School at U.C.-Berkeley, and was employed as dispatcher and supervisor by Pacific Motor Trucking (1964-1970), and as clerk by Union Pacific Railroad (1970-1980). His articles have been published by **Transportation Law Journal**, **Western Growers Association Magazine**, and **Transportation Lawyer Magazine** and **Salinas Californian**.

Opik Guest Editorial

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January 5, 2010

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12 years later.
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Thank you for allowing members of the public to comment on HSRA's second (judicially-required) EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letters to you dated 3/23/09 and 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see attached to my letter to you 3/23/09).

Summary. Lenin convinced his fellow countrymen that Marx & Engels were right, with Trotsky's help, and Stalin's "persuasion" tactics. Did that make his philosophy right? No. Just like Lenin, CAHSRA's proponents are wrong. You remind me of heroin addicts who refuse to admit their addiction. Revelations since the election show what a disastrous idea you have proposed for this sad State, dominated by radical socialists in our Legislature, the League of California Cities, and the California State Association of Counties, and the public transit agencies and their public-sector unions. I think that history will be just as kind to the CAHSRA's proponents as it's been to Lenin. The people of California will rue the day that the Trojan Horse was approved in the guise of the Bullet Train.

As I said before, "The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should

government do, and what should it leave to others.”¹ The sound, sustainable answer to Secretary Mineta’s “crucial question” lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail’s owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

The north-south tonnage flows in California, on Hwy. I-5, US 101, and Hwy. 99, represent a source of funding that could, in a private-sector model, duplicate and exceed taxpayers’ subsidies in the public-sector model as proposed in the EIR. The French government has announced that it will have Fedex freight transported by that nation’s HSR starting next year, so those with experience in operating HSR in Europe have apparently resorted to freight revenue as a source of funding. We could reduce air pollution, traffic congestion, and road and bridge support deterioration and maintenance expenses if we diverted some of that tonnage onto HSR. I have said this to the HSRA since before its creation when it was a Commission.

I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

As the LAO’s Report states (page 5), the HSR service should “not require an operating subsidy.” A feasible “funding source . . . for future years . . .” (page 6, LAO’s Report) exists now and will exist into the future: freight revenue. As with freight moving in the bellies of airliners, HSR can transport freight, thereby decreasing air pollution because the fuel savings per ton/mile is about 75% compared with rubber tires hauling freight on concrete or asphalt. The profit made moving freight

¹Joseph P. Thompson, “ISTEA Reauthorization and the National Transportation Policy,” 25 *Transportation Law Journal*, pp. 87-etseq. (1997).

can offset the losses sustained transporting passengers. Overnight shipments between Northern and Southern California can be transported without interfering with daytime, commute hours.

Comment: UP's Property Rights.

In addition to those aspects identified by Cox and Moore ("Reason Report"), the UP's Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its to own, for its shareholders' benefit. The Nation's national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP's tracks in the SF Peninsula, San Jose, and South Bay Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!"

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Kim Mancera, Municipal Services Assistant

APPROVED BY: City Manager

ADOPT RESOLUTION DETERMINING THAT CONDUCTION OF IN-PERSON MEETINGS WOULD PRESENT A PUBLIC HEALTH RISK AND CONTINUING TELECONFERENCE MEETINGS

RECOMMENDATION(S)

Adopt resolution to continue holding City Council and commission meetings by teleconference.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

In light of the existing state of emergency and [the County Health Officer's recommendation](#), the attached Resolution has been prepared to enable all legislative bodies of the City of Morgan Hill to continue to meet remotely in accordance with AB 361. The Resolution directs all legislative bodies subject to the Brown Act, including the City Council, Planning Commission, Parks and Recreation Commission, and the Library, Culture, and Arts Commission, to continue to only meet remotely in accordance with AB 361. The Resolution also makes the necessary findings under AB 361 by finding that a state of emergency continues to exist relating to COVID-19 and this necessitates that legislative bodies continue to meet remotely. The Resolution is consistent with the County Health Officer's recommendation that legislative bodies continue to meet remotely to promote social distancing to reduce the risk of COVID-19 transmission.

COMMUNITY ENGAGEMENT:

This report serves to inform the Community of the recommendation to continue teleconferenced meetings.

ALTERNATIVE ACTIONS:

The Council could choose not to adopt the proposed resolution and continue its April 20, 2022 meeting to a date certain for an in-person meeting. All meetings of the City and its commissions going forward would also be in-person.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Each month since October 6, 2021, the City Council has adopted a resolution determining that conducting in-person meetings would present an imminent risk to attendees' health and electing to continue conducting meetings using teleconferencing.

FISCAL AND RESOURCE IMPACT:

Continued use of teleconferencing software has a minimal fiscal impact.

CEQA (California Environmental Quality Act):

Not a Project.

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are not projects that require environmental review.

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE CITY COUNCIL AND ITS BOARDS AND COMMISSIONS WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH GOVERNMENT CODE SECTION 54953(e) (AB 361)

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency related to the COVID-19 global pandemic, a state of emergency that is ongoing; and

WHEREAS, on March 13, 2020, the City Manager in her capacity as Emergency Services Director declared a local emergency due to the spread of COVID-19, and that emergency declaration was ratified on March 18, 2020; and

WHEREAS, the City of Morgan Hill remains in a state of emergency due to the continuing spread of COVID-19; and

WHEREAS, the Centers for Disease Control and Prevention recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated, or are at a higher risk of severe illness due to COVID-19; and

WHEREAS, the City's public meeting facility is indoor and not designed to ensure circulation of fresh/outdoor air, and not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of severe illness due to COVID-19; and

WHEREAS, technology exists that allows full participation from members of the public without requiring in-person attendance at a City Council meeting.

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:

1. The conduct of in-person public meetings would pose imminent risks to the health of attendees.
2. Public health and safety and the public right to participate in local government are both critically important. The City of Morgan Hill is committed to balancing both by making City Council and commission meetings accessible through multiple formats and by allowing real-time public comment through teleconferencing solutions.
3. The City Council will renew these findings at least every thirty (30) days in accordance with Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted or until the City Council determines that in-person meetings no longer pose imminent risks to the health of attendees, whichever comes first.

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 a regular meeting held on the April 20, 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 20, 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 20, 2022

PREPARED BY:

Lynette Kong, Associate Engineer

APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING FY2022-23 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SENATE BILL (SB) 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

RECOMMENDATION(S)

Adopt resolution approving a list of street rehabilitation projects funded by SB 1, The Road Repair and Accountability Act of 2017.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Transportation

REPORT NARRATIVE:

City staff are in the process of awarding the East Dunne Avenue Rehabilitation Project construction contract and will be bidding for the 2022 Pavement Resurfacing Project; both projects are scheduled for construction this summer. The 2022 Pavement Resurfacing Project will include spot repairs and crack sealing maintenance throughout the City.

The East Dunne Avenue Rehabilitation Project will include pavement rehabilitation along East Dunne Avenue from lower Thomas Grade to the eastern City limit.

The 2022 Pavement Resurfacing Project will include pavement rehabilitation and maintenance treatments for the following streets:

- East Dunne Avenue from Hill Road to lower Thomas Grade;
- Jackson Oaks Drive and neighborhood streets;

- Hill Road from south of East Dunne Avenue to the southern City limit;
- Murphy Avenue from San Pedro Avenue to the southern City limit;
- East Main Avenue from Monterey Road to Butterfield Boulevard;
- Hilltop Court;
- Rustling Oaks Court;
- Condit Road from San Pedro Avenue to Tennant Avenue;
- Church Street from San Pedro Avenue to Barrett Avenue;
- Mast Street from Church Street to Vineyard Boulevard;
- Vineyard Boulevard from Tennant Avenue to Mast Street;
- West Main Avenue from Dewitt Avenue to John Telfer Drive;
- Via Grande;
- Hidalgo Court; and
- La Giralda Court

This will be the sixth year the City has been receiving SB 1 fund allocations and the City is continuing to prioritize these funds towards the repair of the City's arterial and collector roadways, while allocating some of the funds to the resurfacing of residential streets.

SB 1, which is known as the Road Repair and Accountability Act of 2017, established a tax that formed the Road Maintenance and Rehabilitation Account (RMRA). The RMRA is intended to fund basic road maintenance and rehabilitation needs on the local street and road systems within the State. Prior to receiving RMRA funds for the Fiscal Year (FY) 2022-23, the City must submit a list of projects proposed to be funded with RMRA funds, adopted by resolution, to the California Transportation Commission (CTC) by July 1, 2022. The list of projects proposed to be funded must include a description and the location of each proposed project, a proposed project schedule, and the estimated useful life of the improvement (Streets and Highways Code Section 2034(a)).

To ensure that the City is eligible for FY 2022-23 SB 1 RMRA funding, the proposed resolution (Attachment 1) identifies the City street locations proposed to be funded by FY 2022-23 SB 1 RMRA funds. These streets include the project streets for the East Dunne Avenue Rehabilitation and 2022 Pavement Resurfacing Projects to ensure full utilization of the FY 2022-23 funding. The proposed resolution is expected to fulfill the CTC's requirement that the City Council adopt, via resolution, a list of projects proposed for the next fiscal year's SB 1 RMRA funds and meets the intention of prioritizing these funds for basic road maintenance and rehabilitation projects, and on critical safety projects.

The East Dunne Avenue Rehabilitation and some of the streets from the 2022 Pavement Resurfacing Projects were previously adopted by City Council under Resolution #21-019 for the FY 2021-22 SB 1 RMRA project street list. These project streets are relisted in the FY 2022-23 resolution because the FY 2021-22 RMRA funding was expended on the 2021 Pavement Resurfacing Project. The East Dunne Avenue Rehabilitation Project and the 2022 Pavement Resurfacing Project streets are

required by CTC to be relisted in the FY 2022-23 resolution for City Council adoption to reaffirm to the State the City's intent to fund the project with the SB 1 RMRA funding.

COMMUNITY ENGAGEMENT:

Inform

City staff are working on a significant communication planning effort to be implemented ahead of the work, which is planned to occur during the summer months.

ALTERNATIVE ACTIONS:

The City Council could direct staff to submit a funding request for an alternative project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On March 2, 2022, City Council received an update regarding pavement rehabilitation planning for calendar years 2021 through 2024.
- On May 5, 2021, City Council passed Resolution No. 21-019 adopting a list of street rehabilitation projects for FY 2021-22 funded by SB 1.
- On June 17, 2020, City Council adopted the FY 2020-21 through 2025-26 Capital Improvement Budget.

FISCAL AND RESOURCE IMPACT:

The FY 2022-23 SB 1 RMRA projected revenue of \$1,079,874 will be included as a revenue source for Fund 308 (Street CIP) in the City's CIP under the Pavement Rehabilitation Program (Project No. 519000) as part of the FY 2022-23 project budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SB 1:
THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$1,079,874 in RMRA funding in Fiscal Year 2022-23 from SB 1; and

WHEREAS, this is the sixth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate portions of East Dunne Avenue, Hill Road, Murphy Avenue and East Main Avenue, four of the City's arterial streets; Condit Road and Church Street, two of the City's collector streets; and Jackson Oaks Drive and its neighborhood streets, Hilltop Court, Rustling Oaks Court, Mast Street, Vineyard Boulevard, West Main Avenue, Via Grande, Hidalgo Court, and La Giralda Court

multiple residential/local streets, throughout the City this year and multiple similar projects into the future; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City’s streets and roads are in an “at-risk” condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a “good” condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Morgan Hill, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2022-23 Road Maintenance and Rehabilitation Account revenues:
 - 1) **Project Title:** 2022 Pavement Resurfacing Project
Project Description: The removal and replacement of failed pavement sections, pavement milling and conform grinding, cold-in-place recycling (CIR) rehabilitation treatment, a full pavement grind and hot mix asphalt concrete pavement fill, hot mix asphalt concrete overlay, slurry sealing, utility box adjustments, restoration of thermoplastic striping and traffic loop detectors.
Project Locations: 1) East Main Avenue from Monterey Road to Butterfield Boulevard; 2) Hill Road from south of East Dunne Avenue to the southern City limit; 3) Jackson Oaks’ neighborhood streets; 4) Hilltop Court; 5) Rustling Oaks Court; 6) Condit Road from San Pedro Avenue to Tennant Avenue; 7) Church Street from San Pedro Avenue to Barrett Avenue; 8) Mast Street from Church Street to Vineyard Boulevard; 9) Vineyard Boulevard from Tennant Avenue to Mast Street; 9) West Main Avenue from Dewitt Avenue to John Telfer Drive; 10) Via Grande; 11) Hidalgo Court; and 12) La Giralda Court.
Estimated Project Schedule: Start (June 2022)– Completion (October 2022) based on the component being funded with RMRA funds
Estimated Project Useful Life: The City’s Pavement Management System calculates a new useful life of 20 years for these roadways.

3. The following previously proposed and adopted projects may also utilize Fiscal Year 2022-23 Road Maintenance and Rehabilitation Account revenues in their delivery. With the relisting of these projects in the adopted fiscal year resolution, the City is reaffirming to the public and the State our intent to fund these projects with Road Maintenance and Rehabilitation Account revenues:

- 1) **Project Title:** 2022 Pavement Resurfacing Project and East Dunne Avenue Rehabilitation

Project Description: The removal and replacement of failed pavement sections, pavement milling and conform grinding, cold-in-place recycling (CIR) rehabilitation treatment, a full pavement grind and hot mix asphalt concrete pavement fill, hot mix asphalt concrete overlay, slurry sealing, utility box adjustments, and restoration of thermoplastic striping.

Project Locations: 1) East Dunne Avenue from Hill Road to lower Thomas Grade; Flaming Oak Lane to upper Thomas Grade; 2500' east of Holiday Drive to the eastern City limit; 2) Hill Road from south of East Dunne Avenue to the southern City limit; 3) Jackson Oaks Drive; and 4) Murphy Avenue from San Pedro Avenue to the southern City limit.

Estimated Project Schedule: Start (June 2022)– Completion (October 2022) based on the component being funded with RMRA funds

Estimated Project Useful Life: The City's Pavement Management System calculates a new useful life of 20 years for these roadways.

PASSED, APPROVED, AND ADOPTED by the City Council of to the City of Morgan Hill, State of California at its meeting held on this 20th day of April, 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
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.XXXX , adopted by the City Council at the meeting held on 20th 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 20, 2022

PREPARED BY:

Kim Mancera, Municipal Services Assistant

APPROVED BY: City Manager

ADOPT ORDINANCE 2331, 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)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2331, 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

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Public Safety Master Plan

REPORT NARRATIVE:

On April 6, 2022, the City Council introduced Ordinance No. 2331 New Series, by the following roll call votes: AYES: Borgioli, Constantine, Martinez Beltran, McKay, Spring; NOES: None ABSTAIN: None; ABSENT: None.

This item is returning to Council to comply with the noticing requirements regarding the timing between the introduction and adoption.

The adoption of the ordinance is an administrative step required by law outlining the use of military equipment by the Morgan Hill Police Department. The adoption will bring the Morgan Hill Police Department in alignment with the law as outlined in Assembly Bill 481.

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:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This is the second report to City Council for compliance with the state legislation.

FISCAL AND RESOURCE IMPACT:

There is no 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.

ORDINANCE NO. 2331, 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 April 20, 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 6th day of April, 2022, and adopted at a meeting 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:

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. 2331, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 20th 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 20, 2022

PREPARED BY:

Michelle Bigelow, Deputy City Clerk

APPROVED BY: City Manager

ADOPT RESOLUTION RESCINDING RESOLUTION 21-016: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, SUBMITTING TO THE VOTERS OF THE CITY AN INITIATIVE ORDINANCE CHANGING ZONING REGULATIONS THROUGHOUT THE CITY OF MORGAN HILL TO PROHIBIT CERTAIN NEW STORAGE AND DISTRIBUTION USES IN ALL AREAS OF THE CITY AND AMENDING THE REVIEW PROCESS FOR LARGE-SCALE DEVELOPMENT PROJECTS

RECOMMENDATION(S)

Adopt resolution rescinding Resolution 21-016: A resolution of the City Council of the City of Morgan Hill, California, submitting to the voters of the City an initiative ordinance changing zoning regulations throughout the City of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

On March 3, 2021, the City Council certified the sufficiency of the Morgan Hill Responsible Growth Coalition's (RG4MH) Initiative Petition. The City Council also directed staff to work with the Morgan Hill Responsible Growth Coalition (MHRGC) to clarify language and develop an ordinance that meets the Initiative's intent while reducing impacts to existing businesses. As a part of the development of the collaborative ordinance, the MHRGC agreed that once the City Council took action to ratify the Urgency Ordinance and place that Ordinance on the November 2022 ballot, they would request that Resolution 21-016 be rescinded. The collaborative Ordinance was passed on April 7, 2021 as Urgency Ordinance 2320 along with Resolution 21-016 placing the Initiative Petition on the November 8, 2022, ballot. On March 2, 2022, the City Council ratified Urgency Ordinance 2320 and adopted Resolution 22-014 placing the urgency ordinance on the November 8, 2022 ballot.

In keeping with the agreement, on April 6, 2022, the MHRGC submitted a letter to the City Clerk requesting that Resolution 21-016 be withdrawn.

COMMUNITY ENGAGEMENT:

This staff report serves to inform the community of the City Council's action to rescind Resolution 21-016.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 22, 2020, the Planning Commission recommended changes to the Zoning Ordinance that included language implementing provisions of the Initiative related to the review of large projects. The September 22 recommendation also prohibited all large-scale e-commerce distribution uses but would have allowed some local delivery.

On October 28, 2020, the City Council introduced a Zoning Ordinance amendment adopting the Planning Commission's recommendations and prohibiting local e-commerce delivery uses. This ordinance was adopted on November 18, 2020.

On March 3, 2021, the City Council certified the sufficiency of the Morgan Hill Responsible Growth Coalition's (RG4MH) Initiative Petition.

On April 7, 2021, the City Council passed Urgency Ordinance 2320, prohibiting certain types of buildings that meet three cumulative characteristics of dock-high-doors, dock-high-door to square foot ratio and ceiling height and adopted a resolution placing the Morgan Hill Responsible Growth Coalition Initiative petition on the November 2022 ballot.

On February 8, 2022, Planning Commission unanimously approved Resolution 22-04 recommending approval of the ratification Ordinance.

On March 2, 2022, the City Council ratified Urgency Ordinance 2320 by introducing Ordinance 2329 and approved resolution 22-104 placing the Urgency Ordinance on the November 8, 2022 ballot.

On March 16, 2022, the City Council adopted Ordinance 2329.

FISCAL AND RESOURCE IMPACT:

There is no direct cost or resource impact associated with the preparation of this staff report.

CEQA (California Environmental Quality Act):

Not a Project: Rescinding a Council action is not a project subject to review under CEQA.

RESOLUTION NO. 22-XXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL RESCINDING RESOLUTION NO. 22-
016**

WHEREAS, On March 3, 2021 the City Council certified the sufficiency of an initiative measure changing zoning regulations throughout the City of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development; and

WHEREAS, in response to the initiative measure, the City Council adopted Resolution No. 22-016 placing the measure on the ballot for the November 2022 general election; and

WHEREAS, the City has received a request, signed by both proponents of the measure, asking to withdraw the initiative measure; and

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

1. Resolution No. 22-016 is hereby rescinded.
2. The City Clerk or designee is hereby authorized and directed to provide a copy of this resolution to and work with the Santa Clara County Registrar of Voters to remove the initiative measure certified on March 3, 2021 from the November general election ballot.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the April 20, 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

RECEIVED APR 07 2022

① 3:15 pm



Morgan Hill Responsible Growth Coalition (MHRGC)

16600 Monterey ST #87
Morgan Hill, CA 95038
mhrgc@mh-rgc.org

April 6, 2022

VIA HAND DELIVERY

Michelle Bigelow
City Clerk, City of Morgan Hill
17575 Peak Ave Morgan Hill,
CA 95037

Dear Michelle,

On April 7, 2021 the Morgan Hill City Council adopted Urgency Ordinance 2320, a collaborative agreement between the City and proponents, including the Morgan Hill Responsible Growth Coalition, of a Citizens qualified Initiative known as the Responsible Growth for Morgan Hill Initiative, changing zoning regulations throughout the City to prohibit buildings with characteristics that could be used for new storage and distribution uses in all areas of the City.

On the same date, (April 7, 2021) the City Council also passed resolution 21-016, calling for the qualified Initiative to be placed on the November 8, 2022 General Election ballot.

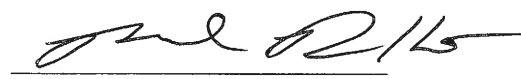
As part of the discussions leading to the collaborative agreement, the proponents of the 'original' Initiative agreed that if the City Council took further actions to ratify the Urgency Ordinance as a permanent ordinance and place the permanent ordinance on a citywide ballot, the proponents of the Responsible Growth for Morgan Hill Initiative would request that resolution 21-016 be withdrawn.

On March 2, 2022 the Urgency Ordinance was adopted and ratified as permanent Ordinance 2329 and the City Council, by a unanimous vote, adopted Resolution 22-104 calling for a General Municipal Election for Tuesday, November 8, 2022 for the voters of Morgan Hill to decide if the zoning changes specified in Ordinance 2329 shall be adopted by the people. In keeping with the agreement reached with the City in adopting the Urgency Ordinance, the signed proponents below hereby request that the original Responsible Growth for Morgan Hill Initiative encompassed in resolution 21-016 be withdrawn with the expectation that Resolution 22-104 will be fulfilled.

Please contact me at 408-674-2846 if you require any additional information or have any questions. Thank you for your assistance, and for all your public service, always.

Sincerely yours,


Joseph Baranowski
MHRGC President
Proponent


Rick Kent
MH Resident
Proponent

RESOLUTION NO. 22-014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA SUBMITTING TO THE VOTERS OF THE CITY AN ORDINANCE CHANGING ZONING REGULATIONS THROUGHOUT THE CITY OF MORGAN HILL TO PROHIBIT BUILDINGS WITH CHARACTERISTICS THAT COULD BE USED FOR NEW STORAGE AND DISTRIBUTION USES IN ALL AREAS OF THE CITY

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 was 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 changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects; and

WHEREAS, the qualified initiative was placed on the November 8, 2022 ballot on April 7, 2021

WHEREAS, a collaborative discussion of the goals of the initiative was held between the City and the Morgan Hill Responsible Growth Coalition to examine the potential for non-conforming designations on existing buildings and a revised ordinance was developed and adopted as Urgency Ordinance 2320 on April 7, 2021; and

WHEREAS, Urgency Ordinance 2320 was adopted and ratified as a permanent ordinance on March 2, 2022; 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 calls a General Municipal Election for Tuesday, November 8, 2022 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that Ordinance 2329 changing zoning regulations throughout the city of Morgan Hill to prohibit building with characteristics that could be used for new storage and distribution uses in all areas of the City.

Section 3. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

City of Morgan Hill
Resolution No. 22-014
Page 2 of 4

Shall the ordinance, changing zoning regulations throughout the city of Morgan Hill to prohibit buildings with characteristics that could be used for new storage and distribution uses in all areas of the City 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. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 6. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 7. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 8. Filing with County. The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors.

Section 9. 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 10. 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 changing zoning regulations throughout the city of Morgan Hill to prohibit building with characteristics that could be used for new storage and distribution uses in all areas of the City. 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."

City of Morgan Hill
Resolution No. 22-014
Page 3 of 4

Section 11. 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 12. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors 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 13. Effective Date. This Resolution shall be effective immediately upon adoption.

Section 14. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

City of Morgan Hill
Resolution No. 22-014
Page 4 of 4

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 2nd day of March 2022 by the following vote:

AYES:	COUNCIL MEMBERS:	Gino Borgioli, Rich Constantine, Yvonne Martinez Beltran, John McKay, Rene Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:
Rich Constantine
RICH CONSTANTINE, Mayor

DocuSigned by:
Michelle Bigelow
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. 22-014, adopted by the City Council at the meeting held on March 2, 2022.

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

DATE: 3/7/2022

DocuSigned by:
Michelle Bigelow
MICHELLE BIGELOW, City Clerk

ORDINANCE NO. 2329, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL 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.

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

Section 1. Section 18.76.140 ("Maximum Dock High Door Ratio") of Chapter 18.76 ("Performance Standard") of Title 18 ("Zoning") is hereby added to read as follows:

18.76.140 - Maximum Dock High Door Ratio

The maximum Dock High Door to Square Foot Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000

Section 2. Subsection (D) ("Manufacturing, Light") of Section 18.124.050 ("Industrial Uses") of Chapter 18.124 ("Land Use Definitions") of Title 18 ("Zoning") is hereby amended to read as follows:

D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mill sand manufacturing uses involving primary production of wood, metal or chemical products from raw materials. For purpose of this definition, the term "Assembly" includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or of wholesale trading.

City of Morgan Hill Ordinance
No.2329, New Series
Page 2 of 4

Section 3. Subsection (C) ("C' Terms") of Section 18.128.020 ("Definitions") of Chapter 18.128 ("General Terms") of Title 18 ("Zoning") is hereby amended to read as follows:

C. "C" Terms.

1. California Room. A room or space in a building where one or more sides is open and exposed (without a wall or windows) to adjacent outdoor space.
2. Ceiling Height. The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.
3. Cessation of Use. The discontinuation of a use, either temporarily or permanently, whether with the intent to abandon such use or not.
4. City Geologist. A registered professional geologist certified by the state of California in the specialty of engineering geology (C.E.G.) who is either a city staff member or a consultant retained by the city.
5. Clear Triangle. A triangular area bounded by the street right-of-way lines of a corner lot and a line joining points along said street lines 20 feet from the point of intersection.
6. Commercial. Any activity on or use of land which involves the buying, selling, processing or improving of things not produced on the land, and having financial gain as the primary aim of the activity or use, whether or not such activity or use is for hire or on account of the buyer, seller, processor or improver.
7. Conditional Use. A use that requires approval of a conditional use permit or an administrative use permit.
8. Condominium. Individual ownership of a dwelling unit within a multiple-unit structure exclusive of the land underlying such structure.
9. Condominium Development. A structure and appurtenant premises divided in ownership by the existence of the condominiums as defined in Section 783 of the California Civil Code. Includes instances where ownership is divided following prior single ownership of the entire structure and premises, as well as new structures divided in ownership.

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

D. "D" Terms.

1. Deck. A platform, either freestanding or attached to a building, that is supported by piers, pillars or posts.
2. Dock-High-Door. An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more.
3. Dock-High-Door-to-Square-Foot Ratio. The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.
4. Driveway. A permanently surfaced area on a lot designed and required to provide direct access for vehicles between a street and a private garage, carport or other parking space, parking area, or loading area.
5. Driveway Aisle, Major. A driveway providing principal access to the parking area or the driveway providing principal circulation throughout the parking areas or premises.
6. Driveway Apron. A paved area providing principal access from a drive aisle or street right-of-way to a garage or other covered parking space.
7. Dwelling. A building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons. Excludes tents, cabins, trailers and trailer coaches.
8. Dwelling Unit. A room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one family on a non-transient (less than thirty-day stay) basis and having not more than one kitchen.
9. Density. The number of dwelling units permitted per net lot area.

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

Section 6. Effective Date; Posting. This Ordinance shall take effect on March 16, 2022. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

City of Morgan Hill Ordinance
No.2329, New Series
Page 4 of 4

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 3rd DAY OF MARCH 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 16th DAY OF MARCH, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

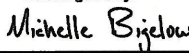
AYES:	COUNCIL MEMBERS:	Gino Borgioli, Rich Constantine, Yvonne Martinez Beltran, John McKay, Rene Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:


RICH CONSTANTINE, Mayor

DocuSigned by:


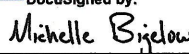
MICHELLE BIGELOW, City Clerk

∞ 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. 2329, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 16th day of March 2022.

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

DATE: 3/18/2022

DocuSigned by:


MICHELLE BIGELOW, City Clerk

RESOLUTION NO. 21-016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA SUBMITTING TO THE VOTERS OF THE CITY AN INITIATIVE ORDINANCE CHANGING ZONING REGULATIONS THROUGHOUT THE CITY OF MORGAN HILL TO PROHIBIT CERTAIN NEW STORAGE AND DISTRIBUTION USES IN ALL AREAS OF THE CITY AND AMENDING THE REVIEW PROCESS FOR LARGE-SCALE DEVELOPMENT PROJECTS

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 changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects; 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 calls a General Municipal Election for Tuesday, November 8, 2022 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Initiative Petition ordinance changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects be submitted to the voters at that election.

Section 3. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

Shall the Initiative ordinance, changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects 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. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 6. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 7. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 8. Filing with County. The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors.

Section 9. 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 10. 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 Adding Chapter 5.06 (Cannabis Business Tax) to Title 5 of the

Morgan Hill Municipal Code. 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 11. 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 12. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors 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 13. Effective Date. This Resolution shall be effective immediately upon adoption.

Section 14. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

City of Morgan Hill
Resolution No. 21-016
Page 4 of 14

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 7th day of April 2021 by the following vote:

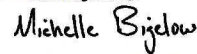
AYES:	COUNCIL MEMBERS:	Gino Borgioli, Rich Constantine, Yvonne Martinez Beltran, John McKay, Rene Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DocuSigned by:

02EAF5B057884E7...
RICH CONSTANTINE, Mayor

ATTEST:

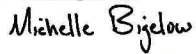
DocuSigned by:

C0FCB7EAB47C4C8...
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. 21-016 adopted by the City Council at the meeting held on the 7th day of April 2021.

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

DATE: 9/15/2021

DocuSigned by:

C0FCB7EAB47C4C8...
MICHELLE BIGELOW, City Clerk

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

TITLE: Citizens' initiative changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects.

SUMMARY OF MEASURE: The measure is proposed to prohibit new uses that meet the definition of a "fulfillment center" in all areas of Morgan Hill and to require Planning Commission review of all discretionary permits for large-scale development projects.

If approved, the measure would define the term "fulfillment center" to include any structure with greater than 75,000 square feet of floor area that has more than 1 dock-high-door per 25,000 square feet and a clear ceiling height of more than twenty-four (24) feet over more than 25 percent of its floor area. Any such structure would be classified as a fulfillment center regardless of actual use.

The measure would prohibit uses and structures that meet the definition of a fulfillment center in all zones within the City. Existing uses and structures would be allowed to continue as legal-nonconforming. Legal-nonconforming uses would be unable to expand their current use. Property owners would not be allowed to make substantial modifications to legal-nonconforming buildings.

The measure would define the term "dock-high-door" to mean an opening to the outside of a building with a raised elevation of twenty-four (24) inches or more to allow for the loading and unloading of trucks. "Clear ceiling height" would be defined as the distance from the floor to the lowest-hanging ceiling object, beam, joist, or truss.

In addition, the measure would make changes to the development review process. Specifically, the measure would require all discretionary development permits for large-scale development projects to be approved by the Planning Commission. A large development project would be defined as a project that includes more than 75,000 square feet of new floor area, or is a new building or an addition to an existing building that is more than 35 feet in height, regardless of use.

NOTICE OF INTENTION TO CIRCULATE INITIATIVE PETITION AND STATEMENT OF REASONS

Notice is hereby given by the persons whose names appear hereon of their intention to circulate a petition within the City of Morgan Hill for the purpose of amending the Zoning Code (Article 18) of the City of Morgan Hill Municipal Code. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

The purpose of this ordinance is to preserve the small-town feel and family-friendly character of Morgan Hill, to protect the health and safety of its residents, and to support the viability of local businesses by enacting legislation that will enable our city to remain distinctive in the midst of the rapidly changing logistics and distribution industry.

This ordinance safeguards our General Plan and land use entitlement process, allowing it to evolve in a sustainable manner that encourages high quality job growth and meets the needs of our residents and visitors.

This ordinance updates the Morgan Hill Zoning Code to include Fulfillment Center (commonly known as Distribution Center) as a defined land use, and to distinguish this use from traditional Warehouse & Distribution associated with manufacturing or static storage buildings that already exist in Morgan Hill. This ordinance will strictly prohibit Fulfillment Centers as a permitted land use anywhere within the City limits of Morgan Hill.

The proposed ordinance also changes the review and decision-making authority for administering the Zoning Code to allow Morgan Hill residents, through their elected officials and appointed planning commissioners, to have a voice in deciding whether large-scale development projects are permitted in the City.

The intent of this ordinance is to allow responsible growth for job-generating land use in our City, consistent with the General Plan, Zoning Code and Economic Blueprint while preserving public health and safety and Morgan Hill's special character and unique quality of life for generations to come.

Signed: /s/ Joseph Baranowski 16600 Monterey ST #67 Morgan Hill CA 95037, /s/ Andrew Plant 7660 Fay Ave Suite N, La Jolla, CA 92037, and /s/ Rick Kent 18735 Madrone Parkway Morgan Hill CA 95037.

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TEXT OF PROPOSED INITIATIVE

The people of the City of Morgan Hill, California, do hereby ordain and enact as follows:

ARTICLE I: FINDINGS, PURPOSE, AND INTENT OF INITIATIVE

Section 1.1. Findings. The People of the City of Morgan Hill ("City") find and declare as follows:

A. The Morgan Hill General Plan represents the collective vision of the community and serves as the primary policy document governing land use in the City. The MORGAN HILL 2035 GENERAL PLAN ("General Plan") represents countless hours of collaborative work by City staff and residents to develop a collective vision for what Morgan Hill will look and feel like through the year 2035. The overarching goal of the General Plan is to "maintain Morgan Hill's family-friendly character and strong sense of community while the community grows and prospers." In accordance with Government Code Section 65032, the General Plan defines a framework of detailed goals and policies intended to provide clear guidance for decision makers in the areas of land use, circulation, housing, conservation, open space, noise, and safety. Residents want the City to respect and follow the principles of the General Plan.

i. Preserve the City's unique character and quality of life: Often called the "hidden gem" of Silicon Valley, Morgan Hill has long been known for its pastoral valley and hillsides, quaint downtown, and family-friendly atmosphere. These qualities are eloquently expressed in the General Plan as: "strong connections between Morgan Hill's developed neighborhoods, natural setting, and agricultural surroundings establish the feeling of a traditional, family-oriented, high quality, progressive, and active small town removed, although easily accessible, from the crowded, fast-paced Silicon Valley communities to the north."

ii. Adhere to principles for responsible growth in all land use decisions. Incorporated in 1906, Morgan Hill has slowly evolved from an agrarian area into a small suburban community, yet its small-town charm has not been lost, even as the population has grown to over 45,000 residents. This ideology is further affirmed by the General Plan: "Morgan Hill is proud of its small town character, strong sense of community, abundant access to open space and recreational amenities and ever growing participation in the Silicon Valley economy, and seeks to promote these desirable qualities through thoughtful land use planning." As we go forward, "the City seeks to build upon its previous success by maintaining a steady, well-defined, and responsible rate of growth."

iii. Protect environmental resources for future generations. The residents of Morgan Hill declare that irresponsible development cannot easily be undone. The General Plan has "safety, services, and infrastructure" policies intended to "protect people from detrimental impacts associated with development". Residents want the City to make the most conscientious land use decisions based on these elements to protect the pastoral

landscape and family-friendly atmosphere for years to come, as these qualities make Morgan Hill a beautiful place to visit and an extraordinary place to live.

B. The Morgan Hill Zoning Code regulates land use in the City by implementing policies of the General Plan to protect public health, safety, and welfare. Codified as Title 18 in the Morgan Hill Municipal Code, the Zoning Code of the City of Morgan Hill (the "Zoning Code") implements the General Plan through detailed land use and development regulations. The Zoning Code establishes a Zoning Map with zoning districts that apply to all property in Morgan Hill. The Zoning Code identifies which specific land uses are permitted in each zoning district and establishes development standards for each zoning district. As set forth in Section 18.04.040 of the Morgan Hill Municipal Code, the City's Zoning Code aims to achieve each of the following purposes:

- i. "Preserve and enhance Morgan Hill's small-town feel and family friendly character."
- ii. "Protect and enhance the quality of life in residential neighborhoods."
- iii. "Support a vibrant, diverse, and dynamic local economy."
- iv. "Protect environmental resources and promote a sustainable development pattern."

C. Morgan Hill Zoning Code contains outdated definitions related to land use for Warehousing and Distribution. Revisions to the Zoning Code have not kept pace with the evolution of e-commerce and fails to adequately distinguish characteristics of traditional "warehouse and distribution" from modern-day Fulfillment Centers. Many industry and government organizations recognize and clearly define the differences between traditional warehouses and Fulfillment Centers and this initiative updates the Zoning Code to do the same.

i. Current Zoning Code describes a traditional warehouse facility only. The Zoning Code describes Warehousing and Distribution under Industrial Land Uses (18.124.050) as "a use engaged in storage, wholesale and distribution of manufactured products, supplies, and equipment to retailers; to industrial, commercial, institutional, farm, or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies." This description characterizes a traditional warehouse facility but not a modern Fulfillment Center.

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ii. **Current Zoning Code does not presently include a definition for Fulfillment Center.** Fulfillment Centers and Distribution Centers have revolutionized the way e-commerce companies meet the demands of their customers. The most common term for these facilities is "Distribution Center", also labeled as Fulfillment Center, Ecommerce Center, Logistics Center, Parcel Hub, Cold Storage Facility, High Cube Warehouse, Last-Mile Distribution Facility, and many other names that describe these specialized facilities in the logistics and distribution industry. The term "Fulfillment Center" was selected for the purpose of this ordinance, rather than "Distribution Center", because the Morgan Hill Zoning Code already contains the defined term "Warehouse and Distribution Facility" to refer to traditional uses associated with manufacturing, wholesaling, and other business-to-business commerce, none of which are affected by this proposed ordinance. It was determined that allowing "Distribution Facility" and "Distribution Center" to refer to two different types of land uses in the Zoning Code, would create unnecessary confusion. Therefore, "Fulfillment Center" is used to represent all related facilities.

iii. **The function of a Fulfillment Center is vastly different from a traditional warehouse.** Driven primarily by the massive growth in e-commerce over the past decade, the role of warehousing has been radically transformed in the supply chain and logistics industry. While many different types of Fulfillment Centers have evolved to meet the demands of e-commerce, they share each of the following characteristics which differentiate them from traditional warehouses.

a. **Primary role:** While traditional warehouses are used for more static long-term storage of manufactured goods, Fulfillment Centers are used for short-term storage, fast intake and rapid shipment of goods driven by customer demand.

b. **Operations:** A typical warehouse has fairly simple everyday operations that include organizing stored goods, shipping pallets of goods, and replenishing stock at periodic intervals. Fulfillment Centers usually ship individual products directly to customers making operations much more complex when they are managing tens of thousands of unique products, or stock keeping units (SKUs). To meet customer demand, product flow, volume and velocity are also much greater in Fulfillment Centers.

c. **Technology:** Technology is an integral part of the order fulfillment process for all e-commerce companies. Unlike traditional warehouses, in order to handle the high volume and rapid movement of products, Fulfillment Centers use advanced technology for functions such as warehouse management, transportation management, package identification, sorting, picking, packaging, labeling, etc. many of which are becoming fully automated using robots and computer-controlled automated systems. These value-added services are designed to reduce inventory carrying costs and act as a bridge between a supplier and its customers.

iv. **Design specifications for a Fulfillment Center differ from those for a traditional warehouse.** Because of the dynamic

nature of its operations, modern Fulfillment Centers have different building requirements than traditional warehouse and distribution facilities in order to optimize the high-volume product flow. While there are many types of Fulfillment Centers being built across the country, they share each of the following physical characteristics which distinguish them from a traditional warehouse:

a. **Floor area and ceiling heights:** Fulfillment Centers usually require more square footage of available floor area (75,000 square feet or more) and higher clear ceiling heights (greater than 24 feet) that are geared for high volume and velocity of modern e-commerce distribution.

b. **Service Doors and Docks:** A dock-high door is a loading dock that is not at ground level but rather is elevated in order to align with the standard tractor-trailer height for loading or unloading goods without a change in elevation. The number of dock-high doors is a key characteristic of modern Fulfillment Centers. The Dock-High-Door-to-Square-Foot Ratio (DHDSFR) is the ratio of the total number of dock-high doors to the building's total square feet of floor area. Fulfillment Centers have a higher ratio of DHDSFR $>1:25,000$ (i.e. more than one dock-high door for every 25,000 square feet of available floor area) than traditional warehouses. The number of dock-high doors is an indicator of the anticipated truck traffic that will be generated by a Fulfillment Center.

c. **Located for convenient highway access:** Whereas traditional warehouses are typically located in urban industrial areas, Fulfillment Centers are located along interstate highways in rural or urban periphery areas. With explosive e-commerce growth and competition to offer shorter delivery times (same-day and even one-hour delivery are becoming common), many Fulfillment Centers are moving into urban and suburban areas located along major highways where available land offers convenient highway access.

D. **Fulfillment Centers are unsuitable for land use in our city due to the relatively few quality jobs generated.** The General Plan establishes that land use should "support the development of office and industrial facilities to meet local demand, compete for regional growth opportunities, and create high-quality jobs." City leaders and residents recognize the need to diversify and expand employment opportunities in Morgan Hill. The City's Economic Blueprint states that "attracting high-quality jobs that are well-suited to the skills and preferences of local workers, may increase the number of people who can both live and work in Morgan Hill." However, permitting Fulfillment Centers on parcels allocated for "vibrant job centers" is not consistent with the General Plan or Economic Blueprint, and does not ensure the long-term economic strength of the City.

i. **Residents want City planners to be mindful of the limited supply of commercial and industrial land available for development in Morgan Hill.** But, with little or no public input, City staff approved a 503,400 square foot Fulfillment Center for the Shoe Palace Expansion project. City staff was also asked to review and recommend approval of a proposal for General Plan and Zoning Code amendments to permit the development of the

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Morgan Hill Technology Center, designed as a 1,040,000 square foot Fulfillment Center. The City has also submitted documents to organizations collectively known as Bay Area Metro, identifying 797 acres of land to be classified as a Priority Production Area (PPA) with "last mile production and distribution" as the key industry envisioned for expansion within the PPA area.

ii. **Fulfillment Centers do not provide an influx of quality jobs.** Studies show that the number of jobs created per square foot of building or per acre of land, called the 'employment density', differs depending on the land use. In 2020, Kent, Washington, which has a substantial number of Fulfillment Centers and advanced manufacturing, flex, and engineering buildings, reported the number of jobs created per square foot of development is almost five times higher for advanced manufacturing than for Fulfillment Centers. They stated, "with market forces strongly favoring storage and pass-through operations for goods produced elsewhere, there is a need for a deliberate, proactive approach to preserve and grow the manufacturing sectors in Kent's industrial lands." Fulfillment Center jobs also generally have a lower pay scale than manufacturing jobs. Fulfillment Center jobs are highly repetitive and workers experience both physical and psychological stress with the demands of the work environment - bending, twisting, running, and lifting boxes in a high-pressure setting that prioritizes line speed over employee health.

iii. **Automation is displacing Fulfillment Center jobs.** Most jobs at Fulfillment Centers involve repetitive tasks, so to increase efficiency and reduce costs, many e-commerce companies have begun to reduce their human work force by deploying automation technology. Sorting, picking, labeling and even janitorial work can be done by robots. Experts in automation at Cornell University and University of Redlands predict this trend will accelerate and 75% to 90% of Fulfillment Center jobs will be displaced in the near future. As automation increases, so too will the disparity in the number of jobs created per square foot of land use. If the predicted number of job displacements does occur, land developments for advanced manufacturing and research & development are forecast to support 20 to 50 times more jobs per square foot than Fulfillment Centers.

E. **Fulfillment Centers generate intense truck activity around the clock, increasing both highway and surface street traffic, and causing significant damage to roadways.** The City General Plan establishes the importance of an effective Transportation System and recognizes that "congestion in Morgan Hill can be substantially affected by regional traffic if Highway 101 capacity does not meet demand, as regional travelers attempt to decrease travel times by using local roads". The most recent 10th Edition of the Institute of Transportation Engineers' Trip Generation manual, a compilation of traffic generation studies, shows that Fulfillment Centers are likely to generate significantly more peak hour and overall more traffic on a daily or weekly basis than traditional warehouses. A 2016 study by the Institute of Transportation Engineers (High-Cube Warehouse Vehicle Trip Generation Analysis) found that Fulfillment Centers of four different types generate between

forty-five (45) and four hundred (400) daily truck trips per 100,000 gross square feet of building area. Residents of Morgan Hill are concerned how traffic could intensify at the Cochrane Road interchange, known as the "choke point" of South County, if Fulfillment Centers are built in that area. As Morgan Hill residents have declared, "Traffic on Hwy 101 is barely tolerable now, it would become absolute gridlock for anyone traveling through this region of the Bay Area." It is likely that intense trucking activity from Fulfillment Centers would cause significantly more wear and tear on our roadways. Relevant news articles and government documents describe unexpected economic repercussions of Fulfillment Centers, including effects on roadways and other infrastructure. The *American Association of State Highway and Transportation Officials* estimate that one big-rig truck results in street maintenance costs that are equivalent to approximately seven thousand (7,000) passenger cars. In Kent, Washington, the city's long-range planning manager, in her report to the city council stated, "One truck is equal to about eight thousand (8,000) cars when it comes to impact on our pavement. And those costs are borne by the city, which puts us in a difficult fiscal situation to keep that infrastructure maintained." The City of Morgan Hill already struggles to fund these repairs to infrastructure as evident by more than \$2.0 million in general fund needs for pavement rehabilitation and street maintenance that are unfunded as of year-end 2019.

F. **Fulfillment Centers can produce a significant amount of pollution that would have a detrimental impact on the health and safety of residents.** The General Plan establishes that "protecting environmental resources for future generations" and making development decisions that "contribute to the overall health and well-being of Morgan Hill Residents" should be priorities. The General Plan also defines policies for "safety, services, and infrastructure" that "intends to protect people from detrimental impacts associated with development, including noise impacts." Fulfillment Centers in Morgan Hill would result in neighborhoods congested with trucks queued up for loading docks while polluting the air with diesel emissions. Onsite equipment like forklifts, and large numbers of robots inside open dock doors, produce continuous sounds that travel a considerable distance, especially at night. There are many articles in the news that describe air pollution, noise pollution, and serious health effects from fulfillment centers developed too close to schools and residential areas. The Union of Concerned Scientists, stated in a 2017 report: "Driven by the fast-paced e-commerce industry, warehousing construction has grown dramatically over the past 10 years in the US and bringing with it, big negatives like air pollution, noise, traffic safety and road damage. Developers are searching for locations with low land rent, low-wage labor pool, weak political power, and favorable public policies. The exposure of residents, especially, the young and elderly, to truck emissions, like NOx and particulate matter, causes asthma and other serious respiratory issues." Another article, by Carlos De La Cruz of Sierra Club's My Generation campaign states: "Trucks generate more than three-fourths the nitrogen oxides emissions statewide. These contribute to ozone, which damages the lungs, lowers resistance to diseases and causes wheezing and chest pain. For such a small segment (of the overall number of vehicles), they present a big health risk."

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G. Fulfillment Centers will negatively impact the General Plan Goals for Retail and Tourism. It is widely reported by industrial real estate firms that rapid e-commerce growth is expected to continue, driving the insatiable demand for Fulfillment Centers for the foreseeable future. This is true for all types of Fulfillment Centers and especially last-mile Fulfillment Centers where developers and investors are expanding their search for available land to secondary and tertiary markets near population centers. Space for last-mile distribution has become so valuable that, in cities which have allowed it, office buildings are being torn down and the land repurposed as Fulfillment Centers. Not only is a high percentage of Morgan Hill's vacant land located adjacent to Highway 101, but such land is less expensive than comparable properties in other Bay Area cities. The land that is now associated with the proposed Morgan Hill Technology Center was purchased in 2019 at a significant discount on a per acre basis compared to land in Fremont which was purchased in 2018 for a large Fulfillment Center development. If allowed, developers will almost certainly build more Fulfillment Centers in Morgan Hill and they will target areas adjacent to highway exits. They are likely to request zoning amendments to convert parcels currently zoned for Commercial uses as is the case for the proposed Morgan Hill Technology Center. Given the large footprint, high building heights and number of dock-high doors with resulting trucking activity, the Morgan Hill General Plan goals to "support the development of regional retail facilities that are visible and accessible from the City's freeway exits, to provide easy access by local residents as well as shoppers traveling from the City" and to support "a vibrant, enhanced, visible, and well-promoted tourist industry that draws on Morgan Hill's unique character and variety of amenities" will certainly not be met.

H. This Initiative encourages development of advanced manufacturing, research and development, and engineering facilities on industrial land. Other jurisdictions who sought to bring more advanced manufacturing into their industrial employment areas, such as robotics and industrial R&D, recognize that limiting dock-high doors for truck loading to a ratio of one dock-high door per 25,000 square feet of building area discourages trucking-intensive uses such as Fulfillment Centers while providing the flexibility that modern advanced manufacturing facilities need. Because some, albeit a low percentage, of advanced manufacturing operations require more grade-level truck docks or service doors, no limitations are put on grade-level doors which are understood not to facilitate trucking intensive operations.

I. This initiative promotes democracy in land use planning, ensuring that citizens have a voice in deciding whether large development projects should be permitted. Despite the protections in our General Plan, our community is facing new, imminent threats. Residents have noticed that City planners, under the sway of developers and under the pressure of an ongoing budget crisis, are taking steps to radically change our town and open it up to development that is not consistent with the General Plan. Allowing large-scale development projects to be approved by one person, without review oversight and approval (voting) by the Planning Commission and City Council is not responsible land use planning. Morgan Hill residents, through their elected officials and appointed planning commissioners, should have a voice in deciding whether large development projects, that could radically alter the character of our community and have significant long term fiscal impacts, are approved.

J. This initiative proposes Fulfillment Centers not be permitted as a land use in the City of Morgan Hill. Fulfillment Centers should not be permitted due to their adverse impacts on the health and safety of residents, detrimental effect to existing and future retail businesses and tourism, inability to generate high-quality jobs, and impact on regional traffic and transportation. Fulfillment Centers would erode the small-town character of Morgan Hill and forever change our quality of life here.

K. This Initiative proposes regulations that will prevent new Fulfillment Centers from being established in Morgan Hill that are also consistent with the Morgan Hill General Plan, Zoning Code, and Economic Blueprint.

i. The proposed amendments to the Morgan Hill Municipal Code will implement the goals, objectives, and policies of the General Plan.

ii. The proposed amendments are consistent with the purposes of the Zoning Ordinance.

iii. The proposed amendments to the Morgan Hill Municipal Code are reasonably related to the public interest, and that public necessity, convenience and general welfare require the proposed amendments.

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Section 1.2. Statement of Purpose. In establishing this Act, the people of the City do hereby declare it is their purpose and intent to:

- A. Preserve our community's unique small-town character and protect the safety and health of our residents and the environment by adopting provisions that will ensure our city remains unique in the midst of a rapidly changing logistics and distribution industry, while at the same time ensuring the City's land use entitlement process continues to evolve in a sustainable manner that encourages high quality job growth and meets the needs of our residents and visitors.
- B. Update the City of Morgan Hill Municipal Code to identify and prohibit proposed developments that exceed threshold Dock-High-Doors-to-Square-Foot Ratios (DHDSFR) and are therefore indicative of Fulfillment Centers.
- C. Update the City of Morgan Hill Municipal Code to distinguish between traditional Warehouse & Distribution facilities and modern Fulfillment Centers.
- D. Prevent new Fulfillment Centers from being built anywhere in the City.
- E. Ensure thoughtful accountable long-term planning by requiring Planning Commission review and approval for large-scale developments.
- F. Ensure that no member of City staff, whose compensation is funded, in whole or in part, by the payment of fees by the applicants whose applications are requiring approval, has discretionary authority to grant land use entitlements for a proposed Large-Scale Development within the City.

ARTICLE II: AMENDMENT OF CITY OF MORGAN HILL ZONING CODE

Section 2.1. Amendments to City of Morgan Hill Land Use Regulations. Title 18 – ZONING, Division I. – Zoning Code, of the City of Morgan Hill Municipal Code, is amended as follows:

Section 2.1.1. Definition of Dock-High Door and Dock-High-Door-to-Square-Foot-Ratio. Chapter 18.12 ("Rules of Measurement") of Part 1 ("General Provisions") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to insert a new Section 18.12.045 ("Dock-High-Door-and-Dock-High-Door-to-Square-Foot-Ratio"), which reads, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

§18.12.045 - Dock-High-Door-and-Dock-High-Door-to-Square-Foot-Ratio.

A. Dock-High-Door means an opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more. Dock-High-Doors are used so that the bed of a truck and/or shipping container will match the building slab elevation at

the opening. The typical configuration allows a semi-truck to back up to a building and directly align the back doors of the truck with a loading dock door. The elevation of the dock apron, the approach pavement area, is lower than the building slab elevation so that the bed of the truck will match the building slab elevation. The typical offset is forty-eight (48) inches and the typical loading dock door is nine (9) feet wide by ten (10) feet tall. (Dock-High-Doors are also sometimes known as loading dock doors.)

B. Dock-High-Door-to-Square-Foot Ratio (DHDSFR) means the ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.

Section 2.1.2. Definition of Clear Ceiling Height. Section 18.12.060 ("Height") of Chapter 18.12 ("Rules of Measurement") of Part 1 ("General Provisions") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to insert a new Paragraph B ("Clear Ceiling Height").

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which reads, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

A. Building Height.

B. Clear Ceiling Height. Distance from the floor to the lowest-hanging ceiling member or hanging objects, beams, joists or truss work descending down into a substantial portion of the area. This measure of the interior height of an industrial building defines the minimum height of usable space within the structure. Also known as clear height, clear headway, or clearance.

B. C. Number of Stories.

Section 2.1.3. Definition of Large-Scale Development. Chapter 18.12 ("Rules of Measurement") of Part 1 ("General Provisions") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to insert a new Section 18.12.065 ("Large-Scale Development"), which reads, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

§18.12.065 – Large-Scale Development. Large-Scale Development means any development which proposes the construction and/or addition of more than seventy-five thousand (75,000) square feet of new floor area, or a new building or addition to an existing building which is more than thirty-five (35) feet in height.

Section 2.1.4. Amendment of Chapter 18.92 ("Supplemental Standards"). Chapter 18.92 of Part 3 ("CITYWIDE STANDARDS") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to include a new Section 18.92.105 ("Fulfillment Centers"), which reads, in its entirety, as follows (language in bold double underline text is inserted):

Chapter 18.92 – Supplemental Standards.

§18.92.100 – Mini-Storage

§18.92.105 – Fulfillment Centers

Fulfillment Centers, as defined in Section 18.124.050, are prohibited uses in all Zoning Districts and Overlay Zones in the City of Morgan Hill. Fulfillment Centers lawfully existing prior to the effective date shall not be affected by this section.

Section 2.1.5. Amendment of Section 18.124.050 ("Industrial Uses"). Section 18.124.050 "Industrial Uses" of Chapter 18.124 ("LAND USE DEFINITIONS") of Part 5 ("GLOSSARY") of Division 1 ("Zoning Code") of Title 18 ("ZONING") of the City of Morgan Hill Municipal Code is amended to insert a new Paragraph H ("Fulfillment Center"), which reads in its entirety, as follows (language in bold double underline text is inserted):

§18.124.050 – Industrial Uses

G. Warehousing and Distribution

H. Fulfillment Center. Any structure, building or other facility that has all of the following three attributes: (1) a floor area of seventy-five thousand (75,000) square feet or greater, and (2) a clear ceiling height of twenty-four (24) feet or greater over more than twenty-five (25) percent of the floor area, and (3) more than one dock-high door per 25,000 square feet of floor area (i.e., a proposed or as built DHDSEF greater than 1:25,000). For purposes of this section, "Fulfillment Center" shall include, but not be limited to, the following structures, buildings, and facilities: distribution center, sortable fulfillment center, e-commerce center, non-sort fulfillment center, transload facility, parcel hub, cold storage facility, short-term storage facility, high-cube warehouse, cross-dock facility, bulk break center, package handling center, order fulfillment center, logistics center or facility, receive center, sortation center, delivery station, specialty facility, last-touch facility, last-mile facility, last-mile distribution facility, city distribution facility, multi-market distribution facility, gateway facility, warehousing center, or any building, structure, or other facility, provided it has all three attributes listed above.

Section 2.1.6. Amendment of Table 18.26-2 INDUSTRIAL ZONING DISTRICT DEVELOPMENT STANDARDS. Table 18.26-2, which is set forth in Section 18.26.030 "Development Standards" of Chapter 18.26 ("INDUSTRIAL ZONING DISTRICTS") of Part 2 ("ZONING DISTRICTS") of Division 1 ("Zoning Code") of Title 18 ("ZONING") of the City of Morgan Hill Municipal Code is amended to insert a reference ("21") to the "Structure Requirements" table cell and a Note ("21"), which read in their entirety, as follows (language in bold double underline text is inserted):

Table 18.26-2: INDUSTRIAL ZONING DISTRICT DEVELOPMENT STANDARDS.

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Structure
Requirements [2]

[2] Fulfillment Center structures, as defined in Section 18.124.050, are prohibited per Section 18.92.105.

Notes:

[1] An FAR of 0.6 is allowed for industrial uses. An FAR of 0.5 is allowed for non-industrial uses.

Section 2.2. Amendments to Specific Permit Requirements. Title 18 – ZONING, Division I. – Zoning Code, Part 1 – GENERAL PROVISIONS, Chapter 18.08 – INTERPRETATION OF ZONING CODE, and Part 4 - PERMITS AND ADMINISTRATION, Chapter 18.100 – ADMINISTRATION RESPONSIBILITY, and Chapter 18.108 - SPECIFIC PERMIT REQUIREMENTS, of the Zoning Code of the City of Morgan Hill Municipal Code are amended as follows:

Section 2.2.1. **Amendment of Review Authority and Notice Requirements for Administrative Use Permits.** Paragraph C (“Review Authority”) and Paragraph D (“Public Notice and Hearing”) of Section 18.108.020 (“Administrative Use Permits”) of Chapter 18.108 (“Specific Permit Requirements”) of Part 4 (“Permits and Administration”) of Division I (“Zoning Code”) of Title 18 (“Zoning”) of the City of Morgan Hill Municipal Code are amended to read, in their entireties, as follows (language in **bold double underline text** is inserted, language in ~~strikeout text~~ is deleted):

18.108.020 – Administrative Use Permits.

C. **Review Authority.** The Community Development Director takes action on **shall review and act on all** Administrative Use Permit applications. ~~The Community Development Director may refer any Administrative Use Permit application to the Planning Commission for review and final decision~~ **other than applications relating to Large-Scale Developments; provided, however, that the Community Development Director may refer any Administrative Use Permit application to the Planning Commission for review and final decision. The Planning Commission shall review and act on all Administrative Use Permit applications, which: (1) relate to Large-Scale Developments; and/or (2) are otherwise referred to the Planning Commission by the Community Development Director pursuant to this paragraph.**

D. **Public Notice and Hearing.** Public notice of a pending action on an Administrative Use Permit application **other than applications relating to Large-Scale Developments** shall be provided in compliance with Section 18.104.100 (Notice of Pending Action). The Community Development Director shall hold a public hearing for a minor use permit application only upon

receiving a written request for a public hearing as provided in Section 18.104.090. **The Planning Commission shall review and act on an Administrative Use Permit application related to Large-Scale Developments or an application otherwise referred to the Planning Commission at a noticed public hearing in compliance with Chapter 18.104 (Common Permit Requirements).**

Section 2.2.2. **Amendment of Definitions, Review Authority, and Notice Requirements for Design Permits.** Paragraphs B (“Review Authority”), C. (“When Required”), D (“Significant Projects”), E (“Sensitive Sites”), and G (“Public Notice and Hearing”) of Section 18.108.040 (“Design Permit”) of Part 4 (“Permits and Administration”) of Division I (“Zoning Code”) of Title 18 (“Zoning”) of the City of Morgan Hill Municipal Code are amended as follows (language in **bold double underline text** is inserted, language in ~~strikeout text~~ is deleted):

18.108.040 – Design Permit

B. Review Authority:

1. The Community Development Director shall review and act on all Design Permit applications **other than applications relating to Large-Scale Developments; provided, however, that the Community Development Director may refer any Design Permit application to the Planning Commission for review and final decision. The Planning Commission shall review and act on all Design Permit applications, which: (1) relate to Large-Scale Developments; and/or (2) are otherwise referred to the Planning Commission by the Community Development Director pursuant to this paragraph.**

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

2. ~~The Community Development Director may refer any Design Permit application to the Planning Commission for review and final decision.~~

3. The City Council shall review and act on all Design Permit applications for new City projects (e.g., new municipal buildings, parks) determined by the Community Development Director to be significant in accordance with Subsection D below.

C. When Required. The following types of projects require a Design Review permit:

12. Other projects determined by the Community Development Director to be significant in accordance with Paragraph D below, or which may adversely affect the environment or adjacent development or otherwise be considered a sensitive site in accordance with Paragraph E below.

D. Significant Projects.

2. The Community Development Director's determination that a project is or is not significant may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).

E. Sensitive Sites

2. The Community Development Director's determination that a site is or is not sensitive and that a Design Permit is required may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).

Section 2.2.3. Blanket Prohibition of City Staff Authority to Grant Discretionary Land Use Approvals. Section 18.08.020 ("Authority") of Chapter 18.08 ("Interpretation of the Zoning Code") of Part 1 ("General Provisions") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to read, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

18.08.020 - Authority.

The City Council delegates to the Community Development Director and the director's designees the authority to interpret the meaning and applicability of all provisions in the Zoning Code; provided, however that, notwithstanding any other provision of this code, in no event shall any staff employee of the City of Morgan Hill have authority to approve a land use application for a Large-Scale Development project which requires environmental review under the California Environmental Quality Act (Public Resources Code Section 21000, et seq., as amended), including without limitation, any application for a "project" (as defined in 14 CCR §15378) requiring discretionary approval (as defined in 14 CCR §15357). All such authority having been vested in the City Council of the City of Morgan Hill and/or the Planning Commission of the City of Morgan Hill, as appropriate.

Section 2.2.4. Amendment of Table 18.100-1 - Review and decision-making authority. Table 18.100-1, which is set forth in Section 18.100.030 (Review and Decision-Making Authority.) of Part 4 ("Permits and Administration") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code shall be amended as necessary to update the information presented in Table 18.100-1 consistent with the terms and conditions of the various provisions of this Act.

ARTICLE III: MISCELLANEOUS

Section 3.1. Effective Date. As used herein, "effective date" shall mean the date on which this initiative measure has been adopted by the City Council of the City of Morgan Hill or the date upon which it shall have been approved by the voters of the City of Morgan Hill in accordance with applicable laws, whichever shall occur first.

Section 3.2. Exemptions for Certain Projects. This initiative shall not be construed to apply to any application or development, property, or contemplated use that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution.

Section 3.3. No Interference with State Law Housing Obligations. Nothing in this initiative shall be construed or

City of Morgan Hill
Resolution No. 21-016
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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

applied to prevent the City from complying with its housing obligations under state law. The City Council may, without voter ratification, approve a change to the amendments of the General Plan or Zoning Ordinance set forth in this initiative for the sole purpose of complying with the City's housing obligations if it (1) makes a finding that such change is necessary to comply with the City's housing obligation under the laws of the United States of America or the State of California and there is no suitable land available elsewhere in the City that may be used to satisfy the obligation; and (2) makes such a change or approves a project only to the extent necessary to comply with the applicable state law housing obligation.

Section 3.4. Liberal Construction. The provisions of this Act shall be liberally construed to effectuate its purposes. Nothing herein shall be construed to make illegal any lawful use being made of any land in compliance with all required permits in force before the effective date of this Act. This Act shall be interpreted and applied in as far as is possible in a manner that is consistent with all federal, state, and local laws, rules, and regulations. If any provision of this Act or any portion thereof, or any application thereof, is, for any reason held to be invalid or unconstitutional or otherwise unenforceable, the remaining sections and applications shall not be affected but shall remain in full force and effect, and

to this end, the provisions of this Act are severable.

Section 3.5. Interpretation. If this initiative measure and another measure on the same subject matter should appear on the same ballot, and a majority of the voters vote in favor of both measures but this measure receives more votes than the other measure, this measure alone shall become valid in its entirety. If a majority of the voters vote in favor of both measures but this measure receives less votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this measure shall control, and all other provisions of this measure shall become valid, binding, and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

Section 3.6. Amendment. This Act may be amended only by a vote of the People at a future municipal election conducted in accordance with laws governing initiative measures then in effect.

Section 3.7. Judicial Enforcement. Any aggrieved person or City of Morgan Hill registered voter shall have the right to maintain an action for equitable relief to restrain any violation of this Act, or to enforce the duties imposed on the City by this Act.

URGENCY ORDINANCE NO. 2320

AN URGENCY ORDINANCE OF THE CITY OF MORGAN HILL 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

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

Section 1. The Council finds and declares that this urgency ordinance is necessary to protect the public safety, health, and welfare, and to prevent the development of uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

Section 2. Section 18.76.140 ("Maximum Dock High Door Ratio") of Chapter 18.76 ("Performance Standard") of Title 18 ("Zoning") is hereby added to read as follows (additions in underline, deletions in strikeout):

18.76.140 – Maximum Dock High Door Ratio

The maximum Dock High Door to Square Foot Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000.

Section 3. Subsection (D) ("Manufacturing, Light") of Section 18.124.050 ("Industrial Uses") of Chapter 18.124 ("Land Use Definitions") of Title 18 ("Zoning") is hereby amended to read as follows:

D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mill sand manufacturing uses involving primary production of wood, metal or chemical products from raw materials. For purpose of this definition, the term "Assembly" includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or

City of Morgan Hill
Ordinance No. 2320, New Series
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wholesale trading.

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

C. "C" Terms.

1. California Room. A room or space in a building where one or more sides is open and exposed (without a wall or windows) to adjacent outdoor space.
2. Ceiling Height. The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.
3. Cessation of Use. The discontinuation of a use, either temporarily or permanently, whether with the intent to abandon such use or not.
4. City Geologist. A registered professional geologist certified by the state of California in the specialty of engineering geology (C.E.G.) who is either a city staff member or a consultant retained by the city.
5. Clear Triangle. A triangular area bounded by the street right-of-way lines of a corner lot and a line joining points along said street lines 20 feet from the point of intersection.
6. Commercial. Any activity on or use of land which involves the buying, selling, processing or improving of things not produced on the land, and having financial gain as the primary aim of the activity or use, whether or not such activity or use is for hire or on account of the buyer, seller, processor or improver.
7. Conditional Use. A use that requires approval of a conditional use permit or an administrative use permit.
8. Condominium. Individual ownership of a dwelling unit within a multiple-unit structure exclusive of the land underlying such structure.
9. Condominium Development. A structure and appurtenant premises divided in ownership by the existence of the condominiums as defined in Section 783 of the California Civil Code. Includes instances where ownership is divided following prior single ownership of the entire structure and premises, as well as new structures divided in ownership.

Section 5. Subsection (D) ("D' Terms") of Section 18.128.020 ("Definitions") of Chapter 18.128 ("General Terms") of Title 18 ("Zoning") is hereby amended to read as follows:

D. "D" Terms.

City of Morgan Hill
Ordinance No. 2320, New Series
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1. Deck. A platform, either freestanding or attached to a building, that is supported by piers, pillars or posts.
2. Dock-High-Door. An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more.
3. Dock-High-Door-to-Square-Foot Ratio. The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.
4. Driveway. A permanently surfaced area on a lot designed and required to provide direct access for vehicles between a street and a private garage, carport or other parking space, parking area, or loading area.
5. Driveway Aisle, Major. A driveway providing principal access to the parking area or the driveway providing principal circulation throughout the parking areas or premises.
6. Driveway Apron. A paved area providing principal access from a drive aisle or street right-of-way to a garage or other covered parking space.
7. Dwelling. A building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons. Excludes tents, cabins, trailers and trailer coaches.
8. Dwelling Unit. A room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one family on a non-transient (less than thirty-day stay) basis and having not more than one kitchen.
9. Density. The number of dwelling units permitted per net lot area.

Section 6. **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 7. **Effective Date; Posting.** This Ordinance shall take effect on immediately upon adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof in the manner required by law.

City of Morgan Hill
Ordinance No. 2320, New Series
Page 4 of 4

THE FORGOING ORDINANCE WAS DULY ADOPTED AT A MEETING HELD ON THE 7TH DAY OF APRIL 2021, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Gino Borgioli, Rich Constantine, Yvonne Martinez Beltran, John McKay, Rene Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DocuSigned by:
Rich Constantine
02EAF5B057984E7...
RICH CONSTANTINE, Mayor

ATTEST:

DocuSigned by:
Michelle Bigelow
C0FCB7EABA7C4C8...
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. 2320, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th day of April 2021.

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

DATE: 4/21/2021

DocuSigned by:
Michelle Bigelow
C0FCB7EABA7C4C8...
MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

ADOPT RESOLUTION AUTHORIZING AN APPLICATION FOR THE CALIFORNIA CLIMATE INVESTMENTS-DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S (CAL FIRE) FIRE PREVENTION GRANT PROGRAM.

RECOMMENDATION(S)

Adopt resolution authorizing an application for the California Climate Investments-Department of Forestry and Fire Protection's (CAL FIRE) Fire Prevention Grant Program for the purchase of a radio controlled slope mower.

Estimated Time: N/A

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this staff report is to request the City Council's authorization to submit a grant application to Cal Fire for a new Green Climber Radio-Controlled Slope Mower. CAL FIRE's Fire Prevention Grants Program provides funding for local projects and activities that address the risk of wildfire and reduce wildfire potential to forested and forest-adjacent communities. Funded activities include hazardous fuel reduction, fire prevention planning, and fire prevention education with an emphasis on improving public health and safety while reducing greenhouse gas emissions. More information can be found on the CAL FIRE website at: <https://www.fire.ca.gov/grants/fire-prevention-grants/>.

The Council has previously approved the application for Cal Fire for competitive grants. This current application will be a non-competitive grant run through our local Cal Fire Office. City maintenance staff worked with Cal Fire to analyze the benefits of the new equipment for Morgan Hill. The radio-controlled slope mower is a tractor-type vehicle that can mow and cut brush on steep slopes, without the risk of injury to a driver. The

equipment is planned to be used to manage weeds and brush in the City's open space areas as well as in other areas requiring weed abatement and storm channel clearing. The City will partner with Cal Fire to allow use in the jurisdiction of our local Cal Fire unit and, in return, Cal Fire will support the ongoing maintenance of the equipment.

COMMUNITY ENGAGEMENT:

None

No community engagement was made in this effort to prepare and apply for this grant funding. The City informs the community of maintenance that may impact them through its standard communication channels.

ALTERNATIVE ACTIONS:

The City Council could choose to not adopt the resolution and not allow the grant application, which would result in the City not receiving the equipment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior actions related to this specific grant application. The City Council authorized the application for a separate Cal Fire grant for the development of a Wildfire Mitigation Plan on January 19, 2022.

FISCAL AND RESOURCE IMPACT:

The grant does not require matching funding. The equipment, once purchased, will provide increased efficiency in maintenance and reduce maintenance costs overall. The cost of the equipment and grant request is \$160,000. The City and Cal Fire are planning to use an existing trailer for moving the equipment.

CEQA (California Environmental Quality Act):

Categorical Exemption

The new equipment will be used to perform existing maintenance requirements in a more efficient and safer manner. The planned maintenance and management of City facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

RESOLUTION NO: XX-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE SUBMITTAL OF A CALIFORNIA CLIMATE INVESTMENTS FIRE PREVENTION GRANT APPLICATION TO THE CALIFORNIA DEPARTMENT OF FORESTRY & FIRE PROTECTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED TO APPLY AND ACCEPT THE GRANT FOR THE CITY, IF AWARDED, AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Morgan Hill, is 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”); and

WHEREAS, the Governor of the State of California in cooperation with the California State Legislature has enacted State of California **Climate Investment**, which provides funds to the State of California and its political subdivisions for **fire prevention programs**; and

WHEREAS, the State Department of Forestry and Fire Protection (CAL FIRE) has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing the application by local agencies, non-profit organizations, and others under the program; and

WHEREAS, said procedures established by the State Department of Forestry and Fire Protection require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the project; and

WHEREAS, the City desires to apply for the grant funds through the State of California, Department of Forestry and Fire Protection; and

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

NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY: APPROVES THE FILING OF AN APPLICATION FOR THE MORGAN HILL GREEN CLIMBER EQUIPMENT PURCHASE; AND

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:

1. Certifies the approval of the filing of an application for “**California Climate Investment Fire Prevention Grant Program**”; and
2. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project; and
3. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
4. Certifies that the Applicant will expend grant funds prior to the Grant Deadline of March 15, 2026; and
5. Delegates the authority to the City Manager, or his or her designee, to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of Grant Scope;

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 a regular meeting held on the April 20, 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. xx-xxx, adopted by the City Council at a regular meeting held on April 20, 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 20, 2022

PREPARED BY:

Jennifer Ponce, OES Coordinator

APPROVED BY: City Manager

APPROVE AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MORGAN HILL GRANTING PROGRAM FUNDS FOR THE 2021 STATE HOMELAND SECURITY GRANT PROGRAM

RECOMMENDATION(S)

Adopt a Resolution to:

1. Accept grant funds from the Santa Clara County Office of Emergency Management via the Department of Homeland Security up to the amount of \$17,558 for the purchase of a Long-Range Acoustic Device (LRAD);
2. Amend the adopted Fiscal Year (FY) 2021-2022 budget to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$17,558 in the Police Department budget for the capital expenditures; and
3. Authorize the City Manager to execute the Agreement and approve the purchase up to the amount of \$17,558 for an LRAD system from Genasys.

Estimated Time: Consent

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

Guiding Documents

Public Safety Master Plan

REPORT NARRATIVE:

The Santa Clara County Office of Emergency Management (SCC OEM) engages the whole community in assessing needs and developing strategies to achieve stronger emergency preparedness, prevention, response, and mitigation capabilities within the

Santa Clara County Operational Area (Op Area). The Op Area includes all fifteen cities within the County and special jurisdictions. The Op Area is responsible for coordinating information, resources, and priorities among the local governments during large-scale emergency events.

SCC OEM has a designated Emergency Operations Center for the overall coordination of large-scale emergencies for County government and is capable of serving as the central point for coordination within the Op Area following the Standardized Emergency Management System. SCC OEM also oversees the State Homeland Security Grant Program and Emergency Management Performance Grant process for the County.

SCC OEM wishes to provide a grant donation for the following amount and purpose:

\$17,558 for the purchase of a Long Range Acoustic Device (LRAD). LRAD systems deliver live or recorded voice messages with exceptional clarity for any operational scenario. Optimized to the primary range of hearing, LRAD technology ensures broadcasts are clearly heard and understood, even above crowd, engine, and background noises. The LRAD is portable and can be carried or transported in any police vehicle. The LRAD will be available to our South Santa Clara County partners for mutual aid resource requests. The Police Department strives to provide safe and efficient practices when delivering widespread alert and warning messages to our community.

It is recommended the purchase be made pursuant to Morgan Hill purchasing code 3.04.150, as it is determined the vendor is the sole source of the Grantor approved system.

COMMUNITY ENGAGEMENT:

Inform

This staff report will serve as notification to the community of the grant funds from the Santa Clara County Office of Emergency Management/ Department of Homeland Security.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve the grant for the equipment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously accepted grant funds from the Santa Clara County Office of Emergency Management/ Department of Homeland Security to aid in the operation of the Police Department Emergency Operations Center.

FISCAL AND RESOURCE IMPACT:

The purchase of the LRAD system will be fully funded by the grant from the SCC OEM.

CEQA (California Environmental Quality Act):

Not a Project. The purchase of equipment does not constitute a project as defined in Section 15378 of the State CEQA guidelines as the purchase is an administrative activity that will not result in physical environmental impacts.

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF MORGAN HILL GRANTING PROGRAM FUNDS FOR THE
2021 STATE HOMELAND SECURITY GRANT PROGRAM FUNDS**

THIS AGREEMENT is made effective when fully executed by the County of Santa Clara (“County”) and the City of Morgan Hill (“City”) for the allocation and distribution of 2021 State Homeland Security Grant Program (“SHSGP”) funds.

RECITALS

WHEREAS, the 2021 SHSGP (CFDA #97.067) supports the implementation of State Homeland Security Strategies to address the identified planning, organization, equipment, training and exercise needs for acts of terrorism and other catastrophic events, and management and administration of the grant. In addition, SHSGP supports the implementation of the National Preparedness Guidelines, the National Incident Management System (NIMS), and the National Response Network (NRF);

WHEREAS, the State of California (“State”) has designated the County as the Operational Area for purposes of distributing SHSGP funds to the cities, special districts and other entities within the County. An Anti-Terrorism Approval Body (“County Approval Authority”), comprised of the County Health Officer, the County Fire Chief, a Municipal Fire Chief, the County Sheriff, and a Chief of Police, has been appointed for the purpose of approving the distribution of SHSGP funds at the Operational Area level;

WHEREAS, on September 1, 2021 the California Governor’s Office of Emergency Services (“Cal OES”) awarded the County 2021 SHSGP funds in the amount of \$2,004,605. The allocation of the SHSGP funds will be determined by the County Approval Authority in accordance with the grant guidelines.

NOW, THEREFORE, the County and City agree as follows:

THE AGREEMENT

Article I. Definitions

1. Specific Terms

- (a) **“Burdened Labor Rate”** shall mean the labor rate including benefits, taxes and other deductions from an employee’s paycheck. This rate does not include vacation benefits.
- (b) **“City”** shall mean the City of Morgan Hill, its officers, board members, employees, and agents.
- (c) **“County”** shall mean the County of Santa Clara, its officers, board members, employees, and agents.
- (d) **“SHSGP funds”** or **“SHSGP funding”** shall mean the funding City receives under this

Agreement.

- (e) **“Federal Program Guidance”** shall mean guidance documents issued by the Federal Emergency Management Agency, including the SHSGP Program Funding Opportunity Announcement, for Fiscal Year 2021.
- (f) **“Grant Certifications and Assurances”** shall mean the FY21 SHSGP Agreement Articles, Assurances, Certifications, Terms, and Conditions.
- (g) **“Highly Compensated Individual”** shall mean an individual whose income is \$300,000 or more per year.
- (h) **“Prime Recipient”** shall refer to County.
- (i) **“State Guidance”** shall mean the California Supplement to the Federal Program Funding Opportunity Announcement, issued by Cal OES for Fiscal Year 2021.
- (j) **“Sub-Recipient”** shall refer to City.

2. References to This Agreement

Any reference to this Agreement shall include: (a) the Agreement; (b) all exhibits, appendices, schedules, and attachments to this Agreement; (c) all statutes, ordinances, regulations, rules, or other documents incorporated by reference into this Agreement; (d) all amendments, modifications, or supplements to this Agreement.

Article II. Payment

1. Payment Eligibility

Unless otherwise approved in advance by the County Office of Emergency Management (“OEM”) Grants Administrator (hereinafter “grants administrator”), only an actual cash disbursement by City for a claimed expense shall be eligible for reimbursement by the County as approved and specified in Exhibit A, SHSGP Project Funding, which is attached and hereby incorporated into this Agreement.

2. Amount of Payment

The County will provide City, unless otherwise specified, with the equipment, supplies, and/or other resources as set forth in Exhibit A, SHSGP Project Funding. Specifications for such equipment shall be provided by City’s requesting agency to the County for the appropriate procurement process. City’s requesting agency will be notified when the procurement process is complete for final approval of equipment prior to the order being placed. If, through previous agreement with the County, City is to procure its own equipment, performance milestone dates will apply (refer to Article IV, Section 3(b)).

The County may reallocate SHSGP funds as specified in Article II, section 4 of this Agreement. County does not guarantee a minimum payment to City.

Authorized personnel budgets are allowable within the County OEM, Central Fire, and County Emergency Medical Services for grant-funded staffing. The personnel budget for these departments will reflect the expenditure authority. Reimbursement for actual cash disbursements will be requested through the County OEM. Based on the preference of the Department/Agency, reimbursement requests may be requested on a monthly or quarterly basis. For County Departments, reimbursements will be made via inter-county transfer. For all others, a County warrant will be issued.

3. Maximum Amount Payable

Subject to the availability of funds and the priorities established by the County Approval Authority, the maximum amount of SHSGP funds payable by the County to City under this Agreement must not exceed \$17,558 for equipment costs, as allocated by the County Approval Authority.

4. Reallocation of SHSGP Grant Funds

For the purpose of maximizing the resources available for preparedness for acts of terrorism and other catastrophic events within the Operational Area, City agrees that the County Approval Authority may reallocate funds under this Agreement to another applicant if the County determines that City is unable to utilize the amount allocated under this Agreement. The County may base its determination on factors that include but are not limited to the following: delivery timelines, fund expenditure capabilities, and timeliness of expenditure. The County will notify City in writing of any determination to reallocate funds, by issuing a "Notice of Reallocation." SHSGP funds will be put forth to the County Approval Authority for reallocation. City agrees that the County has the authority to increase or decrease the maximum amount payable under this Agreement as specified in the Notice of Reallocation document without liability and the County has the authority to amend Exhibit A, "SHSGP Project Funding," accordingly. Upon issuance, the Notice of Reallocation will automatically become part of this Agreement.

Article III. Requests for Reimbursement and Reimbursements

1. Required Documentation for Reimbursement

The SHSGP is a reimbursement grant under which Cal OES disburses reimbursement funds to County, and County disburses reimbursement funds to City. No cash advances are permitted under the SHSGP program.

(a) Requests for Equipment

The following documentation is required for all reimbursement requests for equipment:

- Quote or solicitation documents
- Summary of pricing and chosen vendor
- Documentation that vendor is not on the excluded parties list (<https://www.epls.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Receiving documentation/packing slip
- Invoice

- Proof of payment

All equipment must be approved by the County Approval Authority and must be authorized per the web-based Authorized Equipment List on the Responder Knowledge Base, which is sponsored by Grants & Training and the National Memorial Institute for the Prevention of Terrorism at <https://www.rkb.us/>. (Contact the Grant Manager for a current Authorized Equipment List.)

(b) Subcontracts

If City awards subcontracts totaling \$25,000 or more, it must report on any such subcontracts and on Highly Compensated Individuals on the Financial Disclosure Form, Exhibit D, within 30 days of the award. The following information must be included in City's report on any sub-award exceeding \$25,000:

- Name of entity receiving award;
- Amount of award;
- Funding agency;
- Catalog of Federal Domestic Assistance program number;
- Award title (descriptive of the purpose of the funding action);
- Location of the receiving entity and primary location of performance including city, state, and federal Congressional district;
- Dun & Bradstreet (D&B) DUNS Number of the receiving entity, and of its parent if applicable; and
- Total compensation and names of receiving entity's five most highly compensated executives if:
 - In the preceding fiscal year, the subcontractor received 80 percent or more, and \$25,000,000 or more, of its gross annual revenue from federal procurement contracts or subcontracts or from federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.230; and
 - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or under section 6104 of the Internal Revenue Code of 1986.
 - City must report subcontractor executive compensation by the end of the month following the month in which it makes the sub-award. For example, if the sub-award is obligated in any date in April 2022, City must report any required compensation information by May 31, 2022.

Classified information that, in the interest of national security, requires protection against unauthorized disclosure (i.e., information deemed Top Secret, Secret, or Confidential under Executive Order 12958) is exempt from the Prime and Sub-Recipient reporting requirements, as are contracts with individuals.

(c) Sole and Single Source Contracts

Sole source or single source contracts of \$250,000 or more are not allowable under the SHSGP program unless first approved by Cal OES. City must obtain sole/single source request documentation and submit it to the Grants Manager of County's OEM. Upon City's completion and submission of the required sole/single source documentation, County's Grants Manager shall forward all sole/single source documents to the appropriate Cal OES contact for review and approval. Only after Cal OES approval is given can a sole/single source procurement be completed and expenditures reimbursed using SHSGP allocated funds. Sole source or single source requests below the \$250,000 threshold must follow City's own procurement policies.

(d) Other Requests

The following documentation is required for all reimbursement requests for contractors:

- Quote or solicitation documents
- Executive summary of how contractor was chosen
- Documentation that vendor is not on the excluded parties list (<https://www.sam.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Invoice showing deliverables and milestones completed
- Proof of payment
- Financial Disclosure Form (Exhibit D) if awarded contract exceeds \$25,000

The following documentation is required for reimbursement of Salaries:

- Functional timesheet
- Description of scope of job which includes Homeland Security-related functions
- Burdened Labor Rate
- Payroll reports showing amount paid for each pay period being claimed

The following documentation is required for reimbursement for Training activities:

- Class syllabus
- Class sign-in sheet
- Instructor/consultant contract documents
- Instructor's invoice
- Proof of payment

2. Submission of Requests for Reimbursement

(a) City shall submit reimbursement requests to County's OEM on a quarterly basis. Unless pre-approved by County's OEM Director or designee, all reimbursement requests shall be due fifteen calendar days after the end of the quarter, with the exception of the final expenditure and/or invoice, as indicated below. Any expenditure during the final period identified in the chart below shall be made by April 15, 2024, and any related invoice shall be submitted by April 30, 2024, unless otherwise pre-approved by County's OEM Director or designee, in order to meet 2021 SHSGP deadlines.

(b) During the term of this Agreement, County is not obligated to honor any request for reimbursement that is submitted after April 30, 2024.

Article IV. Use of Funds

1. Master Grant Obligations

- (a) City shall comply with the SHSGP Federal Program Guidance, the State Guidance, and the Grant Certifications and Assurances, attached as Exhibit B. City shall require any sub-grantee, contractor, or other entity receiving SHSGP funds through or from City to execute a copy of the Grant Certifications and Assurances, and shall be responsible for ensuring that sub-grantee, contractor, or other entity complies with the Grant Certifications and Assurances.
- (b) City shall comply with all other applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement, provided that if any provisions of this Agreement conflict with any State requirements, the State requirements will control. City shall ensure that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from City complies with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement.
- (c) City shall establish and maintain administrative, programmatic and fiscal management records in accordance with federal and state requirements, and:
 - i. Maintain financial management systems that support grant activities in accordance with federal and state requirements, including but not limited to requirements in 44 Code of Federal Regulations (“C.F.R.”) Part 13.20, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part II, Chapter 3.
 - ii. The County shall provide and affix equipment tracking numbers for all equipment purchased through its procurement process. Using the County-issued tracking number, City shall maintain an equipment tracking ledger that tracks the equipment within City and complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6.
- (d) By executing this Agreement, City certifies that it is not debarred, suspended, or otherwise ineligible to receive SHSGP funds. In addition, City shall ensure and independently verify that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from City complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6, and is not debarred, suspended, or otherwise excluded from participation in the SHSGP program. City shall maintain documentary proof of this verification in its files.

2. Scope of Services

- (a) If City has been allocated funding for a project, Exhibit A, “SHSGP Project Funding,” will serve as the basis for the project. A further detailed description may be necessary and will be requested by the County if needed to be incorporated by reference herein. If future funding is allocated, City shall provide a detailed description of the approved project to be attached hereto and incorporated by reference herein.
- (b) City shall use the funds granted under this Agreement in a manner compliant with:
 - i. The applications submitted by the County to the State for the grant under this Agreement;
 - ii. The grant guidelines issued by the State for the grant under this Agreement; and
 - iii. The notifications issued by the State of the approval of the grant under this Agreement.
- (c) The documents described in Exhibit B of this Agreement (collectively the “State Grant Requirements”) are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. City hereby acknowledges that it has received a copy of the State Grant Requirements.
- (d) City shall use the funds granted under this Agreement only for the purpose of implementing applicable initiatives under the 2021 SHSGP program, as indicated in Exhibit A, “SHSGP Project Funding”. City shall not use the funds granted under this Agreement for any other purpose. Incumbents filling positions funded by the 2021 SHSGP program shall work at a location inside of the City County Operational Area, and the work of grant-funded personnel must be solely focused on threats to the Santa Clara County Operational Area. County will not disburse funds to or otherwise pay City for services that do not address a terrorism nexus, or for materials, equipment, or supplies provided by City that are beyond the scope of the services, materials, equipment, or supplies agreed upon in this Agreement or a lawfully executed written amendment.

3. Performance and Reporting Requirements

- (a) Performance reports indicating the status of outstanding projects are due to the County Grants Administrator on a quarterly basis as follows:
- (b) The following dates represent the Grant Performance Period for the SHSGP program:
 - Performance Period 1 (September 1, 2021 – December 31, 2021) – due by January 15, 2022
 - Performance Period 2 (January 1, 2022 – March 31, 2022) – due by April 15, 2022
 - Performance Period 3 (April 1, 2022 – June 30, 2022) – due by July 15, 2022
 - Performance Period 4 (July 1, 2022 – September 30, 2022) – due by October 15, 2022
 - Performance Period 5 (October 1, 2022 – December 31, 2022) – due by January 15, 2023
 - Performance Period 6 (January 1, 2023 – March 31, 2023) – due by April 15, 2023
 - Performance Period 7 (April 1, 2023 – June 30, 2023) – due by July 15, 2023

- Performance Period 8 (July 1, 2023 – September 30, 2023) – due by October 15, 2023
 - Performance Period 9 (October 1, 2023 – December 31, 2023) – due by January 15, 2024
 - Performance Period 10 (January 1, 2024 – March 31, 2024) – due by April 30, 2024
- (c) The County will provide City with a report template (Exhibit C, “Performance Report”), and City will utilize the template to complete the performance submittal to the County.
- (d) Payments made by the County to City are conditioned upon the timely receipt of applicable, accurate and complete reports, including supporting document, to be submitted by City.
- (e) City will notify the County representative identified in Article VII, Section I, within 15 days, when City has completed all performance obligations for these grants.
- (f) City will provide single audit reports to the County by July 31st of each fiscal year.

Article V. Term and Termination

1. Term of Agreement

This Agreement is effective from September 1, 2021 through May 31, 2024.

2. Availability of Funds

- (a) The parties acknowledge and agree that this Agreement is dependent upon the availability of county, regional, State and/or federal funding.
- (b) Budgetary Contingency: This Agreement is contingent upon the appropriation of sufficient funding by County for the products and services covered by this Agreement. If funding is reduced or eliminated by County for the products or services covered by this Agreement, County has the option to either terminate this Agreement with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.
- (c) The obligations of County to make payments in accordance with the provisions of this Agreement may be delayed, reduced or terminated as a result of any delay, reduction, or change in allocation or allotment in funding to County from federal, State or other regional funding sources.

3. Termination

- (a) Termination for Convenience. County shall have the option, in its sole discretion, to terminate this Agreement at any time without cause upon written notice to City. The written notice shall specify the date on which termination shall become effective, which shall be no less than seven (7) days from the date of the notice.

- (b) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party. The written notice shall specify the date on which termination shall become effective, which shall be no less than thirty (30) days from the date of the notice. Termination for cause includes, but is not limited to, a material breach of this Agreement, a violation of any applicable laws, or failure to comply with applicable SHSGP guidelines.
- (c) Opportunity to Cure. In the event of termination for material breach of this Agreement, the non-breaching party shall give written notice of the breach to the breaching party, specifying the breach/cause. The breaching party shall not be deemed in default and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the breaching party's receipt of the notice of breach, or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced its cure, correction or remedy within the thirty (30) day period and diligently and continuously pursues that cure, correction or remedy.
- (d) If this Agreement is terminated, City shall return SHSGP funding in accordance with SHSGP program guidelines.

Article VI. Indemnification and Liabilities

1. Indemnification by City

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties under Government Code section 895.6, County and City agree instead that under Government Code section 895.4, City shall fully indemnify and hold County, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of City, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to City under this Agreement. This indemnity shall include, without limitation, reasonable attorneys' fees, consultants and experts and related costs, and County's cost of investigating any claim.

2. Duty to Defend

City acknowledges and agrees that its obligation to defend County under Article VI: (a) is an immediate obligation, independent of its other obligations under this Agreement; and (b) applies to any claim, expense, cost, damage, or liability falling within the scope of Article VI, regardless of whether the allegations made in connection with that claim, expense, cost, damage, or liability may be groundless, false, or fraudulent. County shall provide City with prompt notice of any claim, expense, cost, damage, or liability under Article VI and City shall have the right to defend, settle, or compromise that claim, expense, cost, damage, or liability, provided, however, that County shall have the right to retain its own counsel at City's expense if representation of County by counsel retained by City would result in a conflict of interest, and that City shall obtain County's prior written consent to settle or compromise if City contends that County shares in any liability. County's failure to notify City promptly of any claim, expense, cost, damage, or liability shall not relieve City of liability to County under Article VI unless

that failure materially impairs City's ability to defend against the claim, expense, cost, damage, or liability.

3. Limitation on Liability

County, its officers, board members, employees, and agents shall not be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of City, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to City under this Agreement.

County's obligations under this Agreement shall be limited to the aggregate amount of SHSGP funds actually disbursed. Notwithstanding any other provision in this Agreement or any other document or communication between County and City relating to this Agreement, in no event shall County be liable for any damages arising out of or in connection with this Agreement, the SHSGP funds, City's Spend Plan, or any activities performed in connection with this Agreement.

Article VII. Miscellaneous

1. Notice

All notices required by this Agreement shall be deemed given when provided in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To City:

Shane Palsgrove, Police Chief
Morgan Hill Police Department
16200 Vineyard Boulevard
Morgan Hill, CA 95037

To County:

Michelle Sandoval
Grant and Administrative Services Manager
County of Santa Clara Office of Emergency Management
55 W. Younger Ave., Suite 450
San José, CA 95110

2. Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

- (a) Compliance with All Laws: City shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (b) Compliance with Non-Discrimination and Equal Opportunity Laws: City shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, City shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall City discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- (c) Compliance with Wage and Hour Laws: City shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (d) Definitions: For purposes of this Subsection (2), the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City’s Office of Equality Assurance.

- (e) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, City affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that City violated an applicable wage and hour law or pay equity law. City further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.
- (f) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, City receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then City shall promptly satisfy and comply with any such Final Judgment. City shall inform the Office of the County Executive-Office of Countywide Contracting Management (“OCCM”) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. City shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (g) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to City’s records, City shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, City shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County’s access to such records and facilities shall be permitted at any time during City’s normal business hours upon no less than 10 business days’ advance notice.
- (h) Pay Equity Notification: City shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to City for a job in California (collectively, “Employees and Job Applicants”) with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of City’s Employees and Job Applicants.
- (i) Material Breach: Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
1. Suspend or terminate any or all parts of this Agreement.
 2. Withhold payment to City until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
 3. Offer City an opportunity to cure the breach.

- (j) Subcontractors: City shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

3. County No-Smoking Policy

City and its employees, agents and subcontractors shall comply with County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

4. Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by City with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low-fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans-fat per serving. Whenever possible, City shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high-calorie desserts; (3) attempt to accommodate special dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and City should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, for which sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored nonfat or 1% low-fat dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8-ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8-ounce serving. Sugar-sweetened beverages shall not be provided.

5. Governing Law

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California.

6. Assignment

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

7. Entire Agreement

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

8. Amendments

This Agreement may only be amended by an instrument signed by the parties.

9. Counterparts; Contract Execution

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. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed Agreement, or an electronically signed Agreement, 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.

10. Severability

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

11. 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 must be in writing, and shall apply to the specific instance expressly stated.

12. Conflict of Interest

In accepting this Agreement, City covenants that is presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services under this Agreement. City is responsible for assuring compliance of its subcontractors, if any, with the requirements of this provision.

13. California Public Records Act

County and City are public agencies subject to the disclosure requirements of the California Public Records Act (“CPRA”). If either County’s or City’s proprietary information is contained in documents

or information submitted to the other party, and the submitting party claims that such information falls within one or more CPRA exemptions, the submitting party must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, the receiving party will make best efforts to provide notice to the submitting party prior to such disclosure. If the submitting party contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the receiving party is required to respond to the CPRA request. If the submitting party fails to obtain such remedy within the time the receiving party is required to respond to the CPRA request, the receiving party may disclose the requested information.

14. 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.

15. COVID-19 Requirements

City shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. If applicable, City shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements (“Certification”), attached hereto as Exhibit G. City shall comply with the requirements of this Section for the entire term of this Agreement.

City shall comply with all reasonable requests by County for documentation demonstrating City’s compliance with this Section. Failure by City to comply with any of the requirements of this Section (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) is a material breach of this Agreement, and the County may, in its sole discretion terminate this Agreement immediately or take other action as the County may determine to be appropriate.

16. Prohibition on Contracting for Covered Telecommunications Equipment or Services

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy #405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.
- (b) *Prohibitions.*
 - 1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. §200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

2. Unless an exception in paragraph (c) of this clause applies, City and any contractor and/or subcontractor may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - d. Provide, as part of its performance of this contract, subcontract or other contractual instrument, any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

1. This clause does not prohibit City or its contractors or subcontractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 1. Are not used as a substantial or essential component of any system; and
 2. Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

1. In the event the City or its contractor or subcontractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or City or its contractor or subcontractor is notified of such by a subcontractor at any tier or by any other source, City shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
2. City shall report the following information pursuant to paragraph (d)1 of this clause:
 - a. Within one business day for the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- b. Within 10 business days of submitting the information in paragraph (d)2a of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts.

City shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

17. Domestic Preferences for Procurement¹

(a) As appropriate and to the extent consistent with law, City should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all contracts and purchase orders for work or products under this agreement.

(b) For purposes of this section:

1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

18. Noncompetitive Procurement & Training

The State will not reimburse grant recipients for non-competitively procured terrorism-related training or exercises, regardless of the cost. Exceptions to this policy may be approved in limited circumstances, e.g., related to a procurement effort that has resulted in inadequate competition. County requires City to submit the Cal OES Request for Noncompetitive Procurement Authorization form for any training or exercise-related sole/single source requests. City must have written approval for non-competitively procured source training or exercises prior to obligating any funds.

19. Nationwide Cybersecurity Review (NCSR)

All SHSGP recipients must complete the NCSR between October and December and the submission deadline is December 1st of every year. Completion time is approximately 2-3 hours.

The Federal Emergency Management Agency (FEMA) and the Cybersecurity and Infrastructure Security Agency (CISA) have determined that providing information on the Nationwide Cybersecurity Review (NCSR) benefits and improves the quality of cybersecurity investment justifications (IJs) submitted by SHSGP recipients. The NCSR is a no-cost, anonymous, and annual self-assessment designed to measure gaps and capabilities of state, local, tribal, territorial, nonprofit, and private sector agencies’ cybersecurity programs. The anonymous results provide actionable feedback and metrics directly to individual respondents.

¹ “Local preference” is still prohibited under 2 CFR Part 200 Section 200.319(c)

20. Certified Resolution of Signature Authority

Upon request of County, City shall deliver to County a copy of the resolution(s) authorizing execution, delivery, and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of City.

Signed:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

By _____
Jeffrey V. Smith
County Executive

Date

By _____
Christina Turner
City Manager

Date

Approved as to Form and Legality:

Approved as to Form:

Kavita Narayan
Assistant County Counsel

Date

Donald Larkin
City Attorney

Date

Enclosures

- | | |
|-----------|--|
| Exhibit A | 2021 SHSGP Project Funding List – Morgan Hill |
| Exhibit B | 2021 SHSGP Grant Assurances |
| Exhibit C | Quarterly Reporting Requirements and Report Template |
| Exhibit D | Financial Disclosure Form (FFATA) |
| Exhibit E | Certification Regarding Lobbying |

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY OF MORGAN HILL TO ACCEPT STATE HOMELAND SECURITY GRANT FUNDS IN THE AMOUNT OF \$17,558 FROM THE COUNTY OF SANTA CLARA

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

WHEREAS, the reasons supporting the purchase described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Memorandum of Understanding between the County of Santa Clara and the City of Morgan Hill granting program funds for the 2021 State Homeland Security Grant Program funds” submitted for City Council consideration at its meeting of April 20, 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, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

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

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

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

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

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

- a. State Homeland Security Grant funds will be used for City of Morgan Hill Police Department to purchase a Long-Range Acoustic Device (LRAD) to be used for emergency alert and warning; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to accept grand funding in the amount of \$17,588 from the County of Santa Clara; and
- c. 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; and
- d. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 20th 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, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on April 20, 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 #

014

FUND:

010 General Fund

DEPARTMENT:

3210 Police-Patrol

OBJECT:

43825 MACHINERY/EQUIPMENT

AGENDA DATE:

04/27/22

AGENDA ITEM TITLE:

Long Range Acoustic Device

	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	-	-	270,530	(270,530)
RECOMMENDED ACTION		17,558	17,558	-
RESULT OF RECOMMENDED ACTION	<u>24,896,179</u>	<u>43,453,014</u>	<u>44,977,302</u>	<u>23,371,891</u>



16262 W Bernardo Drive
San Diego, CA 92127

Telephone 858-676-1112
Fax 858-676-1120

Bill to:
Morgan Hill Police Department
16200 Vineyard Blvd
Morgan Hill, CA
Morgan Hill, CA 95037

Delivery terms

Quotation

Page 1 of 1
Number SQ 004072-5
Date 3/30/2022
Your ref.
Our ref. 00073
Quotation deadline 6/28/2022
Payment
Sales taker Chris Keane
Sales responsible Chris Keane

Ship to:
Morgan Hill Police Department
16200 Vineyard Blvd
Morgan Hill, CA
Morgan Hill, CA 95037

Customer phone
Customer email jennifer.ponce@morganhill.ca.gov
Customer contact

Item number	Description	Quantity	Unit	Unit price	Amount
100X-BLK-MAG-SYS	CATALOG, LRAD-100X, XX MAG MOUNT, WIRELESS, CH 14, BLACK	1.00	ea	15,500.00	15,500.00
100X-BATT	BATTERY PACK, 2X4 CELLS, Li-Ion	1.00	ea	476.00	476.00

The lead time shown is an estimated lead time based on existing conditions when the quote was produced. Please be aware that global supply chain shortages and transportation delays may cause the lead time provided in this quote to change. Genasys is aggressively working on resolving these issues and we remain committed to delivering the highest quality products in a timely manner.

Seller's acceptance of this Order is expressly conditioned upon the Buyer's assent to Seller's General Terms and Conditions of Sale as stated in Seller's Offer and which are located at <https://genasys.com/contact/where-to-buy/terms-conditions/>.
Seller is proceeding with the performance of Buyer's Order strictly on this basis.

Subtotal: 15,976.00
Freight: 110.22
Sales Tax: 1,397.90
Total: 17,484.12

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Jennifer Ponce, OES Coordinator

APPROVED BY: City Manager

APPROVE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY FOR THE 2021 EMERGENCY MANAGEMENT PERFORMANCE GRANT

RECOMMENDATION(S)

1. Authorize the City Manager to execute the Memorandum of Understanding with the County of Santa Clara for the 2021 Emergency Management Performance Grant (EMPG); and
2. Recognize grant revenue in an amount not to exceed \$19,000 for the purchase of Emergency Operations Center (EOC) Technology.

Estimated Time: Consent

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Public Safety Master Plan

REPORT NARRATIVE:

The County Civil Protection and Emergency Services Ordinance establishes the Operation Area Council (OAC) and endows the OAC with governing body authority to enhance planning and preparedness for large-scale emergencies in the Santa Clara Operational Area, including by making funding allocation decisions for Emergency Management Performance Grant (EMPG) funding awarded by the United States Department of Homeland Security to the California Office of Emergency Services (Cal OES), and subsequently sub-awarded to the County of Santa Clara (County).

Cal OES is expected to award the County 2021 EMPG funding in the amount of \$521,180 for the purpose of sustaining and improving comprehensive emergency management programs.

Per the Memorandum of Understanding (MOU) with the County, Morgan Hill will receive up to \$19,000 in grant funds for equipment to enhance the EOC capabilities, including laptops and tablets. The laptops and tablets will be for use by the City's EOC team during training exercises and activations. Equipment purchase will occur in FY2022-23. The County requires the MOU be executed in the current fiscal year in order to avoid funding delays from the state.

COMMUNITY ENGAGEMENT:

Inform

This staff report serves to inform the community of the City's grant award and subsequent expenditures and activities associated with the grant funds. This grant is administered by the County of Santa Clara with funds that originated with the Federal Emergency Management Agency (FEMA). The City is eligible to receive the grant funding as part of the EMPG program.

ALTERNATIVE ACTIONS:

One alternative action by the Council could be to decline the funds for the EOC equipment. Without approval, the EOC would continue to function without widespread video display capabilities and utilize current aging EOC laptops.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No previous actions have been taken on this item.

FISCAL AND RESOURCE IMPACT:

Grant funds will be received as a reimbursement after purchase and proof of payment has been submitted to the County. Sufficient funds will be appropriated in the FY2022-23 EOC operating budget for associated grant expenditures.

CEQA (California Environmental Quality Act):

Not applicable. This MOU entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF MORGAN HILL GRANTING PROGRAM FUNDS FOR THE
2021 EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG¹)**

THIS AGREEMENT is made effective July 1, 2021, by and between the County of Santa Clara (“County”) and the City of Morgan Hill (“City”) for the allocation and distribution of 2021 Emergency Management Performance Grant (“EMPG”) funds.

RECITALS

WHEREAS, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San José, Santa Clara, Saratoga, Sunnyvale, the Towns of Los Gatos and Los Altos Hills, and the County of Santa Clara are parties to the 1994 Operational Area Interim Agreement; and

WHEREAS, the Santa Clara County Emergency Operational Area Council (“EOAC”) is the advisory body of the Santa Clara Operational Area in matters affecting disaster preparedness throughout the Operational Area. EOAC membership includes 5 city council members representing cities in the Operational Area as well as representatives of the Santa Clara Valley Water District, Office of the County Executive, County Board of Supervisors, City Managers’ Association, Police Chiefs’ Association, Fire Chiefs’ Association, County Public Health Department, County Social Services Agency, County Emergency Medical Services Agency, Santa Clara Valley Transportation Authority, and emergency management representatives; and

WHEREAS, the County Emergency Management Ordinance establishes the EOAC and endows the EOAC with authority to enhance planning and preparedness for large-scale emergencies in the Santa Clara Operational Area, including by making funding allocation recommendations for EMPG funding awarded by the United States Department of Homeland Security to the California Governor’s Office of Emergency Services (“Cal OES”), and subsequently sub-awarded to County; and

WHEREAS, Cal OES has awarded County 2021 EMPG funding in the amount of \$521,180 for the purpose of sustaining and improving comprehensive emergency management programs;

NOW, THEREFORE, this AGREEMENT is to allocate the sum of **\$19,000** from County to City, so that City may implement the “EOC Technology” project as provided under this Agreement and specified in the EMPG Grant Certifications and Assurances, Exhibits B, C & D. The performance period for County for this grant expires on June 30, 2023. The performance period for City for the subgrant expires on March 31, 2023.

County and City agree as follows:

THE AGREEMENT

Article I. Definitions

1. Specific Terms

(a) **“Burdened Labor Rate”** shall mean the labor rate including benefits, taxes and other

¹ 2021 Homeland Security Grants, version 1

deductions from an employee's paycheck. This rate does not include vacation benefits. The hourly burdened labor rate is used to calculate City's match obligation.

- (b) **"City"** shall mean the City of Morgan Hill, its officers, board members, employees, and agents.
- (c) **"County"** shall mean the County of Santa Clara, its officers, board members, employees, and agents.
- (d) **"EMPG funds" or "EMPG funding"** shall mean the funding City receives under this Agreement.
- (e) **"Emergency Operations Center" or "EOC"** shall mean the physical location at which the coordination of information and resources to support incident management (on-scene operations) activities normally takes place.
- (f) **"Federal Program Guidance"** shall mean guidance documents issued by the Federal Emergency Management Agency, including the EMPG Program Funding Opportunity Announcement, for Fiscal Year 2021.
- (g) **"Grant Certifications and Assurances"** shall mean the FY21 "Standard Assurance For Cal OES Federal Non-Disaster Grant Programs" (EXHIBIT B), "Certification Regarding Lobbying" (EXHIBIT C), and "Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure" (EXHIBIT D).
- (h) **"Highly Compensated Individual"** shall mean an individual whose income is \$300,000 or more per year.
- (i) **"Prime Recipient"** shall refer to County.
- (j) **"Project Manager"** shall refer to the City employee identified as "Requestor" on an EMPG Project Proposal form.
- (k) **"Spend Plan"** shall mean a written document that explains the project on which City intends to spend 2021 EMPG funding, including project deliverables and milestone dates by which any funds allocated to City must be spent.
- (l) **"State Guidance"** shall mean the California Supplement to the Federal Notice of Funding Opportunity Announcement, issued by Cal OES for Fiscal Year 2021 for Emergency Management Performance Grants.
- (m) **"Subgrant"** shall mean funds awarded to the City under this Agreement.
- (n) **"Sub-Recipient"** shall refer to City.

2. References to This Agreement

Any reference to this Agreement shall include: (a) the Agreement; (b) all exhibits, appendices, schedules, and attachments to this Agreement; (c) all statutes, ordinances, regulations, rules, or other

documents incorporated by reference into this Agreement; (d) all amendments, modifications, or supplements to this Agreement.

Article II. Allocation and Spend Plans

1. Allocation.

The 2021 EMPG funds shall be disbursed pursuant to the County's FY 2021 EMPG Grant application for each City. County shall reimburse to City funds that City expends under the 2021 EMPG program for eligible expenditures. The amount for City shall not exceed **\$19,000** unless additional funds become available under the 2021 EMPG program following the execution of this Agreement. If additional funds are allocated, an amendment to this Agreement shall follow.

City acknowledges and agrees that County shall have no obligation to disburse EMPG funds to City until County and City have fully and finally executed this Agreement.

City acknowledges and agrees that County shall have no obligation to disburse EMPG funds to City unless and until the State of California has approved \$521,180 in FY 2021 EMPG funding.

2. Spend Plans

Upon execution of this agreement, City shall provide County with Spend Plans for review by County's Office of Emergency Management ("OEM") Director or designee. All Spend Plans must be approved by County's OEM Director or designee based on projects County has submitted to the State for the 2021 EMPG program. If County's OEM Director does not approve City's Spend Plan, County OEM shall notify City, and City shall have 10 days from the date of the notice to submit a revised Spend Plan to County OEM for approval or risk reallocation of funds. City's Spend Plans are a required part of this MOU.

Article III. Requests for Reimbursement and Reimbursements

1. Required Documentation for Reimbursement

The EMPG is a reimbursement grant under which Cal OES disburses reimbursement funds to County, and County disburses reimbursement funds to City. No cash advances are permitted under the EMPG program.

The EMPG is a matching funds grant that requires City to provide a dollar-for-dollar match for any EMPG funds it receives. All invoices/ requests for reimbursement from City must include appropriate documentation such as receipts or payment records as well as other documentation required under Federal or State grant program requirements (see Article III).

(a) Requests for Equipment

City is solely responsible for procuring any equipment under this Agreement in accordance with the most current applicable Federal requirements for procuring grant-funded equipment; and, if more restrictive, applicable City procurement policies and requirements.

Prior to purchasing any equipment under this Agreement, when required, City must submit an

Environmental and Historic Preservation (EHP) Screening form and receive written approval from FEMA.

The following documentation must be provided along with any reimbursement requests for equipment:

- Quote or solicitation documents
- Summary of pricing and chosen vendor
- Documentation that vendor is not on the excluded parties list (<https://sam.gov/>) a print-out of the search result page will suffice)
- Purchase order and/or contract
- Receiving documentation/packing slip
- Invoice
- Proof of payment

All equipment must be indicated in the Spend Plan City submits to County, and must be authorized per the web-based Authorized Equipment List published by FEMA and available via: <https://www.fema.gov/authorized-equipment-list>.

(b) Subcontracts

Subcontracts totaling \$25,000 or more require preapproval from County. If City is allowed to award subcontracts totaling \$25,000 or more, it must report on any such subcontracts and on Highly Compensated Individuals on the Financial Disclosure Form, Exhibit E, within 30 days of the award. The following information must be included in City's report on any sub-award exceeding \$25,000:

- Name of entity receiving award;
- Amount of award;
- Funding agency;
- Catalog of Federal Domestic Assistance program number;
- Award title (descriptive of the purpose of the funding action);
- Location of the receiving entity and primary location of performance including city, state, and federal Congressional district;
- Dun & Bradstreet (D&B) DUNS Number of the receiving entity, and of its parent if applicable; and
- Total compensation and names of receiving entity's five most highly compensated executives if:
 - In the preceding fiscal year, the subcontractor received 80 percent or more, and \$25,000,000 or more, of its gross annual revenue from federal procurement contracts or subcontracts or from federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.230; and
 - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or under section 6104 of the Internal Revenue Code of 1986.
 - City must report subcontractor executive compensation by the end of the month

following the month in which it makes the subaward. For example, if the subaward is obligated in any date in April 2022, City must report any required compensation information by May 31, 2022.

Classified information that, in the interest of national security, requires protection against unauthorized disclosure (i.e., information deemed Top Secret, Secret, or Confidential under Executive Order 12958) is exempt from the Prime and Sub-Recipient reporting requirements, as are contracts with individuals.

(c) Sole Source Contracts

Sole source contracts of \$250,000 or more are not allowable under the EMPG program unless first approved by Cal OES. City must obtain sole source request documentation and submit it to the Grants Manager of County's OEM. Upon City's completion and submission of the required sole source documentation, County's Grants Manager shall forward all sole source documents to the appropriate Cal OES contact for review and approval. Only after Cal OES approval is given can a sole source procurement be completed and expenditures reimbursed using EMPG allocated funds. All sole source procurements must follow the most current applicable Federal procurement requirements for grants and, if more restrictive, City's own procurement policies.

(d) Grant Funded Personnel

EMPG grant-funded personnel are any personnel paid at any percentage with EMPG funding. This includes M&A staff funded by EMPG Program funds. All EMPG Program funded personnel shall complete the training requirements in Article IV, Section 2 (c) by December 31, 2022.

Recorded proof of completion, such as all certificates of completion, must be submitted by the City to County (OEM) before any reimbursements to the City will be made. In any case, proof of completion must be provided by December 31, 2022.

Documentation of participation in exercises is also required by the grant and progress towards meeting this requirement must be reported to the grant manager at least quarterly.

Time reporting requirements: To receive payments for personnel costs, City must submit time and payroll documentation that meets Federal Grant, State Grant (Cal OES) and County reporting requirements.

(e) Other Requests

The following documentation is required for all reimbursement requests for contractors:

- Quote or solicitation documents
- Executive summary of how contractor was chosen
- Documentation that vendor is not on the excluded parties list (<https://www.sam.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Invoice showing deliverables and milestones completed

- Proof of payment
- Financial Disclosure Form (Exhibit E) if awarded contract exceeds \$25,000

2. Submission of Requests for Reimbursement

- (a) City shall submit reimbursement requests to County's OEM (see Article V.1 below) on a quarterly basis, as detailed in the chart below. Unless pre-approved by County's OEM Director or designee, all reimbursement requests shall be due fifteen calendar days after the end of the quarter, with the exception of the final expenditure and/or invoice, as indicated below. Any expenditure during the final period identified in the chart below shall be made by March 15, 2023, and any related invoice shall be submitted by March 31, 2023, unless otherwise pre-approved by County's OEM Director or designee, in order to meet 2021 EMPG deadlines. Reimbursement requests shall be due for expenditures during specified periods as follows:

For Expenditures During the Period:	Due Dates for Reimbursement Requests:
July 1, 2021 through December 31, 2021	January 20, 2022
January 1, 2022 through June 30, 2022	July 20, 2022
July 1, 2022 through December 31, 2022	January 20, 2023
January 1, 2023 through March 15, 2023	March 31, 2023

- (b) During the term of this Agreement, County is not obligated to honor any request for reimbursement that is submitted after the due dates for reimbursement requests for expenditures within a given quarter as specified above in Article II, Section 2(a).
- (c) All grant funds not claimed by City via a proper reimbursement request, which includes all required documentation, by April 15, 2023 will be forfeited. County may then determine how to spend those funds in accordance with grant requirements.

Article IV. Use of Funds

1. Master Grant Obligations

- (a) City shall comply with the EMPG Federal Program Guidance, the State Guidance, and the Grant Certifications and Assurances, attached as Exhibits B, C & D. City shall require any subgrantee, contractor, or other entity receiving EMPG funds through or from City to execute a copy of the Grant Certifications and Assurances, and shall be responsible for ensuring that subgrantee, contractor, or other entity complies with the Grant Certifications and Assurances.
- (b) City shall ensure its Project Manager attends a grant kickoff meeting with County OEM staff. Additionally, City shall ensure its Project Manager is available to meet with County OEM staff upon request during the period of this agreement to report on progress on each project funded under this Agreement.
- (c) City shall comply with all other applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved Spend Plans; and any other conditions imposed by Cal OES or by this Agreement, provided that if

any provisions of this Agreement conflict with any State requirements, the State requirements will control. City shall ensure that any subgrantee, contractor, or other entity receiving EMPG funds through or from City complies with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved Spend Plans; and any other conditions imposed by Cal OES or by this Agreement.

- (d) By executing this Agreement, City certifies that it is not debarred, suspended, or otherwise ineligible to receive EMPG funds. In addition, City shall ensure and independently verify that any subgrantee, contractor, or other entity receiving EMPG funds through or from City is not debarred, suspended, or otherwise excluded from participation in the EMPG program. City shall maintain documentary proof of this verification in its files.

2. Scope of Services

- (a) City shall use the funds granted under this Agreement only for the purpose of implementing applicable initiatives under the 2021 EMPG program, as indicated in Exhibit E, Program Narrative. City shall not use the funds granted under this Agreement for any other purpose. County shall not be required to disburse funds to or otherwise pay City for services, materials, equipment, or supplies provided by City that are beyond the scope of the services, materials, equipment, or supplies agreed upon in this Agreement or a lawfully executed written amendment.

Indirect costs are allowable under the FY21 EMPG grant. Allowability of Indirect costs does not increase the total amount of the State, Operational Area or other sub-recipient (i.e. jurisdictions) grant awards. Claims for indirect costs therefore necessarily decrease the federal funds available to pay for direct project costs. Subawards are based on the direct cost of approved projects. Sub-recipients wishing to claim indirect costs must use an indirect cost rate in compliance with the most current applicable Federal guidance and regulations including 2 C.F.R. § 200.68 and Subpart E.

- (b) All EMPG grant-funded personnel (e.g. an Emergency Preparedness Planner employed by the City under this grant) shall participate in no less than two exercises in a 12-month period. These exercises must align to an identified priority area. EMPG grant-funded personnel are any personnel paid at any percentage with EMPG funding. This includes contracted personnel, as well as M&A staff funded by EMPG grant funds. There is no specific requirement for level of “participation” in the exercises – i.e., observation and attendance satisfies the objective. The exercises can be of any type (e.g., Drills, Tabletop Exercises, or Functional) within the performance period (see <https://hseep.dhs.gov>). Participation in exercises by grant funded staff must be reported quarterly to ensure adequate progress is being made toward meeting this requirement.
- (c) To ensure the development of a professional emergency management workforce, all EMPG grant-funded personnel shall complete the following 11 training requirements and shall record proof of completion:

- National Incident Management System (NIMS) Training:
 - i. IS 100 Introduction to Incident Command System

- ii. IS 200 ICS for Single Resources and Initial Action Incident
- iii. IS 700 National Incident Management System, An Introduction
- iv. IS 800 National Response Framework, An Introduction
- FEMA Professional Development Series:
 - v. IS 120.c Introduction to Exercises
 - vi. IS 230.e Fundamentals of Emergency Management
 - vii. IS 235.c Emergency Planning
 - viii. IS 240.b Leadership and Influence
 - ix. IS 241.b Decision Making and Problem Solving
 - x. IS 242.b Effective Communication
 - xi. IS 244.b Developing and Managing Volunteers

The aforementioned courses are all available for free on-line at the following links:

<http://training.fema.gov/IS/NIMS.aspx> & <http://training.fema.gov/emiweb/PDS/>

Note: The “G” course series and classroom-based equivalents can be used as an alternate to satisfy these training requirements. Past completion of the above courses (or qualifying equivalent) may be considered acceptable in meeting this requirement.

Article V. Term and Termination

1. Term of Agreement

This Agreement is effective from July 1, 2021 through June 30, 2023—the FY 2021 EMPG performance period established by Cal OES the State for the County.

2. Availability of Funds

- (a) The parties acknowledge and agree that this Agreement is dependent upon the availability of County, regional, State and/or federal funding.
- (b) Budgetary Contingency: This Agreement is contingent upon the appropriation of sufficient funding by County for the products and services covered by this Agreement. If funding is reduced or eliminated by County for the products or services covered by this Agreement, County has the option to either terminate this Agreement with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.
- (c) The obligations of County to make payments in accordance with the provisions of this Agreement may be delayed, reduced or terminated as a result of any delay, reduction, or change in allocation or allotment in funding to County from federal, State or other regional funding sources.

3. Termination

- (a) Termination for Convenience. County shall have the option, in its sole discretion, to terminate this Agreement at any time without cause upon written notice to City. The written notice shall specify the date on which termination shall become effective, which shall be no less than seven (7) days from the date of the notice.

- (b) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party. The written notice shall specify the date on which termination shall become effective, which shall be no less than thirty (30) days from the date of the notice. Termination for cause includes, but is not limited to, a material breach of this Agreement, a violation of any applicable laws, or failure to comply with applicable EMPG guidelines.
- (c) Opportunity to Cure. In the event of termination for material breach of this Agreement, the non-breaching party shall give written notice of the breach to the breaching party, specifying the breach/cause. The breaching party shall not be deemed in default and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the breaching party's receipt of the notice of breach, or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced its cure, correction or remedy within the thirty (30) day period and diligently and continuously pursues that cure, correction or remedy.
- (d) If this Agreement is terminated, City shall return EMPG funding in accordance with EMPG program guidelines.

Article VI. Indemnification and Liabilities

1. Indemnification by City

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties under Government Code section 895.6, County and City agree instead that under Government Code section 895.4, City shall fully indemnify and hold County, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of City, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to City under this Agreement. This indemnity shall include, without limitation, reasonable attorneys' fees, consultants and experts and related costs, and County's cost of investigating any claim.

2. Duty to Defend

City acknowledges and agrees that its obligation to defend County under Article V.1: (a) is an immediate obligation, independent of its other obligations under this Agreement; and (b) applies to any claim, expense, cost, damage, or liability falling within the scope of Article V.1, regardless of whether the allegations made in connection with that claim, expense, cost, damage, or liability may be groundless, false, or fraudulent. County shall provide City with prompt notice of any claim, expense, cost, damage, or liability under Article V.1 and City shall have the right to defend, settle, or compromise that claim, expense, cost, damage, or liability, provided, however, that County shall have the right to retain its own counsel at City's expense if representation of County by counsel retained by City would result in a conflict of interest, and that City shall obtain County's prior written consent to settle or compromise if City contends that County shares in any liability. County's failure to notify City promptly of any claim, expense, cost, damage, or liability shall not relieve City of liability to County under Article V.1 unless that failure materially impairs City's ability to defend against the claim, expense, cost, damage, or liability.

3. Limitation on Liability

County, its officers, board members, employees, and agents shall not be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of City, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to City under this Agreement.

County's obligations under this Agreement shall be limited to the aggregate amount of EMPG funds actually disbursed. Notwithstanding any other provision in this Agreement or any other document or communication between County and City relating to this Agreement, in no event shall County be liable for any damages arising out of or in connection with this Agreement, the EMPG funds, City's Spend Plan, or any activities performed in connection with this Agreement.

Article VII. Miscellaneous

1. Notice

All notices required by this Agreement shall be deemed given when provided in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To City:

Jennifer Ponce, Emergency Services Coordinator
Morgan Hill Police Department
16200 Vineyard Blvd
Morgan Hill, CA 95037

To County:

Ivan Williams
EMPG Grant Manager
County of Santa Clara Office of Emergency Management
55 W. Younger Ave., Suite 450
San Jose, CA 95110

2. Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

- (a) Compliance with All Laws: City shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (b) Compliance with Non-Discrimination and Equal Opportunity Laws: City shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963;

California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, City shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall City discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- (c) **Compliance with Wage and Hour Laws:** City shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (d) **Definitions:** For purposes of this Subsection, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality of Assurance.
- (e) **Prior Judgment, Decisions or Orders against City:** By signing this Agreement, City affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that City violated an applicable wage and hour law or pay equity law. City further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.
- (f) **Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract:** If at any time during the term of this Agreement, City receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then City shall promptly satisfy and comply with any such Final Judgment. City shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. City shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this

paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

- (g) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to City's records, City shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, City shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during City's normal business hours upon no less than 10 business days' advance notice.
- (h) Pay Equity Notification: City shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to City for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of City's Employees and Job Applicants.
- (i) Material Breach: Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
 - 1. Suspend or terminate any or all parts of this Agreement.
 - 2. Withhold payment to City until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
 - 3. Offer City an opportunity to cure the breach.
- (j) Subcontractors: City shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

3. County No-Smoking Policy

City and its employees, agents and subcontractors shall comply with County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

4. Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by City with County funds for County-sponsored

meetings or events.

If food is to be provided, healthier food options shall be offered. “Healthier food options” include (1) fruits, vegetables, whole grains, and low-fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, City shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high-calorie desserts; (3) attempt to accommodate special dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the City should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County’s nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, for which sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored reduced fat (either nonfat or 1% low-fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8-ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8-ounce serving. Sugar-sweetened beverages shall not be provided.

5. 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.

6. 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.

7. 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.

8. Amendments

This Agreement may only be amended by a written instrument signed by the Parties.

9. 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.

10. 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.

11. Severability

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

12. 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.

13. Conflicts of Interest

City shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, City covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. City further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. City, including but not limited to contractor’s employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the “Act”), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, City shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to City’s employees, agents and subcontractors, that could be substantively involved in “making a governmental decision” or “serving in a staff capacity and in that capacity participating in

making governmental decisions or performing duties that would be performed by an individual in a designated position,” (2 CCR 18701(a)(2)), as part of City’s service to the County under this Agreement. City shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. City shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, City shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

14. Contracting Principles

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, the City and all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County’s request, provide the County reasonable access, through representatives of the City, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

15. California Public Records Act

County and City are public agencies subject to the disclosure requirements of the California Public Records Act (“CPRA”). If either County’s or City’s proprietary information is contained in documents or information submitted to the other party, and the submitting party claims that such information falls within one or more CPRA exemptions, the submitting party must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, the receiving party will make best efforts to provide notice to the submitting party prior to such disclosure. If the submitting party contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the receiving party is required to respond to the CPRA request. If the submitting party fails to obtain such remedy within the time the receiving party is required to respond to the CPRA request, the receiving party may disclose the requested information.

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.

17. COVID-19 Requirements

City shall comply with all County requirements relating to COVID-19 for persons who routinely

perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. If applicable, City shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements (“Certification”), attached hereto as Exhibit G. City shall comply with the requirements of this Section for the entire term of this Agreement.

City shall comply with all reasonable requests by County for documentation demonstrating City’s compliance with this Section. Failure by City to comply with any of the requirements of this Section (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) is a material breach of this Agreement, and the County may, in its sole discretion terminate this Agreement immediately or take other action as the County may determine to be appropriate.

18. Prohibition on Contracting for Covered Telecommunications Equipment or Services

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy #405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.
- (b) *Prohibitions.*
 - 1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. §200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - 2. Unless an exception in paragraph (c) of this clause applies, City and any contractor and/or subcontractor may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - d. Provide, as part of its performance of this contract, subcontract or other contractual instrument, any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) *Exceptions.*
 - 1. This clause does not prohibit City or its contractors or subcontractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 2. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

- 1. In the event the City or its contractor or subcontractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or City or its contractor or subcontractor is notified of such by a subcontractor at any tier or by any other source, City shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- 2. City shall report the following information pursuant to paragraph (d)1 of this clause:
 - a. Within one business day for the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within 10 business days of submitting the information in paragraph (d)2a of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts.

City shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

19. Domestic Preferences for Procurement²

- a. As appropriate and to the extent consistent with law, City should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all contracts and purchase orders for work or products under this agreement.
- b. For purposes of this section:
 - i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

² “Local preference” is still prohibited under 2 CFR Part 200 Section 200.319(c)

- ii. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

20. Certified Resolution of Signature Authority

Upon request of County, City shall deliver to County a copy of the resolution(s) authorizing execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of City.

Signed:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

By _____
Jeffrey V. Smith
County Executive

Date

Christina Turner
City Manager

Date

Approved as to Form and Legality:

Approved as to Form:

Kavita Narayan
Assistant County Counsel

Date

Donald Larkin
City Attorney

Date

Enclosures

- | | |
|-----------|--|
| Exhibit A | Santa Clara County EMPG Notification of Subrecipient Application Approval |
| Exhibit B | Standard Assurances for Cal OES Federal Non-Disaster Grant Programs |
| Exhibit C | Certification Regarding Lobbying |
| Exhibit D | Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure |
| Exhibit E | Project Narrative(s) |
| Exhibit F | Functional Timesheet Sample |
| Exhibit G | Contractor Certification of Compliance with COVID-19 Vaccine Requirements |

December 30, 2021

Jeffrey V. Smith
County Executive
Santa Clara County
55 West Younger Ave, Suite 450
San Jose, CA 95110

SUBJECT: NOTIFICATION OF SUBRECIPIENT APPLICATION APPROVAL
FY 2021 Emergency Management Performance Grant (EMPG)
Subaward #: 2021-0015, Cal OES ID: 085-00000

Dear Mr. Smith:

The California Governor's Office of Emergency Services (Cal OES) has approved your FY 2021 Emergency Management Performance Grant (EMPG) application in the amount of \$521,180. As of the date of this letter, you may request reimbursement of eligible grant expenditures using the Cal OES Financial Management Forms Workbook (FMFW) available at www.caloes.ca.gov. A copy of your approved subaward is enclosed for your records.

Any activities requiring additional review (e.g., Environmental Planning and Historic Preservation, Allowability Requests, procurement of Aviation or Controlled Equipment, etc.) shall not incur costs until you receive written approval for those activities.

This subaward is subject to all provisions of 2 CFR Part 200, Subpart F - Audit Requirements. Any funds received in excess of current needs, approved amounts, or those found owed as a result of a final review or audit, must be refunded to the State within 30 days upon receipt of an invoice from Cal OES.

For additional information, please contact your Cal OES Program Representative.

Homeland Security & Emergency Management Grants Processing

Enclosure

cc: Subrecipient file



**CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES
SUPPLEMENTAL GRANT SUBAWARD INFORMATION**

1. Cal OES Contact Information Section:

Governor's Office of Emergency Services
Mark S. Ghilarducci, Director
3650 Schriever Avenue
Mather, CA 95655
(916) 845-8506 phone • (916) 845-8511 fax

2. Federal Awarding Agency Section:

Federal Program Fund / ALN #	Federal Awarding Agency	Total Federal Award Amount	Total Local Assistance Amount
Emergency Management Performance Grant (EMPG) / 97.042	US Department of Homeland Security	\$27,840,216	\$15,481,623
Emergency Management Performance Grant - American Rescue Plan Act (EMPG-ARPA) / 97.042	US Department of Homeland Security	\$7,842,311	\$3,842,311
Choose an item.	Choose an item.	\$	\$
Choose an item.	Choose an item.	\$	\$
Choose an item.	Choose an item.	\$	\$

3. Project Description Section:

- Project Acronym (Please choose from drop down):
N/A
- Project Description (Please type the Project Description):

Implementation of emergency management grant to provide a system of preparedness for the protection of life and property from hazards.

4. Research & Development Section:

- Is this Subaward a Research & Development grant? Yes ☐ No ☒

(Cal OES Use Only)

Cal OES #		FIPS #	085-00000	VS#	06	Subaward #	2021-0015
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CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES GRANT SUBAWARD FACE SHEET

The California Governor's Office of Emergency Services (Cal OES) hereby makes a Grant Subaward of funds to the following:

1. **Subrecipient:** County of Santa Clara **1a. DUNS#:** 069118289
2. **Implementing Agency:** Santa Clara County Office of Emergency Management **2a. DUNS#:** 069118289
3. **Implementing Agency Address:** 55 West Younger Avenue, Suite 450 San Jose 95110-1712
(Street) (City) (Zip+4)
4. **Location of Project:** San Jose Santa Clara 95110-1712
(City) (County) (Zip+4)
5. **Disaster/Program Title:** Emergency Management Performance Grant **6. Performance Period:** July 1, 2021 **to** June 30, 2023
(Start Date) (End Date)
7. **Indirect Cost Rate:** N/A **Federally Approved ICR (if applicable):** %

Item Number	Grant Year	Fund Source	A. State	B. Federal	C. Total	D. Cash Match	E. In-Kind Match	F. Total Match	G. Total Cost
8.	2021	EMPG		\$521,180		\$521,180		\$521,180	\$1,042,360
9.								\$0	\$0
10.								\$0	\$0
11.								\$0	\$0
12.								\$0	\$0
Total	Project	Cost	\$0	\$521,180	\$521,180	\$521,180	\$0	\$521,180	\$1,042,360

13. Certification - This Grant Subaward consists of this title page, the application for the grant, which is attached and made a part hereof, and the Assurances/Certifications. I hereby certify I am vested with the authority to enter into this Grant Subaward, and have the approval of the City/County Financial Officer, City Manager, County Administrator, Governing Board Chair, or other Approving Body. The Subrecipient certifies that all funds received pursuant to this agreement will be spent exclusively on the purposes specified in the Grant Subaward. The Subrecipient accepts this Grant Subaward and agrees to administer the grant project in accordance with the Grant Subaward as well as all applicable state and federal laws, audit requirements, federal program guidelines, and Cal OES policy and program guidance. The Subrecipient further agrees that the allocation of funds may be contingent on the enactment of the State Budget.

14. CA Public Records Act - Grant applications are subject to the California Public Records Act, Government Code section 6250 et seq. Do not put any personally identifiable information or private information on this application. If you believe that any of the information you are putting on this application is exempt from the Public Records Act, please attach a statement that indicates what portions of the application and the basis for the exemption. Your statement that the information is not subject to the Public Records Act will not guarantee that the information will not be disclosed.

15. Official Authorized to Sign for Subrecipient:

Name: Jeff Smith Title: County Executive
 Payment Mailing Address: 55 West Younger Ave, Suite 450 City: San Jose Zip Code+4: 95110-1712
 Signature: [Signature] Date: 11/29/2021

16. Federal Employer ID Number: 21E905DBD1084D7... 94-6000533

(FOR Cal OES USE ONLY)
 I hereby certify upon my personal knowledge that budgeted funds are available for the period and purposes of this expenditure stated above.
Mary Rucker 12/15/2021 Heather Carlson 12/15/2021
 (Cal OES Fiscal Officer) (Date) (Cal OES Director or Designee) (Date)

ENY: 2021-22 Chapter: 21 SL: 14851
 Item: 0690-101-0890 Pgm: 0385
 FAIN#: EMF-2021-EP-00015 10/01/20 - 09/30/23
 Fund: Federal Trust AL#: 97.042
 Program: Emergency Management Performance Grant
 Match Req.: 50% on TPC
 Project No.: OES21EMPG000012 Amount: \$521,180
 SC: 2021-14851

RECEIVED

By Local and Disaster Assistance at 4:41 pm, Dec 15, 2021

RECEIVED

By YangY at 12:56 pm, Nov 30, 2021

ML# 746589

DS

*JH***21LA0037-00**

EXHIBIT B



Standard Assurances For Cal OES Federal Non-Disaster Grant Programs

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) Federal Preparedness Grants Manual;
- (d) California Supplement to the NOFO; and
- (e) Federal and State Grant Program Guidelines.

Federal Regulations

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the [Office of Management and Budget \(OMB\)](http://www.whitehouse.gov/omb/) and can be found at <http://www.whitehouse.gov/omb/>.

State and federal grant award requirements are set forth below. The Applicant hereby agrees to comply with the following:

1. Proof of Authority

The Applicant will obtain proof of authority from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body;



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

- (d) Applicant is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this application; and
- (e) Official executing this agreement is authorized by the Applicant.

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

The period of performance is specified in the Award. The Applicant is only authorized to perform allowable activities approved under the award, within the period of performance.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501- 1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.214 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals, recipients, or subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all state and federal statutes relating to non-discrimination, including:



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§ 12101- 12213), which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs;
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) The Applicant will comply with California's Fair Employment and Housing Act (FEHA) (California Government Code §§ 12940, 12945, 12945.2), as applicable. FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave, military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions;
- (m) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (n) The requirements of any other nondiscrimination statute(s) that may apply to this application.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

The Applicant will comply with state and federal environmental standards, including:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (g) Executive Order 11514 which sets forth national environmental standards;
- (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (j) The Endangered Species Act of 1973, (P.L. 93-205);
- (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Cooperation and Access to Records

All Applicants must cooperate with any compliance reviews or investigations conducted by DHS. In accordance with 2 C.F.R. § 200.337, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

10. Conflict of Interest

The Applicant will establish safeguards to prohibit the Applicant's employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment - The Applicant will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subrecipient, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$30,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

- (c) Assist the awarding agency in assuring compliance with Section 106 of the
- (d) National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and
- (e) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG) AND AMERICAN RESCUE PLAN ACT (ARPA) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

22. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

23. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publicly-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

24. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

25. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

26. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

27. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

28. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

29. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

30. Non-supplanting Requirement

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

31. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

32. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

33. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

34. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.



Standard Assurances

For Cal OES Federal Non-Disaster Grant Programs

35. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

36. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.



Standard Assurances For Cal OES Federal Non-Disaster Grant Programs

IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2021, Version 11.4, hereby incorporated by reference, which can be found at:
<https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____



Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure of Lobbying Activities,' in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Certification Regarding Lobbying

The Subrecipient, as identified below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure

Public Law (PL) 109-282 Federal Funding Accountability and Transparency Act of 2006, as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (PL 110-252), which is outlined in the Federal Emergency Management Agency, Grant Programs Directorate Information Bulletin No. 350.

As defined by the Office of Management Budget, the following are subject to FFATA reporting requirements:

1. All new federal awards of \$30,000 or more, as of August 13, 2020.
NOTE: Cal OES reports on this requirement in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS).
2. The Total Compensation and Names of the top five executive, if the Subrecipient in the preceding year received:
 - a. 80 percent or more of its annual gross revenues in Federal Awards; **and**
 - b. \$25,000,000 or more in annual gross revenues from Federal awards; **and**
 - c. The public does not have access to information about the compensation of the senior executives of the entity.

Subrecipients are required to provide the Executive compensation information in the below chart, if applicable.

Executive Name	Title	Annual Salary	Annual Dollar Value of Benefits	Total Compensation

☐ Not subject to the Executive Compensation requirement of the FFATA Financial Disclosure.



Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

2021 EMPG Project Proposal Request Form / Template



I	A.	Requestor Contact Information
	Agency	Santa Clara County Office of Emergency Management
	Name	Ivan Williams
	Position/Title	OAC Liaison/Senior Management Analyst
	Phone	408-808-7835
	Mobile Number	
	Agency Address	Office of Emergency Management 55 West Younger Avenue, Suite 450 San Jose, CA 95110
	Email	ivan.williams@oem.sccgov.org
I	B.	Project Name
EOC Technology		
TOTAL PROJECT COST (Insert the total from Funding section)		\$80,000 (scalable)
I	C.	Project Type Use the checkbox to indicate corresponding project
	☐	This project is a new Project.
	☐	This project is part of an ongoing Project.
	☒	This project is for sustainment of a previously funded Project.

II. ALIGNMENT WITH NATIONAL PREPAREDNESS GOALS by Core Capability and Mission Area

I	D.	Solution Areas				
		☐ Planning	☐ Organization	☒ Equipment	☐ Training	☐ Exercises
						
Choose ONLY one Sub Area (Sub Category) for Mission Areas above						
		☐ Community Outreach ☐ Conference ☐ Develop and Enhance Plans, Protocols and Systems	☐ Staffing ☐ Day to Day Activities/operations that support emergency management	☒ Information Technology ☐ Cyber Security Enhancement Equipment ☒ Interoperable Communications Equipment ☒ Other Authorized Equipment	☐ Staff Expenses ☐ Course Development ☐ Course Delivery and Evaluation ☐ Staff Expenses ☐ Certification / Recertification of instructors	☐ Design/Develop ☐ Conduct / Attend / Evaluate ☐ Supplies / Materials / Production Costs

I E. Core Capability and Community Lifelines - Identify each of the 12 Emergency Management Core Capabilities (or other Core Capability) this project addresses as well as the Community Lifeline(s) this project is most likely to help restore. Please check all that apply.				
☒ Planning	☒ Public Information & Warning	☒ Operational Coordination	☒ Long-Term Vulnerability Reduction	☐ Risk and Disaster Resilience Assessment
☒ Situational Assessment	☐ Community Resilience	☐ Threats and Hazard Identification	☐ Logistics and Supply Chain	☒ Mass Care Services
☐ Economic Recovery	☐ Other (please specify) _____			
Please identify the Community Lifelines this project is most likely to help stabilize:				
☐ Safety and Security	☒ Food, Water, Shelter	☒ Health and Medical	☒ Energy (Power & Fuel)	☒ Communications
☐ Transportation	☐ Hazardous Materials			

I F. Project Description/Justification - Briefly describe exactly what the project entails (including any equipment purchases or contracting that will be necessary for the project). Please also describe how the project is expected to impact (improve/sustain) the Core Capability(ies) and restore the Community Lifelines identified above.
This project enables Operational Area emergency managers to fully leverage data communication capabilities and sharing of critical information in their EOCs. Laptops and other computers support response and mitigation during emergencies and disasters via common operating picture and resource management web-based programs such as Web EOC, HSIN, COPLink, Mutualink, etc. as well as by supporting situational awareness. Eligibility of Operational Area jurisdictions for this funding is based on the following criteria: <u>Equipment criteria—Laptops/Computers</u> - Funding is primarily for replacement of existing EOC laptops/computers that are at least 4 years old. - Written justification must be provided if funding is requested for additional laptop capacity (i.e. non-replacement laptops) in the City/Town EOC. This written justification must identify the specific EOC needs the additional laptop(s) would provide for as well as specifically how the laptop will be used in the EOC during an activation. These requests will be evaluated and approved on an individual basis. - Funding is limited to a maximum of \$1,800 per computing device (including all peripherals, tax and shipping). - Grant funds cannot be used to purchase warranties, maintenance/service agreements, or software that aren't bundled/included with the laptop. - Any computing device purchased under this project must be capable of running WebEOC—e.g. able to connect to the city/town network and run the necessary browser or other software to access WebEOC. <u>Equipment Criteria—Projectors/Screens/Monitors/Displays/Printers/Laminators/Switches/Networking/Audio or Visual Communications Equipment (e.g. speakers, microphones, cameras, mixers, etc.)</u>

- Each piece of equipment under this category must be fully described including both equipment quantities and specifications (e.g. 2 50" displays), where in the EOC it will be mounted/ located (e.g. North wall) and how it will be used (e.g. to provide situational awareness, WebEOC status boards, etc.).
- Mounted equipment will require State and Federal Environmental and Historic Preservation (EHP) approval prior to purchase of equipment. Forms must be submitted as soon as possible after grant award.
- Cost estimates, including actual bids/pricing information for the equipment must be provided to the grant manager for review and approval. The overall EOC technology project budget may require prioritization of individual jurisdiction's specific technology projects.

City/Town Criteria

- The City/Town must email their intent to use EMPG funding for computing devices—along with the number and type (e.g. laptop) of devices and any required justifications—by July 15, 2021.
- Each City/Town must enter into an MOU with the County for the computers by February 28, 2022.
- Each City/Town must procure any approved laptops/computers under an existing competitive contract OR obtain bids (at least 2) in accordance with local (City/Town) and Federal procurement rules (whichever is more restrictive).

Each City/Town must procure any approved computers / equipment and submit all invoices to the County Office of Emergency Management by November 30, 2022.

I	G.	Does this project require a sole source?
	☐ Yes	If "Yes", please explain ☒ No N/A

I	H.	Installation
	-	Does this project require installation, new construction or renovation, retrofitting, or modification of existing structures?
	☒ Yes, If "Yes", please:	☒ No
	1.	Provide an explanation AND Attach a completed <u>Environmental and Historic Preservation</u> screening form (EHP) available from http://www.fema.gov/media-library/assets/documents/90195
	Specific Jurisdiction equipment may be mounted and require an EHP. Completed EHP forms will be required once a specific project that requires installation is selected.	

III. FUNDING

III	A.	Proposed funding amount
	-	Provide the proposed funding amount to be obligated from this Project towards Planning and Equipment elements. (Please check the appropriate box(es) on the left side for all that apply).
	-	Also, for each funding area selected, provide a brief narrative below describing the items or services being funded.
	ELEMENT	PROPOSED FUNDING
☐	Planning	\$
☒	Equipment	\$80,000
☐	Management & Administration	\$

☐	Training	\$
☐	Exercise	\$
TOTAL PROJECT COSTS		\$

Description of Expenditures That Will Be Used for Project Grant Match
TBD

AEL #	Equipment
	- Use this link to locate and provide the Authorized Equipment number needed for equipment approval https://www.fema.gov/authorized-equipment-list
☒ 04HW-01-INHW 04MD-03-DISP 04MD-02-PROJ	Information Technology
☐	Cyber Security Enhancement Equipment
☐	Interoperable Communications Equipment
☐	Detection Equipment
☐	CBRNE Reference Materials
☐	CBRNE Incident Response Vehicle
☐	Physical Security Enhancement Equipment
☐	Power Equipment
☐	CBRNE Logistical Support Equipment
☐ 21GN-00-OCEQ	Other Authorized Equipment: Contact grants manager prior to selected this sub-category

III	B.	Other Source(s) of funding
		- List other source(s) of funding that is being requested or utilized for this project (check the appropriate box(es) on the left side)
ELEMENT		PROPOSED FUNDING
☐	UASI	\$
☐	SHSGP	\$
☐	General Funds	\$
☐	Other Grant Funds	\$
TOTAL OTHER FUNDING		\$N/A

Other Funds:
- Explain how any other funds, such as general funds, UASI, etc., will be used to assist in implementation of this project.

PROJECT MANAGEMENT AND IMPLEMENTATION

IV A. Milestones

Identify up to 5 additional milestones, with start and end dates, which will be achieved within the performance period under the 2021 EMPG.

No start date should begin before July 1, 2021 and no end date should end after March 31, 2023.

These dates are subject to change based on notification of application approval.

No equipment may be purchased, contracts started or project costs incurred until notified by Grant Administrator that funds may be spent.

If unsure of exact dates, use Quarter timeframes

Include key steps in the procurement process—i.e. RFP issuance, Contract execution, PR issuance, delivery, etc.

MILESTONE NUMBER	MILESTONE NAME/DESCRIPTION (1,000 CHARACTER LIMIT)	START DATE (MM/DD/YYYY)OR Q1, Q2, Q3, Q4	END DATE (MM/DD/YYYY)OR Q1, Q2, Q3, Q4
1	MOU between City/Town and County in Place	As early as Dec 1, 2021	No later than Feb 28, 2022
2	Environmental Historic Preservation (EHP) Forms for FEMA Review Completed (If applicable)	As early as Nov 1, 2021	No later than May 31, 2022
3	City/Town Performance Period	As early as July 1, 2020	No later than March 31 2023
4	City/Town Procurement of Project Equipment (once grant award is made and MOU is signed)	As early as Jan 1, 2022	No later than Nov 30, 2022
5	Installation and testing of Project Equipment	As early as Jan 1, 2022	No later than Nov 30, 2022
6	City/Town submits invoice to County for reimbursement	As early as January 1, 2022	No later than Dec 31, 2022

IV B. Project Outcomes

- Describe the outcomes and benefits that will be achieved as a result of this project. The outcomes should address specific community lifelines.

EOC laptops and EOC equipment will increase the ability for first responders and emergency managers to effectively collect and provide information and data throughout the operational area and region. In addition, they enhance local emergency managers' abilities to respond to and mitigate the emergency or disaster. Laptops must meet minimum standard requirements to support WebEOC, HSIN, COPLink, and WebLink as well as other websites and software that may be needed in a disaster.

A laminator with the capacity to create large sized documents and maps provides staff with the ability to quickly create operational maps and charts when a hazard occurs. Maps and charts of relevant information, such as the location of the city's power lines, can be made in advance and prepared so that in an emergent situation they can be quickly accessed and used.

Enhanced technology in EOCs create more efficient and effective Emergency Operations Center. The equipment will be interoperable with existing communications systems, enabling live updates during hazard events. Situational awareness will be available to all EOC personnel at all times, with multiple screens in various strategic locations around the room projecting and sharing updated information for events throughout the City/Town as well as the region. Updated technology facilitates the exchange of real time data with outside agencies and provides timely communication and notification to the public when a hazard occurs.

IV C. Project Deliverables

- Describe the specific deliverables that will be produced as a result of this project.

EOC laptops for jurisdictions within the Operational Area capable of supporting and displaying WebEOC, HSIN, COPLink, and WebLink as well as the other work of an Emergency Operations Center during a disaster.

EOC displays (projector, monitor, wall maps, etc.) will be upgraded to facilitate better situational awareness and to communicate a common operating picture within the EOC as well as facilitate interoperable communication with the public and outside agencies.

New and upgraded audio and visual equipment enhances communication with entities outside the primary EOC location whether during virtual EOC operations (such as during the pandemic) or in coordination with other EOCs, Department Operations Centers (DOCs), Incident Command Posts (ICPs), or others.

EXHIBIT F

LABOR DISTRIBUTION TIME SHEET	Week Ending	First and Last Name								City/County Participating					
	1/9/22	Sample Name								SCC OEM					
WBS #												107-G107EM21			
PROJECTS	HOURS WORKED BY DAY														
	M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	TOTAL
	12/27/21	12/28/21	12/29/21	12/30/21	12/31/21	1/1/22	1/2/22	1/3/22	1/4/22	1/5/22	1/6/22	1/7/22	1/8/22	1/9/22	HOURS
A - EMPG Grant Administration															
B - EOAC Liaison															
C - CSTI Training															
D - EOC Technology															
E - ReadySCC App															
F - Preparedness Materials and Outreach															
G - CADRE Community Preparedness															
H - Emergency / Risk Communications Officer															
I - Remote Automated Weather Station (RAWS)															
Emergency Manager CERT Related Activities															
Emergency Manager PLANNING Activities															
Emergency Manager TRAINING Administration, Development and Delivery or EXERCISE Activities															
Emergency Manager OPERATIONAL READINESS Activities															
Emergency Manager COVID-19 Related Activities															
Public Risk Communication Officer/PIO Activities															
STO / Vacation / Leave															
Total Work Hours															
Employee Signature Supervisor's Signature															

EXHIBIT G
CONTRACTOR CERTIFICATION OF COMPLIANCE WITH
COVID-19 VACCINE REQUIREMENTS
(Revised January 4, 2022)

Contractor Information:

Contractor name:

Name of Contractor representative:

Contractor phone number:

Contractor email address:

Contractor Certification. On behalf of Contractor, I hereby certify that:

1. Contractor has reviewed and is in compliance with all current County requirements regarding COVID-19 vaccination applicable to contractor's employees working at County facilities, including but not limited to the requirements in the County's memorandum regarding COVID-19 Vaccine Requirement for County Personnel ("County Vaccine Policy"), the County's memorandum regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, all current State and County Health Officer orders, and any other County requirements. These memoranda and current County policies are accessible at <<https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>>. Contractor has also reviewed and is in compliance with the State of California's July 26, 2021 Public Health Order and December 22, 2021 Public Health Orders. Contractor understands that it is responsible for reviewing and maintaining compliance with all subsequent revisions or amendments to State and County orders and requirements regarding COVID-19.
2. As of the date signed below:
 - a. Contractor understands that it must confirm, and has confirmed, that all of contractor's workers (including any subcontractor workers) who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County¹ are:
 - i. Fully vaccinated against COVID-19 and, as of January 24, 2022, up-to-date on any boosters for which they are eligible as defined and required in the County Vaccine Policy; or

¹ As established in the County's Memorandum Regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, contractors performing work at closed construction sites are not required to comply with the County's vaccination requirements, but must comply with all applicable federal, state, and local public health laws, including but not limited to vaccination, testing, and masking requirements.

- ii. Have a legally sufficient and approved medical, disability, or religious exemption from vaccination that has been granted by contractor.
 - b. Contractor has verified and will continue to verify the vaccination status of all staff working on site at any County facility, and has obtained proof of vaccination from its staff in a form consistent with the California Department of Public Health's Vaccine Records Guidelines and Standards.
3. If contractor seeks to send any workers who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible, to any County facility because the contractor has granted them an exemption, contractor shall notify the County in writing by providing a list of any such workers to the COVID-19 Designee for the department that manages the facility where the contractor personnel will be working at least 96 hours in advance of any such worker arriving onsite so that the department has sufficient time to determine whether it will approve the contractor's requests that its personnel work onsite and, if approved, can ensure that the contractor has complied with all applicable COVID-19 safety requirements for unvaccinated individuals, including, where applicable, regular testing and the use of a fit-tested N95 mask.² Notice must be separately provided to each department that manages a facility where contractor seeks to assign personnel to work onsite. Regardless of exemption status, personnel who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible may not work in higher-risk settings at County facilities.³
4. If any of contractor's workers are noncompliant with vaccination or testing requirements, contractor will notify the County Department for which they are providing services immediately and will not permit those workers to go onsite at a County facility without express written permission from the County.

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² If contractor sends workers who are not fully vaccinated and, as of January 24, 2022, up-to-date on boosters for which they are eligible, it is contractor's obligation to ensure that it has any necessary authorization under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et. seq.*, and under any other laws to share this information with the County.

³ "Higher-Risk Settings" are those identified in the Order of the Health Officer of the County of Santa Clara Requiring Up-to-Date COVID-19 Vaccination of Personnel in Higher-Risk Settings, *available at*: <https://covid19.sccgov.org/december-28-2021-booster-health-order>. There are certain high-risk roles and high-risk areas that are not within higher-risk settings. Regardless of exemption status, effective no later than February 1, 2022, County personnel are not permitted to work in these high-risk roles and high-risk areas if they are not fully vaccinated and, as of January 24, 2022, up-to-date.

5. Contractor will comply with all reasonable requests by the County for documentation demonstrating the contractor's compliance with this Certification.

I verify the truth and accuracy of the statements in this Certification under penalty of perjury under the laws of the State of California.

Name of authorized representative of
Contractor

Title

Signature

Date

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO SOLID WASTE DISPOSAL CONTRACT

RECOMMENDATION(S)

Authorize the City Manager to execute the First Amendment to the Solid Waste Disposal Contract.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Maintaining Infrastructure

REPORT NARRATIVE:

The purpose of this item is to allow the City Council to consider approval of Alternate Disposal Facilities which are closer to the City of Morgan Hill than the currently solely designated Potrero Hills Landfill in Solano County.

Since 2014, Waste Solutions Group (Waste Solutions) has contracted with the cities of Morgan Hill and Gilroy to provide solid waste disposal services at John Smith Road Landfill (John Smith) for the waste collected by Recology. Recology transfers waste from the San Martin Transfer Station to John Smith, a one-way haul of 28 miles. John Smith is owned by the County of San Benito and operated under a contract between the County and Waste Solutions. Waste Solutions has informed Morgan Hill and Gilroy that efforts to modify the landfill's permit to create more disposal capacity have been delayed and that San Benito County has decided to reserve the existing John Smith disposal capacity for waste generated within that county. Effective March 30, 2022, out-of-County waste will not be accepted at John Smith for an indefinite period of time, presumably until the capacity expansion is finalized.

The Solid Waste Disposal Agreement with Waste Solutions names Potrero Hills Landfill in Solano County as the sole 'Alternate Disposal Facility' in the event that John Smith is unable to accept solid waste from the two cities. Potrero Hills Landfill is located 106 miles from the San Martin Transfer Station. Utilizing this landfill presents significant and

possibly insurmountable challenges related to transportation and potential trash pickup scheduling conflicts. Therefore, Waste Solutions has proposed that, *in lieu* of Potrero Hills Landfill, it will make arrangements for disposal at Kirby Canyon Landfill located in San Jose (11 miles from San Martin), and/or the Monterey Peninsula Landfill in Marina (38 miles from San Martin). Either or both of the suggested alternate landfill options are preferable over Potrero Hills Landfill due to the operational convenience and other benefits that come with a landfill that is closer than 106 miles away.

As of the beginning of April, the City commenced utilization of Kirby Canyon Landfill and/or Monterey Peninsula Landfill as an interim solid waste disposal site. Approval of the proposed First Amendment (Attachment 1) will formally add these two landfills to the Agreement as 'Alternative Disposal Facilities.' Recology has been closely involved in planning for this switch and supports the planned temporary shift.

COMMUNITY ENGAGEMENT:

Not Applicable. This is an administrative item and the recommended action will prevent negative impacts to solid waste collection services within the community.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the First Amendment to the Solid Waste Disposal Contract. In this case, solid waste generated by Morgan Hill would need to be hauled 106 miles to Potrero Hills Landfill, causing significant challenges related to transportation and trash pickup scheduling conflicts.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Solid Waste Disposal Contract was entered into on July 1, 2014, between Morgan Hill, Gilroy, and Waste Solutions Group of San Benito County, LLC.

FISCAL AND RESOURCE IMPACT:

Per the Solid Waste Disposal Agreement, Waste Solutions will be responsible for paying all documented additional costs resulting from the use of any Alternate Disposal Facilities, and for securing all necessary regulatory approvals needed for Contractor and/or Cities to use the Alternate Disposal Facilities. As a result, changing the disposal site will have no impact on the collection rates charged by Recology at this time.

CEQA (California Environmental Quality Act):

Not a Project.

Approval of the First Amendment is an administrative activity that will not result in direct or indirect physical changes in the environment.

FIRST AMENDMENT TO SOLID WASTE DISPOSAL AGREEMENT

THIS FIRST AMENDMENT TO SOLID WASTE DISPOSAL AGREEMENT (this "Amendment"), by and among the CITY OF GILROY, CALIFORNIA ("Gilroy"), the CITY OF MORGAN HILL, CALIFORNIA ("Morgan Hill" and, together with Gilroy, the "Cities"), and WASTE SOLUTIONS GROUP OF SAN BENITO, LLC, a Delaware limited liability company ("Company"), is entered into as of April __, 2022. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Solid Waste Disposal Agreement, dated July 1, 2014 (the "Agreement"), by and between the Cities and Company.

RECITALS

WHEREAS, the Cities and Company entered into the Agreement, whereby the Cities agreed to dispose of Waste at the Landfill, and Company agreed to accept same for disposal, upon the terms and conditions set forth in the Agreement; and

WHEREAS, the parties desire to amend the Agreement to designate additional landfills as Alternate Disposal Facilities.

AMENDMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE TO AMEND THE AGREEMENT, AS FOLLOWS:

1. **Incorporation of Recitals.** The foregoing recitals are agreed to, accepted and incorporated herein by reference.

2. **Amendment to Section 1.6 (Disposal Facilities).** Section 1.6 (Disposal Facilities) of the Agreement is hereby amended and restated in its entirety to read as follows:

"1.6. "Disposal Facilities" means the Landfill or, if the Landfill is incapable of accepting Acceptable Waste for any reason, any of the following solid waste disposal facilities: (i) the Potrero Hills Landfill in Solano County, California; (ii) the Kirby Canyon Landfill in Morgan Hill, California; or (iii) the Monterey Peninsula Landfill in Marina California (each an "Alternate Disposal Facility")."

3. **Counterparts.** This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

4. **Ratification.** All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term "Agreement" in this Amendment and in the original Agreement shall include the terms contained in this Amendment.

5. **Conflicting Provisions.** In the event of any conflict between the original terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.

6. **Authorization.** Each party executing this Amendment represents and warrants that it is duly authorized to cause this Amendment to be executed and delivered.

*[Remainder of page intentionally left blank;
Signature page immediately follows.]*

IN WITNESS WHEREOF, the parties execute this First Amendment to Solid Waste Disposal Agreement as of the date first written above.

CITIES:

CITY OF GILROY, CALIFORNIA

By: _____

Name:

Title:

CITY OF MORGAN HILL, CALIFORNIA

By: _____

Name:

Title:

COMPANY:

WASTE SOLUTIONS GROUP OF SAN BENITO, LLC, a Delaware limited liability company

By: _____

Name: Paul Nelson

Title: Divisional Vice President

EXHIBIT 1

2014 SOLID WASTE DISPOSAL AGREEMENT

SOLID WASTE DISPOSAL AGREEMENT

This **SOLID WASTE DISPOSAL AGREEMENT** (this "Agreement") is made and entered as of July 1, 2014 (the "Effective Date"), by and among the CITY OF GILROY, CALIFORNIA ("Gilroy"), the CITY OF MORGAN HILL, CALIFORNIA ("Morgan Hill") and, together with Gilroy, the "Cities", and WASTE SOLUTIONS GROUP OF SAN BENITO, LLC, a Delaware limited liability company ("Company"). Cities and Company are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties."

RECITALS

WHEREAS, Contractor (as defined below) is the franchised solid waste collector for all Waste (as defined below) generated within the incorporated city limits of Cities;

WHEREAS, Contractor owns and operates the San Martin Transfer Station, located at 14070 Llagas Ave., San Martin, California (the "Contractor Transfer Station"), which besides accepting franchised solid waste from Cities, accepts self-hauled public Waste from residents of Cities;

WHEREAS, Company operates the John Smith Road Landfill (the "Landfill") and desires to become a provider of solid waste disposal services for Cities;

WHEREAS, Cities conducted a request for proposals for the long-term disposal of the Waste generated within the incorporated city limits of Cities;

WHEREAS, in response to the proposal submitted by Company, Cities have awarded to Company an exclusive, long-term contract for the disposal of the Waste generated within the incorporated city limits of Cities; and

WHEREAS, Cities have directed Contractor to haul all Waste collected within the incorporated city limits of Cities delivered to the Contractor Transfer Station to the Landfill.

AGREEMENT

NOW, THEREFORE, for and in consideration of the respective covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

1. Definitions.

1.1 "Acceptable Waste" or "Waste" means "Solid Waste", as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, § 40191 and regulations promulgated thereunder, and includes residential waste, commercial waste, non-recycled construction and demolition waste, residuals from any material recovery, recycling or other waste processing facility, and any other combination of these wastes, and all other acceptable Class III and Class II Wastes; provided, however, the following materials are excluded from the definition of Acceptable Waste: (a) Special Waste, (b) Hazardous Waste, (c) Class I Wastes, and (d)

materials recovered from Acceptable Waste for recycling or other beneficial use and which are not subsequently disposed of in a landfill.

1.2 "Contractor" means Cities' currently-contracted Waste hauler, Recology South Valley, a California corporation, any successor in interest thereto or any other party Cities subsequently designate as their franchised solid waste collector during the Term.

1.3 "CPI-U" means the Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U): San Francisco-Oakland-San Jose.

1.4 "Designated Waste" means "Designated Waste", as defined by State of California under §13173 of Division 7 of the California Water Code.

1.5 "Disposal," "Dispose" or "Disposed" means the delivery of Acceptable Waste to the Landfill.

1.6 "Disposal Facilities" means the Landfill or, if the Landfill is incapable of accepting Acceptable Waste for any reason, the Potrero Hills Landfill in Solano County, California (the "Alternate Disposal Facility").

1.7 "Free Liquid" means liquid in excess of twenty-five (25) gallons per contained load of waste which readily separates from the solid portions of such waste on delivery to the Landfill under ambient temperature and pressure (*i.e.*, liquid in the waste load that causes the waste to fail the "paint filter test" prescribed by the Environmental Protection Agency in its "Method 9095").

1.8 "Hazardous Waste" means any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under applicable law, including, but not limited to: (a) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281, inclusive; (b) the Toxic Substance Control Act (15 U.S.C. § 2601, et seq.); (c) the regulations contained in 40 CFR Parts 761-766 inclusive; (d) California Health and Safety Code § 25117; (e) the California Public Resources Code, § 40141; and (f) all successor laws and regulations as may be amended from time to time.

1.9 "Special Waste" means and includes, without limitation, Designated Waste and any non-Designated Waste that requires special handling or safety procedures at the Landfill during either off loading or burial. Examples of Special Waste include, but are not limited to: fly ashes, petroleum contaminated soils, waste water treatment plant sludge, field plastic, truck load quantities of box springs and mattresses, toner cartridges, appliances, wood stumps over two (2) feet in diameter, large tree limbs and poles.

1.10 "Special Waste Application" means the form used by Company to gather information about the proposed Special Waste to be delivered to the Landfill. In order to be "approved" the Special Waste Application must be executed by Company's Environmental Manager, or authorized representative, who thereby approves the waste as Acceptable Waste.

1.11 "Ton" means a standard or short ton and shall be deemed to be equal to two thousand (2,000) pounds.

1.12 "Unacceptable Waste" means any and all waste:

- (a) the delivery of which at the Landfill would violate any applicable local, state, or federal laws, regulations, or orders, or conditions of the Landfill's operating permit;
- (b) which constitutes Hazardous Waste;
- (c) which constitutes Special Waste without an approved Special Waste Application;
- (d) which in Company's sole and reasonable discretion Company considers to be unacceptable; or
- (e) containing Free Liquid without an approved Special Waste Application.

2. Term.

2.1 Initial Term. This Agreement shall commence on the Effective Date and shall continue for an approximate period of fifteen (15) years ending June 30, 2030 (the "Initial Term"), unless terminated earlier pursuant to Section 18.

2.2 Extension Term. Cities shall have the sole right to extend the Initial Term by no less than two (2) additional five (5)-year periods (*i.e.*, until June 30, 2035, and again until June 30, 2040) (each an "Extension Term" and, together with the Initial Term, the "Term"). Cities shall notify Company of its intent to extend the Initial Term and, if applicable, the first Extension Term no later than one (1) year prior to the end of the Initial Term. After the second Extension Term, any further extensions of the Term shall be only by written agreement of the Parties.

2.3 Rejection of Extension Term. Notwithstanding anything to the contrary in this Section 2, Company shall have the right to reject Cities' exercise of either Extension Term pursuant to Section 2.2 in the event of any of the following: (i) Company's costs to expand the Landfill (including Company's operating costs) are higher than the documented costs of constructing new landfill airspace as of the Effective Date by a percentage amount greater than the cumulative CPI adjustment calculated pursuant to Section 6.1 from the Effective Date through the date Cities seek to exercise the applicable Extension Term; (ii) the Landfill can no longer accept Acceptable Waste due to permitted Disposal capacity limitations; or (iii) Company determines in its sole but reasonable discretion that Company is reasonably likely to breach its contractual obligation to San Benito County to maintain at least fifteen (15) years of airspace at the Landfill at all times.

3. Exclusive Tonnage Commitment; Waste Type and Source. In consideration of the preferred Base Rate set forth in Section 5, Cities shall direct Contractor to deliver to the Landfill One Hundred Percent (100%) of the Acceptable Waste generated as a result of the City's collection Franchise Agreements. Cities warrant that Contractor shall deliver to the Landfill only Acceptable Waste, except that Contractor may also deliver Special Waste in accordance with the provisions described in an approved Special Waste Application.

4. Disposal.

4.1 Disposal of Acceptable Waste. Company will accept delivery and Dispose of all properly identified Acceptable Waste from Contractor and Cities from time to time during the term of, and according to, this Agreement; provided, however, that such waste is Acceptable Waste that Company is capable of accepting and properly Disposing of at the Landfill.

4.2 Inability to Accept Acceptable Waste. Except as provided in Sections 10 and 19.1, in the event that Company fails to accept some or all Acceptable Waste delivered by Contractor pursuant to this Agreement, regardless of the reason for such failure, the following shall occur:

4.2.1 Immediately upon Company's temporary inability to accept Acceptable Waste delivered by Contractor pursuant to this Agreement, Company shall make whatever arrangements are necessary for the use of the Alternate Disposal Facility and shall direct Contractor to use the Alternate Disposal Facility.

4.2.2 Company shall be responsible for paying all documented additional costs resulting from the use of the Alternate Disposal Facility under Section 4.2.1, including any increase in costs for Disposal services, whether paid on a per-Ton, lump-sum or other basis, and any increase in transport expenses due to increased transport time, distance, or method incurred by Contractor and/or Cities. Company is responsible for securing all necessary regulatory approvals needed for Contractor and/or Cities to use the Alternate Disposal Facility under Section 4.2.1.

4.3 Landfill Disposal Area Site Expansions. Company has represented to Cities that it will, and Company shall, demonstrate reasonable efforts to seek approvals for expansion of the current permitted Landfill disposal area and capacity.

5. Base Rate. During the Term, the tipping fee per Ton (the "Base Rate") for the Disposal of Acceptable Waste at the Disposal Facilities shall be as follows:

<u>Term Year</u>	<u>Proprietary Base Rate Per Ton</u>	<u>Current Taxes Per Ton</u>	<u>Total Base Rate</u>
Year 1 (Effective Date – December 31, 2014)	\$17.10 per Ton	\$3.90	\$21.00
Year 2 (January 1, 2015 – December 31, 2015).....	\$17.60 per Ton	\$3.90	\$21.50
Years 3 – 15 (January 1, 2016 – December 31, 2029).....	As adjusted pursuant to the provisions of <u>Section 6.1</u> .	As adjusted from time to time pursuant to <u>Section 6.2</u> .	As adjusted pursuant to the provisions of <u>Sections 6.1 and 6.2</u> .

The Base Rate for any acceptable Special Waste shall be quoted on a case-by-case basis.

6. Base Rate Adjustments.

6.1 CPI Adjustment. Beginning on January 1, 2016, and on each anniversary thereof through the end of the Term, Company's Proprietary Base Rate shall automatically increase by an amount equal to Eighty Percent (80%) of the increase in the CPI-U for the prior twelve (12)-month period. Any adjustment based on the CPI-U shall be calculated by establishing the percentage difference in CPI-U using October as compared to the immediately preceding October during the term of this Agreement.

6.2 Changes in Law. The Parties acknowledge that solid waste Disposal is a highly regulated and highly taxed enterprise and that taxing authorities frequently raise revenue by imposing taxes on waste Disposal operations and businesses. The Parties acknowledge that the Base Rate already includes costs associated with complying with all existing governmental regulations applicable to the Disposal Facilities including, but not limited to, methane control regulations and the costs of closure and post-closure monitoring. If state, federal or local government or governmental agencies increase any taxes (or impose new taxes), surcharges or other fees (collectively, the "Taxes") or adopt or modify any compliance and regulatory requirements ("Change in Law") that result in increased operating costs to Company or require Company to make or capital expenditures, Company shall have the right to pass the Taxes and increased operating costs resulting from Changes in Law through to Cities in the form of increased Base Rates. To the extent that the Taxes, Change in Law and other increased operational costs (the "Increased Costs") can be factored into the per ton Base Rate applicable to Cities under this Agreement, the Parties hereto shall use good faith efforts to negotiate an adjusted Base Rate that includes Cities' equitable share of the Increased Costs.

7. Turnaround Time of Contractor's Vehicles. Company shall use commercially reasonable efforts to ensure that the average time required for a vehicles delivering Acceptable Waste pursuant to this Agreement ("Contractor Vehicles") to unload and exit the Landfill is thirty (30) minutes commencing from the time the Contractor Vehicles queue in the Landfill's inbound scale line to the time said vehicles exit over the Landfill's exit scale (the "Average Turnaround Time"); provided, however, that Company shall not be responsible for (and shall not be in breach of the provisions of this Section 7) for delays not caused by or under the control of Company, including, without limitation, vehicle breakdown, driver negligence, lack of cooperation, or a vehicle driver parking to use Company's restrooms or telephone. Company shall manage the Acceptable Waste receiving and unloading area in order to facilitate access and unloading by Contractor. Company shall make available to Contractor a functional tipper at all times. The Average Turnaround Time shall be calculated on a thirty (30) calendar day basis as the sum of the vehicle turnaround time for each load of Acceptable Waste delivered by Contractor pursuant to this Agreement during the month divided by the number of loads received during the thirty (30) calendar day period. Company shall report the Average Turnaround Time on a regular monthly basis to Cities. If this Average Turnaround Time exceeds thirty (30) minutes for two consecutive months or more, Company shall meet with Contractor and Cities, determine the cause of such exceedance(s), and reach an acceptable solution with Contractor and Cities to reduce the Average Turnaround Time to an acceptable level.

8. Tender of Delivery. Cities shall direct Contractor to tender Disposal of the Acceptable Waste to Company at those times and places, in those quantities, and in the manner specified in this Agreement or Special Waste approvals. Cities shall direct Contractor to, at the same time and place, tender to Company those completed documents, shipping papers or manifests as are required, for lawful transfer of the Acceptable Waste to Company, by valid and applicable statutes, ordinances, orders, rules or regulations of the federal, state or local governments. Tender of Disposal shall be considered non-conforming if not in accordance with this Section and/or the specifications of and Special Waste approvals.

9. Right To Inspect Waste Material. Company shall have the right, but not the obligation, to inspect, sample, analyze or test any tendered waste material before accepting such material. If the waste material or tender of delivery fails in the opinion of Company, to conform to this Agreement, Company may: (a) reject all waste material tendered; (b) conditionally accept any or all waste material tendered; or (c) accept any unit or units of waste material and reject the rest.

10. Right to Reject Unacceptable Waste. Company may conditionally accept Contractor's and Cities' waste offloaded at the Landfill or the applicable Disposal Facility but may revoke its acceptance of any load of waste as Unacceptable Waste at any time it is determined to be Unacceptable Waste (such rejected waste will hereinafter be referred to as "Rejected Waste"). Upon Company's good faith and timely rejection or revocation of acceptance of waste, that waste shall become Rejected Waste and Company's rejection shall operate to re-vest title to the Rejected Waste in Contractor and Cities. As a condition to its effective rejection of Waste or revocation of its acceptance of any Waste, Company will:

10.1 Promptly notify Contractor and Cities, specifying the basis for its rejection of such Waste;

10.2 Segregate and properly containerize the Rejected Waste at the Landfill or the applicable Disposal Facility; and

10.3 Allow Contractor and Cities a reasonable opportunity (not to exceed seventy-two (72) hours from the time of notice of rejection) to reclaim and remove the Rejected Waste from the Landfill or the applicable Disposal Facility.

If Contractor or Cities fail to reclaim and remove the Rejected Waste from the Landfill or the applicable Disposal Facility (or arrange for the removal of the Rejected Waste from the Landfill or the applicable Disposal Facility), Company may make arrangements for the off-site storage, transportation and Disposal of the Rejected Waste at a facility permitted to accept the Rejected Waste. In such event, Cities shall promptly reimburse Company for the reasonable costs incurred by Company in testing, clean-up, handling, loading, preparing, transporting, storing, Disposing and either returning the Rejected Waste to Contractor and/or Cities or transporting and Disposing of the Rejected Waste at a facility permitted to accept the Rejected Waste.

11. Acceptance of Waste; Passage of Title. Company will be vested with title to all Acceptable Waste accepted by the Landfill hereunder on removal of the Acceptable Waste from the Transfer Station; provided, however, that the Landfill or the applicable Disposal Facility is

legally permitted to accept such waste and acceptance of such waste is not rejected or revoked under Section 10. Otherwise, title to waste delivered by Contractor shall be in, and all risks and responsibilities shall be borne by, Contractor and Cities.

12. Hours of Operation. Company shall accept all Acceptable Waste at the Landfill during normal business hours of: Monday – Friday, 8:00 a.m. – 4:00 p.m.; Saturday – Sunday, 9:00 a.m. – 3:00 p.m.; subject to Company's right to change the hours of operation, which it may do at any time and from time to time upon giving Contractor and Cities reasonable advance notice of any such change in hours or capacity limitations, which reasonable advance notice typically would be no less than ninety (90) days in advance of such change. The Landfill will be closed on the following holidays: New Years Day, Easter Sunday, Thanksgiving Day and Christmas Day. Company shall give Contractor and Cities reasonable advance notice of any change to the holiday schedule.

13. Contractor Landfill Activities. Contractor's activities at the Landfill shall be subject to the applicable provisions of Company's permits and safety and operating procedures made known to Contractor and Cities by Company. Cities shall direct Contractor to exercise due care and diligence in the movement and offloading of Waste from its collection vehicles while in the Landfill and shall be responsible for all acts or omissions of its employees, subcontractors and their agents and employees in connection with their activities at the Landfill. Cities shall direct Contractor to, at its sole cost, protect its own employees and agents, employees of Company and other persons from risk of death, injury or bodily harm arising out of or in any way connected with Contractor's activities at the Landfill. Cities shall indemnify, defend and hold Company harmless for all acts or omissions of Contractor, Contractor's employees, agents and independent contractors and their respective agents and employees in connection with their activities at the Landfill.

14. Intoxicating Liquors and Drugs. Cities shall direct Contractor to establish and keep in place rules prohibiting its employees, agents or independent contractors from taking any controlled substances or intoxicating liquors to the Landfill. Cities shall direct Contractor to not permit its employees, agents or independent contractors to bring, anywhere on the Landfill, any controlled substances or intoxicating liquors. If any employee, agent or independent contractor of Contractor shall, in the opinion of Company, be under the influence of alcohol or controlled substances while at the Landfill, Company shall require such person to leave the Landfill immediately.

15. Invoicing, Dispute of Invoiced Amounts. Company will invoice Contractor twice per month in arrears, using applicable Base Rates for all Tons of Waste accepted for Disposal at the Landfill in the then immediately preceding invoice period. Cities shall direct Contractor to pay undisputed invoiced amounts within thirty (30) days of the date of its receipt of the invoice. If Cities or Contractor dispute an invoiced amount, they shall do so within the fifteen (15) day period following receipt of the invoice containing the disputed amount and give notice to Company setting forth therein the basis for the disputed amount with sufficient specificity to allow Company to investigate the disputed amount. If Cities and Contractor fail to dispute any invoiced amount within fifteen (15) days of receiving the invoice, Cities and Contractor shall be conclusively deemed to have waived their right to dispute the amount. Tonnage amounts of Waste shall be determined using Company's weigh scales at the Landfill or the applicable

Disposal Facilities and shall be taken from certified weight tags issued by Company or the owner/operator of the applicable Disposal Facilities.

16. Insurance. The Parties shall obtain and maintain during the term of this Agreement commercial general liability insurance to protect against any claim or demand concerning bodily injury, death or property damage and business auto insurance for claims arising out of such Party's operations. Each Party hereto agrees to provide the other Party with thirty (30) days' written notice of any nonrenewal, cancellation, decrease or material change in the insurance coverage. Each Party, on request, shall furnish the other Party with a certificate of insurance showing the insurers and the coverages in effect, all of which shall be satisfactory to the receiving party in its sole reasonable judgment. The type and limits of liability of all insurance required herein shall be as set forth in Exhibit A, which is attached hereto and incorporated herein. Insurance provided pursuant to this Section 16 shall be written on an occurrence basis or claims made basis. All policies, except workers' compensation, shall name the other Party as an additional insured. Limits specified in Exhibit A may be provided through any combination of primary, umbrella/excess, deductibles or self-insurance policies.

17. Indemnity.

17.1 By Cities. Cities shall fully and forever defend, indemnify and hold harmless Company and its successors, assigns, officers, directors and agents against and in respect of any and all costs, losses, damages, deficiencies, expenses or liabilities (including court costs and reasonable attorneys' fees and expenses), threatened, suffered or paid, to the extent resulting from or arising out of: (i) any breach of any representation or warranty made by Cities in this Agreement or in any certificate, document or instrument given pursuant hereto or in connection herewith; (ii) any failure by Cities or Contractor to perform or otherwise fulfill or comply with any undertaking, agreement or obligation on the part of Cities or Contractor to be performed, fulfilled or complied with hereunder, including the payment obligations set forth in Section 15; (iii) any claim by any third party of ownership of or any rights or interests in any Waste accepted by Company for Disposal at the Landfill or the applicable Disposal Facility; (iv) any bodily injury, personal injury or property damage arising out of or in any way related to Cities or Contractor's acts or omissions; and (v) any violation by Cities or Contractor of any federal, state, county or local law or regulation pertaining to Cities or Contractor's operations. This obligation shall survive the expiration or earlier termination of this Agreement.

17.2 By Company. Company shall fully and forever defend, indemnify and hold harmless Cities and their respective successors, assigns, officers, directors, employees and agents against and in respect of any and all costs, losses, damages, deficiencies, expenses or liabilities (including court costs and reasonable attorneys' fees and expenses), threatened, suffered or paid, to the extent resulting from or arising out of: (i) any breach of any representation or warranty made by Company in this Agreement or in any certificate, document or instrument given pursuant hereto or in connection herewith; (ii) any failure by Company to perform or otherwise fulfill or comply with any undertaking, agreement or obligation on the part of Company to be performed, fulfilled or complied with hereunder; (iii) any bodily injury, personal injury or property damage arising out of or in any way related to Company's acts or omissions; and (iv) any violation by Company of any federal, state, county or local law or regulation pertaining to

Company's operations. This obligation shall survive the expiration or earlier termination of this Agreement.

18. Default, Termination.

18.1 Default, Event of Default. The terms "event of default" and "default" shall mean either Party's failure to observe, comply with or perform (as the case may be) any covenant, condition or obligation on its part to be performed, complied with or observed, as provided in this Agreement.

18.2 Failure to Pay Amounts Due. Cities shall be in default hereof if it fails to timely pay any invoiced amount in accordance with the terms set forth in Section 15 above. Effective upon not less than five (5) days' notice to Cities, Company may suspend Cities and Contractor's access to the Landfill until such time as Cities have paid Company the undisputed invoiced amount. Notwithstanding any suspension of Cities and Contractor's access to the Landfill by Company, Cities shall remain obligated to comply with all provisions of this Agreement, including, without limitation, Section 3.

18.3 Default; Right to Cure. A Party shall be in default hereof if it breaches or fails to perform any non-monetary covenant, condition, agreement representation or warranty contained in this Agreement and fails to cure such breach or failure for fifteen (15) days after the other Party has given the breaching Party written default notice; provided, however, that, if such failure or breach is of such nature as to not be curable within said fifteen (15)-day period, an event of default shall occur if the breaching or failing Party shall have failed to commence curative action within the prescribed fifteen (15)-day period and prosecuted the same with due diligence to completion thereafter but in no event beyond forty-five (45) days after receipt of the default notice.

18.4 Remedy upon Default. In any such event of default, the non-breaching Party may: (i) terminate this Agreement; and (ii) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right of all damage or loss suffered as a result of such breach or default. In the event either Party waives default by the other Party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

19. Miscellaneous.

19.1 Force Majeure. Except with respect to the payment of money owed for Disposal services hereunder, the performance of this Agreement by either Party may be suspended and the obligations hereunder excused or extended in the event, and during the period, that such performance is prevented by a cause or causes beyond that Party's reasonable control but only to the extent such cause or causes were unforeseeable or not the result of that Party's negligent or intentional act or failure to act when there was a duty to act. Matters beyond the control of either Party include, but are not limited to, injunctions or restraining orders making the performance of this Agreement impossible, and governmental or judicial action or inaction, revoking, suspending, or preventing issuance of any licenses or permits required for operation of the Landfill, in the case of Company, or Contractor's collection, transfer and transportation facilities

or equipment, or adversely affecting the interstate or international flow of Waste (a "Force Majeure Event"). In the event of disruption of services due to a Force Majeure Event, Company shall, and Cities shall direct Contractor to, make every reasonable effort to reopen their respective facilities as soon as practicable after the cessation of the cause of suspension of services, and will take all reasonable steps to overcome the cause of cessation of services.

19.2 Compliance with Laws. During the Term, Company will comply with all present and future federal, state and local statutes and ordinances regulating the Landfill, and with all other rules and regulations and amendments thereto imposed by all federal and state regulatory agencies having jurisdiction over the operation of the Landfill. Cities warrant that they and Contractor are, and at all times during the Term will be, in compliance with all state, Federal, county and other local laws, permits and licenses concerning the collection, handling and transportation of waste covered by this Agreement. Cities shall direct Contractor to at all times maintain in effect all licenses and permits for the generation of Acceptable Waste covered by this Agreement required by any and all agencies that may have jurisdiction over Contractor's operations.

19.3 Independent Contractor. Each Party is and shall perform their respective obligations under this Agreement as independent contractors and, as such, shall have and maintain complete control over all of their respective employees, agents and their conduct of operations. Neither Party, nor anyone employed by it, shall be, represent, act, purport to act or be deemed to be the agent, representative or employee of the other Party.

19.4 Entire Agreement. This Agreement represents the entire understanding and agreement between the Parties relating to the Disposal of the Waste materials described herein and supersedes any and all prior agreements, whether written or oral, that may exist between the Parties regarding same and supersedes any and all terms and conditions which may exist in any form with any Party regarding Contractor's and Cities' Disposal of Waste at the Landfill.

19.5 Notices. All notices or other communications to be given hereunder shall be in writing and shall be deemed given when mailed by Registered or Certified United States mail, or by nationally recognized overnight courier with proof of delivery:

To City of Gilroy:

City of Gilroy
7351 Rosanna Street
Gilroy, CA 95029
Attention: City Administrator
Phone: 408-846-0400

To City of Morgan Hill:

City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037
Attention: City Manager
Phone: 408-779-7271

To Company:

Waste Solutions Group Of San Benito, LLC
Attn: Division Vice President
2650 John Smith Road
Hollister, CA 95023
Phone: (831) 637-4515
Fax: (831) 635-9621

With Copy to:

Waste Connections, Inc.
Attn: Legal Department
3 Waterway Square Place
Suite 110
The Woodlands, Texas 77380
Phone: (832) 442-2200
Fax: (832) 442-2290

Any changes of address by either Party affecting the notice provision of this Agreement shall be by notice given to the other in the same manner as specified above.

19.6 Attorney's Fees. In the event of any dispute between the Parties with respect to the subject matter hereof, the prevailing Party shall recover its costs and expenses including reasonable attorney fees, witness fees (including experts), and discovery costs, all of which shall be included in and as a part of the judgment or award rendered in such litigation or arbitration.

19.7 Specific Services. This is an Agreement for the performance of specific services described herein. Under no circumstances or conditions shall the operations of the Landfill by Company, in accordance with this Agreement, be deemed a public function, nor has Contractor or Cities acquired an interest, ownership or otherwise in the real or personal property or improvements or fixtures at the Landfill by virtue of this Agreement.

19.8 Amendment. No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by the Parties.

19.9 Applicable Law. The terms and conditions of this Agreement shall be construed in accordance with the laws of the State of California, without regard for the state's conflict of laws rules.

19.10 Section Headings. The section headings in this Agreement are inserted for convenience only and shall not be considered as a part of this Agreement or as a limitation or enlargement of the scope or meaning of the particular sections to which they refer, and shall not affect the interpretation of any provisions of this Agreement.

19.11 Severability. In the event that any provisions of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implant and give effect to the intentions of the Parties as reflected herein, and other terms of this Agreement, as so amended, modified, supplemented or otherwise affected by such actions, shall remain in full force and effect.

19.12 Further Assurances. Each Party shall use all reasonable efforts to provide such information, execute and deliver any instruments and documents and take such action as may reasonably be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those contemplated in this Agreement to give full effect to this Agreement and to carry out the intent of this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]

IN WITNESS WHEREOF, the Parties have executed this Solid Waste Disposal Agreement by their duly authorized agents, as of the date first above written.

CITIES:

CITY OF GILROY, CALIFORNIA

By: [Signature]
Name: Thomas J. Haglund
Title: City Administrator

ATTEST:

By: [Signature]
Name: Shawna Freels
Title: City Clerk

APPROVED AS TO FORM:

By: [Signature]
Name: Linda Callon
Title: City Attorney

Council Approved: 6/14/14

CITY OF MORGAN HILL, CALIFORNIA

By: [Signature]
Name: Steve Rymer
Title: City Manager

ATTEST:

By: [Signature]
Name: Michelle Wilson
Title: Deputy City Clerk

APPROVED AS TO FORM:

for By: [Signature]
Name: Renee Gurza
Title: City Attorney

Council Approved: 06/18/14

COMPANY:

WASTE SOLUTIONS GROUP OF SAN BENITO, LLC, a Delaware limited liability company

By: [Signature]
Name: Paul Nelson
Title: Divisional Vice President

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

RECOMMENDATION(S)

Authorize the City Manager to execute the First Amendment to the Agreement for Countywide Household Hazardous Waste Collection Program.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional Initiatives

REPORT NARRATIVE:

The purpose of this City Council report is to request authorization for the City Manager to execute the First Amendment to the Agreement for the Countywide Household Hazardous Waste (HHW) Collection Program (Attachment 1).

For well over 20 years, Santa Clara County has collected a fee to offset each jurisdiction's solid waste management and HHW management expenses. The Countywide AB 939 Fee is collected at waste transfer and disposal facilities by facility operators and has two components. The first component is a Program Fee of \$1.50 per ton which is charged to assist in funding integrated waste management activities. The second component is the HHW Fee of \$2.60 per ton which is held by the County and used to directly offset HHW Collection Program costs associated with the use of the program by each jurisdiction's residents. The HHW Collection Program provides City residents with the opportunity to participate in several HHW collection events each month, held at a permanent collection center in San Martin. If HHW Fee revenues exceed a jurisdiction's HHW Collection Program costs at the end of the fiscal year, the remaining funds are transferred to the jurisdictions to be used to promote or support HHW management costs.

In 2021, the Council authorized the City Manager to execute the most recent three-year Countywide HHW Collection Program Agreement (Attachment 2). Because this agreement includes the HHW collection schedule for the year and an annual augmentation amount elected by the City, it requires

an annual amendment. The sole purpose of this item is to approve the City's execution of the First Amendment to the Countywide HHW Collection Program Agreement with the FY 2022-23 schedule and updated augmentation amount. The Countywide HHW Collection Program Agreement includes a base assumption that 4% of each jurisdiction's households will participate in the program annually. It is estimated that Morgan Hill resident participation in the HHW Collection Program will be more in the range of 10% for FY 2022-23, therefore an augmentation to the 4% base assumption must be specified. For 2022-23, an augmentation of \$55,639 is recommended to ensure that all Morgan Hill residents desiring to participate in the program will be allowed to do so.

COMMUNITY ENGAGEMENT:

Inform

The recommended action is an extension of a long-standing program with no changes proposed, so no engagement activities were conducted prior to presenting the amendment for Council consideration. Should the First Amendment be approved, staff will continue to inform the public about the availability of the County program.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the First Amendment and direct staff to further evaluate the provision of these services and the recommended augmentation amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The current Countywide HHW Collection Program Agreement was approved by the City Council on June 17, 2021 (Attachment 2). The Council has historically acted annually on either an agreement or an amendment to the agreement for over 20 years.

FISCAL AND RESOURCE IMPACT:

The Discretionary Fund is the balance of AB 939 HHW Fees collected after covering the cost of providing HHW Collection Program services to 4% of Morgan Hill households. The augmentation is the amount the city agrees to pay to the county for participation beyond 4%. For FY 2022-23, the recommended augmentation amount for Morgan Hill is \$55,639 to cover the cost of anticipated program participation beyond the 4%. Based on the estimated program cost and the disposal tonnage, the Discretionary Fund in FY 2022-23 will be approximately \$18,015. Under the Countywide HHW Collection Program Agreement, the County may use the Discretionary Fund to offset the cost of the HHW Collection Program. Therefore, Morgan Hill can expect an actual contribution to the HHW Collection Program of up to \$37,624 (\$55,639 - \$18,015) for FY 2022-23.

For the past approximately 15 years, the City's AB 939 Discretionary Fund has been enough to cover the augmentation amount. Based on this trend, no funds were budgeted to cover the contribution that will be required to support full resident participation in the HHW Collection Program in FY 2022-23. Since accrued costs for the FY 2022-23 HHW Collection Program will be billed in FY 2023-24, the City will request an updated estimate on the 2022-23 HHW Collection Program costs in early 2023, and add that estimate to the 2023-24 budget during mid-cycle adjustments. It should be noted

that the augmentation amount uses the highest possible cost under the Countywide HHW Collection Program Agreement, and actuals at the end of the year are typically lower.

CEQA (California Environmental Quality Act):

Categorical Exemption

Approval of the First Amendment to the Agreement for the Countywide HHW Collection Program is categorically exempt from environmental review under Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the CEQA guidelines.

FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on June 17, 2021, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY must augment funding provided under this Agreement to cover the cost of a minimum participation level of 4% of CITY households; CITY may also elect to augment funding to provide additional services to increase CITY participation beyond the 4% minimum participation level. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive Officer or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$55,000 to the Countywide HHW Program during Fiscal Year 2022 for the purpose of attaining or increasing CITY household participation above the 4% minimum participation level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated, where applicable, at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to offset the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$ 55,639 to the Countywide HHW Program during Fiscal Year 2023 for the purpose of attaining or increasing CITY household participation above the 4% minimum participation level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated, where applicable, at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to offset the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

- 2. Attachment C-1 “HHW Schedule For Collection Events for Fiscal Year 2022/2023” attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this First Amendment to the AGREEMENT on the last date shown below:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

Signature:

Signature:

Jeffery V. Smith
County Executive

Christina Turner
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

Willie Nguyen
Deputy County Counsel

Date: _____

**ATTACHMENT C-1: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2022-2023***

HHW SCHEDULE FOR FISCAL YEAR 2022/2023*					
2022/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Fri	1	San Jose	Permanent	
	Saturday	2	No Event	No Event	4th OF JULY WEEK
	Wed,Thurs,Fri,Sat	6,7,8,9	San Jose	Permanent	
	Fri,Sat	8,9	San Martin	Permanent	
	Thurs,Fri	14,15	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	20,21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
August	Wed,Thurs,Fri,Sat	3,4,5,6	San Jose	Permanent	
	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri	11,12	San Jose	Permanent	
	Saturday	13	Mountain View	Temporary	TBD
	Wed,Thurs,Fri,Sat	17,18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Wed	31	San Jose	Permanent	
September	Thurs,Fri	1,2	San Jose	Permanent	
	Saturday	3	No Event	No Event	LABOR DAY WEEKEND
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Fri,Sat	9,10	San Martin	Permanent	
	Wed,Thurs,Fri	14,15,16	San Jose	Permanent	
	Saturday	17	Santa Clara	Temporary	TBD
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs,Fri	29,30	San Jose	Permanent	
October	Sat	1	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	5,6,7,8	San Jose	Permanent	
	Fri,Sat	7,8	San Martin	Permanent	
	Thurs,Fri	13,14	San Jose	Permanent	
	Saturday	15	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	19,20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
November	Wed,Thurs,Fri,Sat	2,3,4,5	San Jose	Permanent	
	Fri, Sat	4,5	San Martin	Permanent	
	Wed, Thurs	9,10	San Jose	Permanent	
	Fri	11	No Event	No Event	VETERANS DAY
	Saturday	12	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	16,17,18,19	San Jose	Permanent	
	Wednesday	23	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	No Event	No Event	THANKSGIVING
	Wed	30	San Jose	Permanent	
December	Thurs,Fri,Sat	1,2,3,	San Jose	Permanent	
	Fri, Sat	2,3	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	7,8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Wed,Thurs	21,22	San Jose	Permanent	
	Fri,Sat	23,24	No Event	No Event	CHRISTMAS
	Wed,Thurs	28,29	San Jose	Permanent	
	Fri,Sat	30,31	No Event	No Event	NEW YEAR'S DAY
*SUBJECT TO CHANGE					

**ATTACHMENT C-1: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2022-2023* (Continued)**

HHW SCHEDULE FOR FISCAL YEAR 2022/2023-continued*					
2023/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Fri, Sat	6,7	San Martin	Permanent	
	Wed,Thurs,Fri	11,12,13	San Jose	Permanent	
	Saturday	14	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	18,19,20,21	San Jose	Permanent	
	Thurs,Fri	26,27	San Jose	Permanent	
February	Saturday	28	Santa Clara	Temporary	TBD
	Wed,Thurs,Fri,Sat	1,2,3,4	San Jose	Permanent	
	Fri, Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	15,16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
March	Wed,Thurs,Fri,Sat	1,2,3,4	San Jose	Permanent	
	Fri, Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	15,16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Wed,Thurs,Fri	29,30,31	San Jose	Permanent	
April	Sat	1	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	5,6,7,8	San Jose	Permanent	
	Fri, Sat	7,8	San Martin	Permanent	
	Thurs,Fri	13,14	San Jose	Permanent	
	Saturday	15	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri	19,20,21	San Jose	Permanent	
May	Saturday	22	Los Altos	Temporary	TBD
	Thurs,Fri	27,28	San Jose	Permanent	
	Saturday	29	Santa Clara	Temporary	TBD
	Wed,Thurs,Fri,Sat	3,4,5,6	San Jose	Permanent	
	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
June	Wed,Thurs,Fri,Sat	17,18,19,20	San Jose	Permanent	
	Wed,Thurs,Fri	24,25,26	San Jose	Permanent	
	Saturday	27	No Event	No Event	MEMORIAL DAY WEEKEND
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri	8,9	San Jose	Permanent	
	Saturday	10	Milpitas	Temporary	TBD
	Wed,Thurs,Fri,Sat	14,15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Wed,Thurs,Fri	28,29,30	San Jose	Permanent	
*SUBJECT TO CHANGE					

**AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM**

This Agreement is made by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) on the 17~~th~~8/2021 day of June 2021.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and cities and towns participating in the Countywide program will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, CITY desires to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, CITY desires to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste; and

WHEREAS, CITY desires to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2022 through FY 2024 (July 1, 2021 – June 30, 2024); and

WHEREAS, CITY desires to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in its jurisdiction; and

WHEREAS, CITY desires to participate in the Countywide Household Hazardous Waste Collection Program to meet these objectives; and

WHEREAS, pursuant to Public Resources Code Section 41901, the County Board of Supervisors has approved the collection of a \$4.10 per ton Countywide AB939 Implementation fee, including a \$2.60 per ton Household Hazardous Waste Fee (AB939 HHW Fee), for FY 2022 through FY 2024 (July 1, 2021 – June 30, 2024) on all wastes landfilled or incinerated within the County, received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County, collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County, or removed from any location in the county by any person or business for disposal or incineration outside the County; and

WHEREAS, the AB939 HHW Fee is allocated to the Countywide Household Hazardous Waste Program and participating jurisdictions to fund HHW program costs in accordance with the terms of the Countywide AB939 Implementation Fee Agreement; and

WHEREAS, CITY desires for COUNTY to utilize CITY's share of the AB939 HHW Fee to provide HHW services for CITY residents.

NOW THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM with the County.

2. PROGRAM FUNDING SOURCE

HHW Program services are mandated by State law, Public Resources Code Section 41500 et seq. State law authorizes cities and counties to impose fees in amounts sufficient to support planning and implementation of integrated waste management programs, including HHW elements. The AB939 HHW Fee, of \$2.60 per ton, imposed by the County as part of the AB939 Implementation Fee and collected and distributed in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services. CITY agrees that COUNTY may utilize CITY's share of the AB939 HHW fee to provide HHW Program services in accordance with the terms and conditions of this Agreement.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San José Facility Use Surcharge will be apportioned based on CITY residents' participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José, CA 95133.
- C. Variable Cost Per Car is the cost associated with labor, waste disposal, transportation, and other services provided to residents at the County HHW Collection Facilities and at temporary HHW collection events. The Variable Cost Per Car is based on the estimated cost of providing a base level service to 4% of

households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."

- D. Available Discretionary Funding is allocated based on tonnage generated per participating jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in Public Resources Code Section 41904.

The projected AB939 HHW Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Estimated HHW Fixed Program Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs are allocated to CITY at the conclusion of each fiscal year based on CITY's proportional share of the County population and will not exceed \$3.75 per household for Fiscal Years 2022, 2023, and 2024. Fixed Program Costs may include, but are not limited to, up to eleven (11) County HHW Program staff members, facility lease costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations. The Abandoned Waste Disposal Cost is based on the cost to the County to dispose of abandoned waste allocated among participating jurisdictions based on their proportional share of the County population and shall not exceed \$0.05 per household. Projected Abandoned Waste Disposal Costs to the CITY based on a charge of \$.05 per household are set forth in Attachment A, attached hereto and incorporated herein.

For the purposes of this Agreement, "Nonprofit Charitable Reuser Organization" is defined in accordance with Public Resources Code Section 41904 as follows: a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSÉ FACILITY USE SURCHARGE

The total San José Facility Use Surcharge for CITY will be based on CITY residents' proportional participation at the County Household Hazardous Waste Collection Facility located

at 1608 Las Plumas Avenue, San José. Estimated San José Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein. The San José Facility Use Surcharge will vary depending on facility usage but will not exceed \$8.29 per car for Fiscal Years 2022, 2023, and 2024.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$58.20 per participating resident car for Fiscal Years 2022, 2023 and 2024. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs and San José Facility Use Surcharge are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in the CITY, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. COUNTY has discretion to determine appropriate uses of Available Discretionary Funding in accordance with the terms and conditions in this Agreement, and to apply the funding toward those uses.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The County of Santa Clara Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE and this Agreement. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall produce and make available to the public an HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing HHW promotion communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of HHW promotion materials produced by the CITY; and,
- Conducting and supporting outreach and publicity to attain the goal of 4% of households in the CITY participating in the CoHHW Program.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

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11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ◆ *San Martin, 13055 Murphy Avenue, San Martin, CA 95046*
- ◆ *San José, 1608 Las Plumas, San José, CA 95133*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG) in accordance with California Health and Safety Code Section 25218.3, as amended from time to time. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. These services to businesses located within the CITY will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. The CITY may choose to pay for services for CESQG's within the City of San José and will notify the COUNTY in writing with 30-day advance notice in order to exercise this option. If the CITY exercises this option, the COUNTY will invoice the CITY for all costs associated with CSQG's within the CITY. If CITY has available Discretionary Funding, COUNTY may use this funding to pay for CESQG costs. For purposes of this Agreement, CESQG has the meaning provided by Health and Safety Code Section 25218.1.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

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B) NONPROFIT CHARITABLE REUSER

In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of the CITY or any other participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to those materials that qualify as Hazardous Waste under Health and Safety Code Section 25218.1, as amended from time to time. These materials include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY must augment funding provided under this Agreement to cover the cost of a minimum participation level of 4% of CITY households; CITY may also elect to augment funding to provide additional services to increase CITY participation beyond the 4% minimum participation level. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive Officer or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ 55,000 to the Countywide HHW Program during Fiscal Year 2022 for the purpose of attaining or increasing CITY household participation above the 4% minimum participation level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated, where applicable, at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to offset the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2022 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this Agreement, COUNTY may seek outside funding sources for services that would supplement existing HHW services such as permanent collection sites, equipment, retail take-back collection and operational funding. If outside funding is obtained, the CoHHW Program will, at COUNTY's discretion, proceed with development of additional programs using that outside funding without drawing on CITY's funding provided under this Agreement.

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20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CITY authorizes the CoHHW Program to apply for lead agency grants, including but not limited to Used Oil Payment Program grants, from the California Department of Resources Recycling and Recovery (CalRecycle), on behalf of participating jurisdictions. The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude the COUNTY or a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply for the grant opportunity.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions, including the CITY, and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

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23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15 of each year. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead 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 by 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, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of 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.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY, at minimum, for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2021 to June 30, 2024, or until all revenue from the last quarter's AB939 fee payments have expended and/or distributed, whichever is later.

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29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of Morgan Hill

City Representative Christina Turner

Representative's Title City Manager

City Address 17575 Peak Ave.

Morgan Hill, CA 95037

Santa Clara County

Director

Consumer and Environmental Protection Agency

1553 Berger Drive

San José, California 95112

34. 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.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM on the dates as stated below:

Date: 6/17/2021

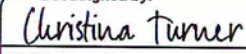
COUNTY OF SANTA CLARA

DocuSigned by:

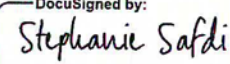
21E905DBD1084D7...
JEFFREY V. SMITH
County Executive

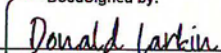
Date: 4/28/2021

"CITY"

DocuSigned by:

CITY/TOWN OF Morgan Hill
Title City Manager
A municipal corporation

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:

STEPHANIE SAFDI
Deputy County Counsel

DocuSigned by:

DON LARKIN
City Attorney

Attachments:

- A Projected Fiscal Years 2022, 2023, and 2024 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2022, 2023, and 2024
- C HHW Schedule of Collection Events for Fiscal Year 2022
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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ATTACHMENT A: PROJECTED FISCAL YEARS 2022-2024 ANNUAL HHW FEE FUNDING ALLOCATION BY JURISDICTION

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$3.75 per HH	SJ Facility \$8.29 Surcharge	Variable Cost \$58.20 per Car	Abandoned Waste Disposal Cost \$.05 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	18,158	726	40,970	\$ 106,521	\$ 68,093	\$ 7,162	\$ 42,272	\$ 908	\$ (11,913)	\$ 45,525	1,268	1,221
Cupertino	21,050	842	41,603	\$ 108,168	\$ 78,938	\$ 4,242	\$ 49,004	\$ 1,053	\$ (25,068)	\$ 36,963	1,034	723
Gilroy	16,676	667	53,681	\$ 139,571	\$ 62,535	\$ 1,086	\$ 38,822	\$ 834	\$ 36,295	\$ 23,027	1,038	185
Los Altos	11,677	467	17,678	\$ 45,963	\$ 43,789	\$ 4,188	\$ 27,184	\$ 584	\$ (29,781)	\$ 90,803	1,451	714
Los Altos Hills	3,180	127	9,303	\$ 24,188	\$ 11,925	\$ 958	\$ 7,403	\$ 159	\$ 3,743	\$ 4,413	259	183
Los Gatos	13,637	545	25,338	\$ 65,878	\$ 51,139	\$ 6,784	\$ 31,747	\$ 682	\$ (24,474)	\$ 66,018	1,216	1,157
Milpitas	22,553	902	100,225	\$ 260,586	\$ 84,574	\$ 5,247	\$ 52,503	\$ 1,128	\$ 117,135	\$ 24,851	1,303	895
Monte Sereno	1,383	55	1,278	\$ 3,323	\$ 5,186	\$ 789	\$ 3,220	\$ 69	\$ (5,941)	\$ 11,138	139	135
Morgan Hill	15,350	614	43,759	\$ 113,774	\$ 57,563	\$ 2,252	\$ 35,735	\$ 768	\$ 17,456	\$ 78,579	1,881	384
Mountain View	36,727	1,469	77,033	\$ 200,285	\$ 137,726	\$ 4,700	\$ 85,500	\$ 1,836	\$ (29,478)	\$ 39,356	1,628	802
Palo Alto	29,298	0	63,437	\$ 164,936		\$ -	\$ -	\$ 1,465	\$ 163,471			
San Jose	336,507	13,460	810,331	\$ 2,106,860	\$ 1,261,901	\$ 114,172	\$ 783,388	\$ 16,826	\$ (69,427)	\$ 476,507	20,026	19,470
Santa Clara	48,975	1,959	160,175	\$ 416,455	\$ 183,656	\$ 9,178	\$ 114,014	\$ 2,449	\$ 107,157	\$ 121,604	3,920	1,585
Saratoga	11,301	452	19,996	\$ 51,990	\$ 42,379	\$ 4,458	\$ 26,309	\$ 565	\$ (21,720)	\$ 45,244	831	760
Sunnyvale	60,273	2,411	116,128	\$ 301,932	\$ 226,024	\$ 6,717	\$ 140,316	\$ 3,014	\$ (74,138)	\$ 152,321	3,672	1,145
Unincorporated	18,558	742	38,112	\$ 99,092	\$ 69,593	\$ 4,640	\$ 43,203	\$ 928	\$ (19,271)	\$ 57,932	1,677	791
Total	665,303	25,440	1,619,047	\$ 4,209,522	\$ 2,385,019	\$ 176,572	\$ 1,480,620	\$ 33,265	\$ 134,047	\$ 1,274,282	41,345	30,110

Notes: Number of HH and Disposal tonnage are based on FY2019-2020 actuals. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2018-2019 actual participation.

**ATTACHMENT B: ESTIMATED ANNUAL HHW PROGRAM FIXED COSTS
FOR FISCAL YEARS 2022, 2023, AND 2024**

FIXED COST		
Staff Salary and Benefits		\$1,568,216
County Admin Overhead		\$421,899
County Counsel		\$13,650
Phones and Communications		\$10,605
Facilities Lease Costs	San Jose	\$176,572
Vehicle Costs		\$34,125
Office Supplies and postage		\$1,916
Maintenance, Software		\$115,500
HHW Hotline		\$50,000
Garbage & Utilities		\$36,488
Membership & Dues		\$15,750
Training & Conference		\$5,250
Safety Wear		\$21,840
Printing		\$13,583
Other Services & Supplies		\$56,175
ESTIMATED ANNUAL TOTAL		\$2,541,568

ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION EVENTS FOR FISCAL YEAR 2021-2022*

2021/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Thurs,Fri	1,2	San Jose	Permanent	
	Saturday	3	No Event	No Event	4th OF JULY WEEK
	Wed,Thurs,Fri,Sat	7,8,9,10	San Jose	Permanent	
	Fri,Sat	9,10	San Martin	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	TBD
August	Wed,Thurs,Fri,Sat	21,22,23,24	San Jose	Permanent	
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	4,5,6,7	San Jose	Permanent	
	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Saturday	14	Mountain View	Temporary	TBD
September	Wed,Thurs,Fri,Sat	18,19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
	Wed,Thurs,Fri	1,2,3	San Jose	Permanent	
	Saturday	4	No Event	No Event	LABOR DAY WEEKEND
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Fri,Sat	10,11	San Martin	Permanent	
October	Wed,Thurs,Fri,Sat	15,16,17,18	San Jose	Permanent	
	Saturday	18	Santa Clara	Temporary	TBD
	Wed,Thurs,Fri,Sat	22,23,24,25	San Jose	Permanent	
	Thursday	30	San Jose	Permanent	
	Fri,Sat	1,2	San Jose	Permanent	
	Fri, Sat	1,2	San Martin	Permanent	
November	Wed,Thurs,Fri,Sat	6,7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	20,21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	3,4,5,6	San Jose	Permanent	
December	Fri, Sat	5,6	San Martin	Permanent	
	Fri,Sat	12,13	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	17,18,19,20	San Jose	Permanent	
	Tuesday	23	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	No Event	No Event	THANKSGIVING
	Wed,Thurs,Fri,Sat	1,2,3,4	San Jose	Permanent	
December	Fri, Sat	3,4	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	8,9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Tues,Wed,Thurs	21,22,23	San Jose	Permanent	
	Fri,Sat	24,25	No Event	No Event	CHRISTMAS
	Tues,Wed,Thurs	28,29,30	San Jose	Permanent	
	Friday	31	No Event	No Event	NEW YEAR's DAY

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2021-2022* (Continued)**

2022/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
2022/Jan	Saturday	1	No Event	No Event	NEW YEAR's DAY
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Fri, Sat	7,8	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	12,13,14,15	San Jose	Permanent	
	Saturday	15	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	19,20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
	Saturday	29	Santa Clara	Temporary	TBD
February	Wed,Thurs,Fri,Sat	2,3,4,5	San Jose	Permanent	
	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	16,17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
March	Wed,Thurs,Fri,Sat	2,3,4,5	San Jose	Permanent	
	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	16,17,18,19	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	23,24,25,26	San Jose	Permanent	
April	Fri,Sat	1,2	San Jose	Permanent	
	Fri, Sat	1,2	San Martin	Permanent	
	Wed,Thurs,Fri,Sat	6,7,8,9	San Jose	Permanent	
	Saturday	9	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	TBD
	Wed,Thurs,Fri,Sat	20,21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
	Saturday	30	Santa Clara	Temporary	TBD
May	Wed,Thurs,Fri,Sat	4,5,6,7	San Jose	Permanent	
	Fri, Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Wed,Thurs,Fri,Sat	18,19,20,21	San Jose	Permanent	
	Thurs,Fri	26,27	San Jose	Permanent	
	Saturday	28	No Event	No Event	MEMORIAL DAY WEEKEND
June	Wed,Thurs,Fri,Sat	1,2,3,4	San Jose	Permanent	
	Fri, Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Wed,Thurs	15,16	San Jose	Permanent	
	Friday	17	No Event	No Event	JUNETEENTH DAY
	Saturday	18	San Jose	Permanent	
	Saturday	25	Milpitas	Temporary	TBD
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Wed,Thurs	29,30	San Jose	Permanent	
*SUBJECT TO CHANGE					

ATTACHMENT D:

COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. PURPOSE

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification:

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection,

transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the City responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

Emergency Planning Contacts and Personnel

Primary County Contact: County of Santa Clara
Consumer and Environmental Protection Agency
Recycling and Waste Reduction Division
Household Hazardous Waste Program
ATTN: Hazardous Materials Program Manager
(408)-918-1967

For Non-Emergency after-hours, contact County Communications at: (408) 977-3220

Responsibility: Coordinate and establish proper collection and disposal methods for household hazardous waste. Assess the need for HHW and CESQG services in consultation with the City and other operations.

Cal OES Public Safety Communications Main Office
601 & 630 Sequoia Pacific Boulevard
Sacramento, CA 95811
(916) 657-9494

Cal OES
3650 Schriever Avenue
Mather, CA 95655-4203
(916) 845-8510

CHEMTREC Emergency number, (800) 424-9300
Non-emergency (800) 262-8200

Chemtrec is a public service established by the Chemical Manufacturers Association. The Center was developed as a resource for obtaining immediate emergency response information to mitigate accidental chemical releases, and as a means for emergency responders to obtain technical assistance from chemical industry product safety specialists, emergency response coordinators, toxicologists, physicians, and other industry experts to safely mitigate incidents involving chemicals.

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2D (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

City of Morgan Hill**Contract Checklist**Date: 4/23/21

Contract # _____

FPPC Required *(completed by CA)*

NO

____ Yes ____ No

DocuSigned by:
Donald Larkin
45E6F0273EA2484...Project Name: Agreement for Countywide Household Hazardous Waste Collection ProgramContractor's Name: Santa Clara CountyProject Manager: Anthony EuloDepartment: Community Services - Environmental ServicesContract Term:Start Date/Executed: July 1, 2021End Date/Completed: June 30, 2024Insurance Attached: ☐ YES ☒ NO☒ **\$60,000 or less authorizes City Manager approval**☒ **Attach Memo Explaining Services**☐ **Provide funding source code _____ (ex. 010.2410.42231)**☐ **\$60,000 or more requires City Council approval (Attach approved staff report).**☐ **\$10,000 or less Department Director Approval (attach memo explaining services)****TYPE OF DOCUMENT**☐ Amendment to Agreement – Original Contract # _____☐ Consultant Services Agreement (Standard)☐ Maintenance Services Agreement☐ BMR Resale Agreement☐ Construction or Public Bid Agreement☐ Informal Bid Contract☐ Lease☐ Subdivision Improvement Agreement☐ Development Agreement☒ Other: Agreement for Countywide Household Hazardous Waste Collection Program**CONTRACTOR'S INSURANCE****To be completed by the Risk Manager:**

Required? ____ Yes ____ No

Reviewed by: _____

Date: _____

Are counterpart signatures required ☒ Yes ☐ No

Certificate Of Completion

Envelope Id: 9C1529DD4A654637B4B231942FFBE5C5

Status: Completed

Subject: Please DocuSign: Countywide HHW Program Agreement FY2022_2024

Source Envelope:

Document Pages: 27

Signatures: 3

Envelope Originator:

Certificate Pages: 5

Initials: 0

City Clerk's Office

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17575 Peak Ave

EnvelopeId Stamping: Enabled

Morgan Hill, CA 95037

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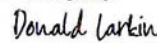
Signer Events

Donald Larkin

donald.larkin@morganhill.ca.gov

City Attorney

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:

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Signature Adoption: Pre-selected Style

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Timestamp

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Viewed: 4/26/2021 10:34:41 AM

Signed: 4/26/2021 10:35:02 AM

Electronic Record and Signature Disclosure:

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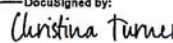
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Christina Turner

christina.turner@morganhill.ca.gov

City Manager

Security Level: Email, Account Authentication
(None)

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Signature Adoption: Pre-selected Style

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Sent: 4/26/2021 10:35:05 AM

Viewed: 4/28/2021 4:48:11 AM

Signed: 4/28/2021 4:48:48 AM

Electronic Record and Signature Disclosure:

Accepted: 4/28/2021 4:48:11 AM

ID: 60a3fa96-21a1-4648-8ac2-67525add51a0

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Chris Ghione

chris.ghione@morganhill.ca.gov

Public Services Director

Security Level: Email, Account Authentication
(None)**COPIED**

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Carbon Copy Events**Status****Timestamp**

Accepted: 4/29/2021 8:00:56 AM
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Kim Mancera
kim.mancera@morganhill.ca.gov
Municipal Services Assistant
City of Morgan Hill
Security Level: Email, Account Authentication
(None)

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Andi Borowski
andi.borowski@morganhill.ca.gov
Municipal Services Assistant
Security Level: Email, Account Authentication
(None)

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Viewed: 4/29/2021 2:00:59 PM

Electronic Record and Signature Disclosure:
Accepted: 3/25/2021 2:21:51 PM
ID: b8cb49a7-f222-4a7d-96e0-2bacc45e523b

Anthony Eulo
anthing.eulo@morganhill.ca.gov
Security Level: Email, Account Authentication
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Signing Complete	Security Checked	4/28/2021 4:48:48 AM
Completed	Security Checked	4/28/2021 4:48:55 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO GILROY STAFF SERVICES AGREEMENT

RECOMMENDATION(S)

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

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional Initiatives

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider an amendment to the City's staff services agreement with the City of Gilroy that would add a full-time benefited Environmental Services Technician to the Stormwater Program (see Attachment 1). The Technician would be shared between the two cities. This Second Amendment also updates the agreement to include revised bill rates for Environmental Services Division staff plus related expenses, and minor text updates including revisions to the Terms for Staff Services.

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

expressed an interest in paying 50 percent of a full-time benefited Environmental Services Technician starting in fiscal year 2022-23.

COMMUNITY ENGAGEMENT:

Not Applicable.

This is an administrative item and the recommended action does not impact services provided within the community.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the Second Amendment to the Staff Services Agreement with Gilroy. In this case, the City of Morgan Hill would seek to continue employment of a part-time temporary Environmental Services Technician to support the increasing needs of the Stormwater Program. However, the City would be unable to provide sufficient staff services for Gilroy to keep up with the increasing compliance needs of their Stormwater Program.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 16, 2015, the City entered into an agreement (Agreement) to provide staff services for the implementation of stormwater permitting requirements and environmental services through June 30, 2019. On May 15, 2019, the City approved the First Amendment to the Agreement to extend the term of the Agreement for another five years through June 30, 2024.

FISCAL AND RESOURCE IMPACT:

As indicated in Exhibit B of the Second Amendment to the Agreement, payments from the City of Gilroy to the City of Morgan Hill for staff services are estimated to range from \$187,097 to \$194,663 annually, over the next two years of the remaining term of the Agreement after being amended with increased costs to cover the proposed Environmental Services Technician. These funds will be used to pay 50 percent of the full costs of the Environmental Programs Coordinator, 50 percent of the full costs of the proposed Environmental Services Technician, and 12 percent of the full costs of the Environmental Services Administrator.

The remaining 50 percent of the costs for the proposed Environmental Services Technician will be partially funded by fees including the Post Construction Requirement Fee (PCR Fee) and the Stormwater Pollution Prevention Program (SWPPP) Construction Inspection Intake and Review Fee. The position will also be funded through transfers from Water (650) and Wastewater (640).

The proposed budget for FY 2022-23 and FY 2023-24 will include the Gilroy reimbursement revenue within the General Fund (010). The PCR Fee will go into Stormwater (232) and the SWPPP Construction Inspection Intake and Review Fee will go into Development Services (206). The Environmental Services Technician will only be hired if the agreement with Gilroy for the increased service is finalized. No budget amendments are needed at this time. Completing work for the City of Gilroy is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

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

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

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

RECITALS

The following recitals are a substantive part of this Agreement:

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

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"Section 3. STATEMENT OF COSTS.

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

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

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

"Section 7.0 TERMINATION

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

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

"Section 16.0 WAIVER

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

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

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

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

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

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

GILROY

APPROVED AS TO FORM:

CITY OF GILROY,
a municipal corporation

Andy Faber
City Attorney

Jimmy Forbis
City Administrator

ATTEST:

Thai Pham
City Clerk

MORGAN HILL

APPROVED AS TO FORM:

CITY OF MORGAN HILL,
a municipal corporation

Donald Larkin
City Attorney

Christina Turner
City Manager

ATTEST:

Michelle Bigelow, City Clerk

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

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

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

**EXHIBIT B
COST ESTIMATE**

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
 Total Half Time Staff	 \$26,200	 \$65,500	 \$70,762	 \$76,454	 \$82,609
 Management Staff (12% FTE)	 \$27,504	 \$28,355	 \$29,206	 \$30,082	 \$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
 Total Management	 \$28,241	 \$29,114	 \$29,987	 \$30,887	 \$31,814
 Total	 \$54,441	 \$94,614	 \$100,750	 \$107,341	 \$114,423
	19-20	20-21	21-22	22-23	23-24
Staff (50% FTE)	\$86,032	\$93,044	\$100,627	\$155,100	\$161,500
Indirect Service Charges	\$2,304	\$2,492	\$2,695	\$2,914	\$3,152
Training	\$500	\$500	\$500	\$1,000	\$1,000
Cell Phone	\$0	\$0	\$0	\$0	\$0
Mileage Reimbursement	\$250	\$250	\$250	\$250	\$250
Field Work Supplies/PPE				\$400	\$400
 Total Half Time Staff	 \$89,086	 \$96,285	 \$104,071	 \$159,664	 \$166,302
 Management Staff (12% FTE)	 \$31,914	 \$32,871	 \$33,857	 \$26,500	 \$27,400
Indirect Service Charges	\$854	\$880	\$906	\$933	\$961
 Total Management	 \$32,768	 \$33,751	 \$34,764	 \$27,433	 \$28,361
 Total	 \$121,854	 \$130,036	 \$138,835	 \$187,097	 \$194,663

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

Exhibit 1

127-04-15-014

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

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

RECITALS

The following recitals are a substantive part of this Agreement:

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

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"Section 2. **TERM.**

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

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

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

GILROY shall reimburse MORGAN HILL for all costs incurred by MORGAN HILL pursuant to this AGREEMENT, which may include, but are not limited to, direct costs for labor and benefits and training and travel expenses. The estimated costs to MORGAN HILL of the resources provided by MORGAN HILL to GILROY pursuant to this AGREEMENT are shown in EXHIBIT "B," which is attached hereto. These estimates are for budgetary purposes only and are not intended to limit the parties' obligations under this AGREEMENT. MORGAN HILL shall use all funds paid to MORGAN HILL by GILROY pursuant to this AGREEMENT solely for providing staff services to GILROY. The contribution of GILROY to MORGAN HILL under this Agreement shall not exceed \$54,441 for FY 2014/2015; \$94,614 for FY 2015/2016; \$100,750 for FY 2016/2017.

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

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

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

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

GILROY

APPROVED AS TO FORM:

CITY OF GILROY, a municipal corporation


for Andy Faber
City Attorney


Gabriel Gonzalez
City Administrator

ATTEST:


for Shawna Freels
City Clerk

MORGAN HILL

APPROVED AS TO FORM:

CITY OF MORGAN HILL,
a municipal corporation


for Donald Larkin
City Attorney


Christina Turner
City Manager

**EXHIBIT B
COST ESTIMATE**

	14-15*	15-16	16-17	17-18	18-19
Staff (50% FTE)	\$25,154	\$62,886	\$68,011	\$73,554	\$79,549
Indirect Service Charges	\$674	\$1,684	\$1,821	\$1,970	\$2,130
Training	\$200	\$500	\$500	\$500	\$500
Cell Phone	\$72	\$180	\$180	\$180	\$180
Mileage Reimbursement	\$100	\$250	\$250	\$250	\$250
Total Half Time Staff	\$26,200	\$65,500	\$70,762	\$76,454	\$82,609
Management Staff (12% FTE)	\$27,504	\$28,355	\$29,206	\$30,082	\$30,984
Indirect Service Charges	\$736	\$759	\$782	\$805	\$829
Total Management	\$28,241	\$29,114	\$29,987	\$30,887	\$31,814
Total	\$54,441	\$94,614	\$100,750	\$107,341	\$114,423
	19-20	20-21	21-22	22-23	23-24
Staff (50% FTE)	\$86,032	\$93,044	\$100,627	\$108,828	\$117,697
Indirect Service Charges	\$2,304	\$2,492	\$2,695	\$2,914	\$3,152
Training	\$500	\$500	\$500	\$500	\$500
Cell Phone	\$0	\$0	\$0	\$0	\$0
Mileage Reimbursement	\$250	\$250	\$250	\$250	\$250
Total Half Time Staff	\$89,086	\$96,285	\$104,071	\$112,492	\$121,599
Management Staff (12% FTE)	\$31,914	\$32,871	\$33,857	\$34,873	\$35,919
Indirect Service Charges	\$854	\$880	\$906	\$933	\$961
Total Management	\$32,768	\$33,751	\$34,764	\$35,807	\$36,881
Total	\$121,854	\$130,036	\$138,835	\$148,299	\$158,480

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

**EXHIBIT B
COST ESTIMATE**

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

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

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

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

RECITALS

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

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

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

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

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

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

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

SECTION 1. PURPOSE; DELEGATION.

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

SECTION 2. TERM.

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

SECTION 3. STATEMENT OF COSTS.

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

SECTION 4. PAYMENT FOR SERVICES.

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

SECTION 5. INDEMNIFICATION.

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

SECTION 6. RECORDS.

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

SECTION 7. TERMINATION.

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

SECTION 8. AMENDMENTS.

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

SECTION 9. NONDISCRIMINATION.

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

SECTION 10. ASSIGNABILITY.

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

SECTION 11. NOTICES.

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

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

SECTION 12. GOVERNING LAW.

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

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

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

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

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

[illegible]

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

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

GILROY

APPROVED AS TO FORM:

CITY OF GILROY,
a municipal corporation

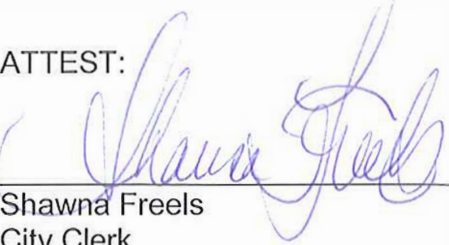


Linda Callon
City Attorney



Thomas J. Haglund
City Administrator

ATTEST:

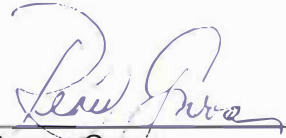


Shawna Freels
City Clerk

MORGAN HILL

APPROVED AS TO FORM:

CITY OF MORGAN HILL,
a municipal corporation



Renee Gurza
City Attorney



Steve Ryme
City Manager

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

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

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

**EXHIBIT B
COST ESTIMATE**

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

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

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Mario Jimenez, Associate Engineer

APPROVED BY: City Manager

APPROVE FINAL MAP FOR APPLE TREE - TRACT NO. 10523 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with 18755 OLD MONTEREY LLC, a California Limited Liability Company; and
3. Authorize the recordation of the Final 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:

Apple Tree – Tract 10523 is a six (6) lot residential subdivision on a 1.13 Acre site located on the Southwest corner of Old Monterey Road and Mustard Avenue (see attached Site Map).

The Developer, 18755 OLD MONTEREY LLC, has completed all the conditions specified by the Planning Commission in the approval of the project's Tentative Map on June 11, 2019, and the Council's approval of the project's Design Review Permit on October 8, 2019. 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 Map.

The Developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Final Map. The Final

Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council approve the Final 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 11, 2019, the Planning Commission approved the project's Tentative Map. Residents within a 300 feet radius were informed of the Planning Commission's intent to approve the Tentative Map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over Tentative Map requirements.

On October 8, 2019, Planning staff presented the project's Design Review permit request to the City Council. In addition, residents within a 300 feet radius were informed of the City Council's intent to approve the Design Review Permit for the project, in which another public hearing was held.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the Developer has met the requirements of the Tentative Map conditions approved by the Planning Commission to file for a Final Map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

June 11, 2019 – Planning Commission adopted Resolution No. 19-06, approving the Tentative Map for the project and Resolution No. 19-07 recommending approval of the Development Agreement (DA2018-0001) to the City Council.

September 18, 2019 – City Council adopted Ord. No. 2303, approving the Development Agreement (DA2018-001)

August 4, 2021 – City Council adopted Ord. No. 2324, approving the amendments to the Development Agreement (DA2018-0001)

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

The project is Categorical Exempt from CEQA and meets the criteria for class 15332 – In-Fill Development exemption. A CEQA Categorical Exemption Memorandum has been prepared and adopted for the project.

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 CAMPOLI DRIVE, MUSTARD AVENUE AND OLD MONTEREY ROAD, 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 DESIGNATED AS "PUBLIC SERVICE EASEMENT" (P.S.E.), ON THE WITHIN MAP.

WE HEREBY RESERVE FOR THE EXCLUSIVE USE OF THE OWNERS OF IMMEDIATELY ADJACENT LOTS, 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.). THE OWNERS OF EACH LOT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THAT PORTION OF SAID EASEMENT THAT LIES WITHIN THE BOUNDS OF THEIR RESPECTIVE LOTS.

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 CONSISTENT WITH THE PURPOSES OF THE STREET OR EASEMENT.

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:

18755 Old Monterey LLC, a California Limited Liability Company

By: [Signature]
Its: MANGER
Date: 3/2/2022

Lender: Technology Credit Union

Authorized Signer: [Signature]

Signature: HANNA BUI

PLANNING COMMISSION STATEMENT

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED ON 6.11.2019 BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL, CALIFORNIA, BY RESOLUTION NUMBER 19 - 06 APPLICATION NUMBER SD 2618 - 0002

[Signature]
JENNIFER CARMAN
SECRETARY OF THE PLANNING COMMISSION

March 1, 2022
DATE

TRACT NO. 10523

BEING A PORTION OF LOTS 1 AND 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH NO. 3", FILED FOR RECORD ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS AT PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS.

LYING WITHIN THE
CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
MARCH 2022

NOTES

- 1.) THE DISTINCTIVE BOUNDARY LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE BOUNDARY IS 1.253 ACRES.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL REPORT WAS PREPARED BY SILICON VALLEY SOIL ENGINEERING ON JUNE 27, 2019 AND RECORDED BY SAID COMPANY AS FILE NO. SV1790
- 5.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNERS/OWNER.

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 MARCH 2, 2022 before me, BRIAN YI, NOTARY PUBLIC
personally appeared KEVAO KATWAN
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.

[Signature]
Name: BRIAN YI, Notary Public In
And For Said County And State



(Seal)

Principal County Of Business: SANTA CLARA
Commission Expires: NOVEMBER 2, 2022
Commission # Of Notary: 2261305

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.

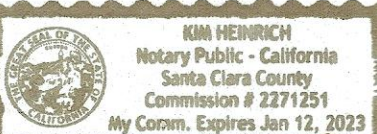
State Of California
County Of Santa Clara

On MARCH 2, 2022 before me, Kim Heinrich, Notary Public
personally appeared Hanna Bao Bui
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.

[Signature]
Name: Kim Heinrich, Notary Public In
And For Said County And State



(Seal)

Principal County Of Business: Santa Clara
Commission Expires: January 12, 2023
Commission # Of Notary: 2271251

ENGINEER'S STATEMENT

THIS MAP WAS PREPARED BY ME AND 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 18755 OLD MONTEREY LLC, ON JANUARY 13, 2021, AND IT IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE APRIL 30, 2023, AND THAT THE MONUMENTS ARE, OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

[Signature]
WILLIAM J. MCCLINTOCK
R.C.E. NO. 24893

March 1, 2022
DATE

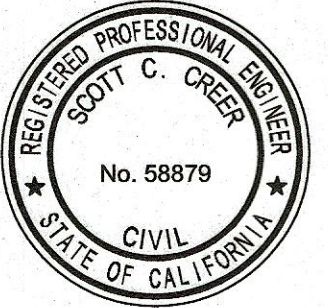


CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL 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.

[Signature]
SCOTT C. CREER - CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 58879

MARCH 3, 2022
DATE



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

[Signature]
JOHN K. KING - ACTING CITY SURVEYOR
HANNA & BRUNETTI PLS 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 _____, DULY APPROVED THE FINAL 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.

MICHELLE BIGELOW
CITY CLERK OF THE CITY OF MORGAN HILL

DATE

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. _____

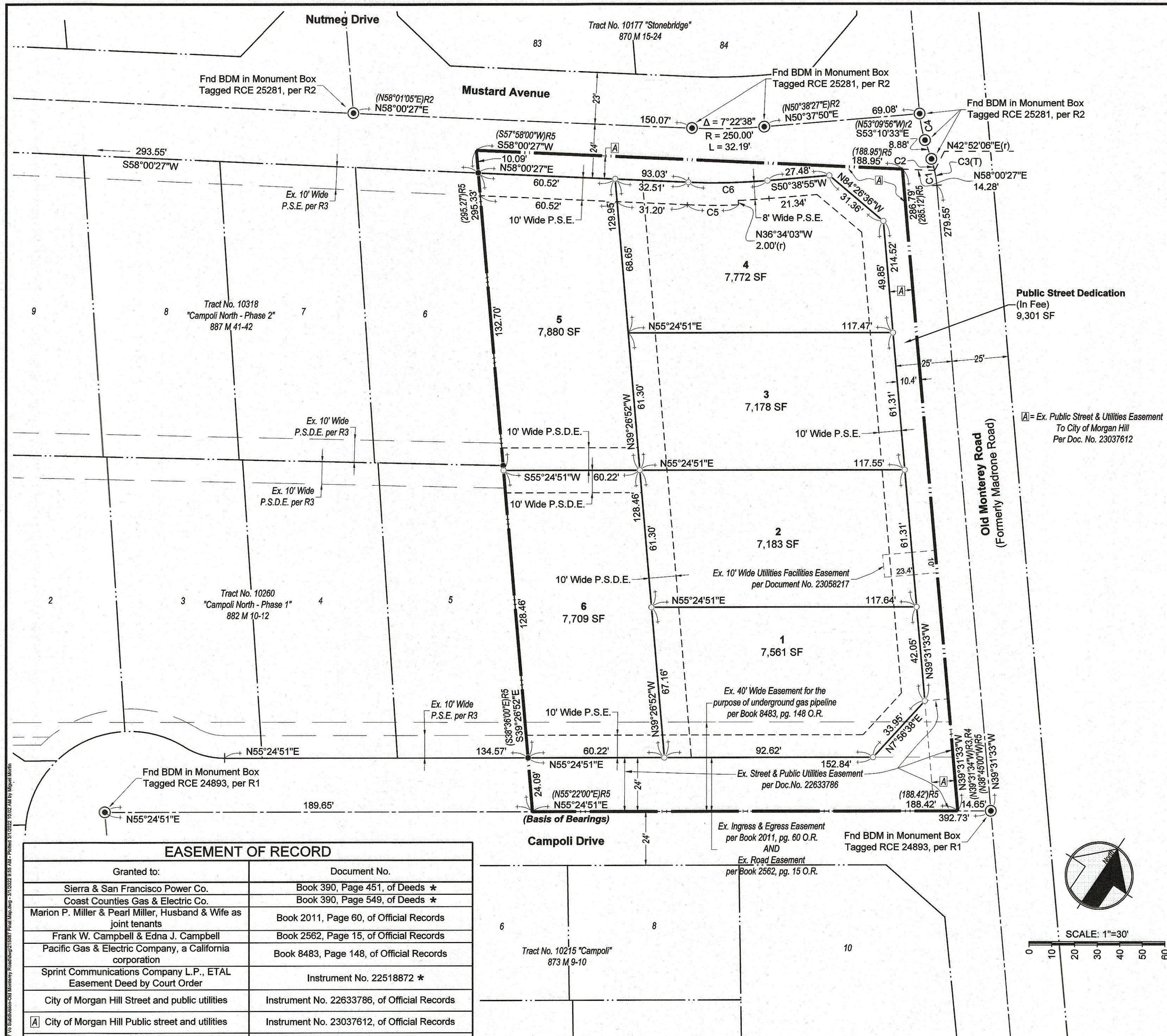
FEE \$ _____

REGINA ALCOMENDRAS, COUNTY RECORDER OF SANTA CLARA COUNTY

BY: _____
DEPUTY

SHEET 1 OF 2

MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037
215087



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

O.R.

OFFICIAL RECORDS

P.S.E.

PUBLIC SERVICE EASEMENT

P.S.D.E.

PRIVATE STORM DRAINAGE EASEMENT

(r)

RADIAL BEARING

SF

SQUARE FEET

(T)

TOTAL

CENTERLINE

DISTINCTIVE BOUNDARY LINE

EASEMENT LINE

EXISTING LOT LINE /RIGHT-OF-WAY LINE

NEW LOT LINE

BASIS OF BEARINGS

The Bearings shown upon this map were based upon the Centerline of Campoli Drive recorded as **North 55°24'51" East**, as shown upon that certain Final Map, filed for record on June 30, 2014 in Book 873 of Maps, at Pages 9 and 10, Santa Clara County Records.

REFERENCED RECORD DATA

R1	TRACT NO. 10215, Book 873 of Maps, PGS 9-10
R2	TRACT NO. 10177, Book 870 of Maps, PGS 15-24
R3	TRACT NO. 10260, Book 882 of Maps, PGS 10-12
R4	TRACT NO. 10318, Book 887 of Maps, PGS 41-42
R5	GRANT DEED - Document No. 24787245

Curve Table				(Record Curve Data)		
#	Radius	Delta	Length	Radius	Delta	Length
C1	50.00'	007°36'45"	6.64'	(50.00'	07°36'48"	6.64')R2
C2	50.00'	006°02'40"	5.27'	(50.00'	06°02'39"	5.27')R2
C3	50.00'	013°39'25"	11.92'	(50.00'	13°39'27"	11.92')R2
C4	50.00'	013°48'23"	12.05'	(50.00'	13°48'23"	12.05')R2
C5	284.00'	004°34'31"	22.68'			
C6	274.00'	007°21'32"	35.19'			

TRACT NO. 10523

BEING A PORTION OF LOTS 1 AND 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH NO. 3", FILED FOR RECORD ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS AT PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS.

LYING WITHIN THE
CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
MARCH 2022

SHEET 2 OF 2

MH

engineering Co.

16075 Vineyard Boulevard
Morgan Hill, CA 95037

215087

EASEMENT OF RECORD	
Granted to:	Document No.
Sierra & San Francisco Power Co.	Book 390, Page 451, of Deeds *
Coast Counties Gas & Electric Co.	Book 390, Page 549, of Deeds *
Marion P. Miller & Pearl Miller, Husband & Wife as joint tenants	Book 2011, Page 60, of Official Records
Frank W. Campbell & Edna J. Campbell	Book 2562, Page 15, of Official Records
Pacific Gas & Electric Company, a California corporation	Book 8483, Page 148, of Official Records
Sprint Communications Company L.P., ETAL Easement Deed by Court Order	Instrument No. 22518872 *
City of Morgan Hill Street and public utilities	Instrument No. 22633786, of Official Records
[A] City of Morgan Hill Public street and utilities	Instrument No. 23037612, of Official Records
Pacific Gas & Electric Company	Instrument No. 23058217, of Official Records

* Exact Location and Extend of said Easement is not disclosed of Record

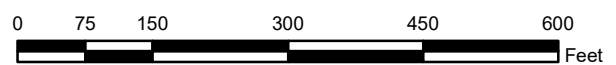


CITY OF MORGAN HILL

Land Development Department
Engineering and Utilities Division

Document Path: G:\R-14\PROJ\GIS\John\Mario_Tract 10523.mxd

SITE MAP
APPLE TREE TRACT 10523



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

18755 OLD MONTEREY LLC, a California Limited Liability Company

APPLE TREE – TRACT NO. 10523

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **18755 OLD MONTEREY LLC, a California Limited Liability Company** ("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 Tract No. **Tract No. 10523**, the subdivision known as **APPLE TREE** ("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 **APPLE TREE, Tract No. 10523**" ("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 **APPLE TREE, Tract No. 10523**".

(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 December 8, 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) 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) 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 on a form at least as broad as ISO Form CG 20 10 for ongoing operations and at least as broad as ISO Form CG 20 37 for completed operations.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.

(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 policies or certificates as outlined herein, whether new or modified, promptly upon receipt. 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 **\$459,754** due under City Resolution No. **5592**, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$146,089** payable at the time of recording of the Final Map, and

(2) **\$313,665** 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:
18755 Old Monterey LLC
5655 Silver Creek Valley Road, #305
San Jose, CA 95138-2473
Email: rkatwan@hawkstonedev.com
Phone: (650) 380-1760

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, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Donald A. Larkin, City Attorney

"Subdivider"

**18755 OLD MONTEREY LLC, a
California Limited Liability
Company**

By: 
Reyad Katwan, Manager

Print Name and Title

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

Date: February 2, 2022

By: _____

Print Name and Title

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

Date: _____

Date: _____

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 FEBRUARY 2, 2022 before me, BRIAN YI, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared REYAO KATWAK
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.

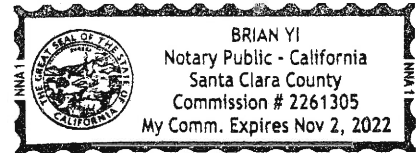
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(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)

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 DECEMBER 8, 2021

MH 215087

12/8/2021

Engineers Cost Estimate
For Apple Tree Investment

<u>Schedule I -Private Improvements</u>						
1	Clearing and grubbing (excl. any demolition)	1	LS	\$	5,000.00	\$ 5,000.00
2	Rough Grading	1,748	CY	\$	10.00	\$ 17,480.00
3	Import	1,561	CY	\$	10.00	\$ 15,610.00
4	Existing redwood fence removal	1	LS	\$	10,000.00	\$ 10,000.00
5	12" RCP storm drain	38	LF	\$	45.00	\$ 1,710.00
6	12" HDPE double wall storm drain	159	LF	\$	32.00	\$ 5,088.00
7	24" HDPE double wall storm drain	21	LF	\$	58.00	\$ 1,218.00
8	24"x24" D.I.	6	EA	\$	1,800.00	\$ 10,800.00
9	36"x36" D.I.	6	EA	\$	2,600.00	\$ 15,600.00
10	Underground retention chamber	2,100	CF	\$	7.50	\$ 15,750.00
11	Erosion Control	1	LS	\$	8,000.00	\$ 8,000.00
					Total Schedule I	\$ 106,256.00
<u>Schedule II -Public Improvements</u>						
1	Remove ex. Curb , gutter and swik and install dwys.	6	EA	\$	3,000.00	\$ 18,000.00
2	Min. 2" grind and overlay	12,010	SF	\$	2.00	\$ 24,020.00
3	City std. sidewalk	1,378	SF	\$	6.00	\$ 8,268.00
4	4" sewer laterals w/trench restoration	6	EA	\$	2,200.00	\$ 13,200.00
5	Existing fire hydrant relocation w/trench restoration	1	EA	\$	2,000.00	\$ 2,000.00
6	1" water services w/trench restoration	5	EA	\$	2,200.00	\$ 11,000.00
7	12" RCP storm drain	18	LF	\$	45.00	\$ 810.00
8	City std. SDMH	1	EA	\$	3,500.00	\$ 3,500.00
9	City std. curb Inlet	2	EA	\$	3,200.00	\$ 6,400.00
10	City std. electroliers	1	EA	\$	2,800.00	\$ 2,800.00
					Total Schedule II	\$ 89,998.00
					Total Sch. I - II	\$ 196,254.00
					10% Contigency	\$ 19,625.40
					Total	\$ 215,879.40

EXHIBIT "B"
PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and _____ (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

[ENTER Subdivider NAME]
[ENTER SUBDIVISION NAME – ENTER TRACT NO.XXXX]

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **[ENTER PROJECT NAME]**, is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: _____

Address: _____

Telephone No.: _____

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident _____

agent:

Non-resident agent's office
address:

Telephone
No.:

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this _____ day of _____ 20 _____.

[form document – do not execute]

Principal

[form document – do not execute]

Principal

By: *[form document – do not execute]*

Surety

By: *[form document – do not execute]*

Attorney-in Fact

By: *[form document – do not execute]*

California Resident Agent

By: *[form document – do not execute]*

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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)

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 "C"
LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and [ENTER Subdivider NAME] (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

[ENTER Subdivider NAME]
[ENTER SUBDIVISION NAME – ENTER TRACT NO.XXXX]

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project [ENTER PROJECT NAME], is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of _____ dollars (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.:

Address: _____

Telephone No.: _____

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: _____,

Non-resident agent's office address: _____

Telephone No.: _____

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this _____ day of _____, 20____.

[form document – do not execute]

Principal

[form document – do not execute]

Principal

By: *[form document – do not execute]*

Surety

By: *[form document – do not execute]*

Attorney-in Fact

By: *[form document – do not execute]*

California Resident Agent

By: *[form document – do not execute]*

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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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)

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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 "D"
WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and [ENTER Subdivider NAME] (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement (hereinafter "Agreement"):

[ENTER Subdivider NAME]
[ENTER SUBDIVISION NAME – ENTER TRACT NO.XXXX]

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20_____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, the Principal is required to furnish a bond to guarantee and warrant the work required by said Agreement for a period of one year following the completion and acceptance by the City of the Improvements, against any defective work or labor performed, or defective materials furnished by Principal.

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of _____ dollars (\$____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If Principal faithfully carries out and performs its guarantee and warranty under the Agreement, 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 Principal promptly reimburses City for all loss and damage that City sustains because of Principal's failure to makes such repairs in accordance with the Agreement requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond Page 1 of 4
Version July 2017

Any notice to Surety may be given in the manner specified in the Agreement and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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.

In witness whereof, this instrument has been duly executed by the principal and surety above named.

SURETY:

Principal:

Date: _____

Date: _____

s/ [form document – do not execute]

s/ [form document – do not execute]

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary

Seal and Power of Attorney)

APPROVED:

Warranty Bond Page 2 of 4
Version July 2017

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date:

END OF WARRANTY BOND

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)

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State of **California**
County of **Santa Clara**

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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)

Warranty Bond Page 4 of 4
Version July 2017

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Michael Horta, Human Resources Director

APPROVED BY: City Manager

APPROVE FOURTH AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Fourth Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$240,980 over 7 years.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure
Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The current agreement with Innovative Claim Solutions (ICS) has been in effect since June 2016. During this time, ICS has administered several lengthy and complex workers' compensation case settlements that resulted in City Council review and approval. ICS has expended significant resources and continues to educate and inform Human Resources, departmental workers' compensation liaisons, and the City Attorney on the particular workers' compensation cases, as well as the general aspects of workers' compensation and case law. In early 2016, staff conducted a joint Request For Proposal (RFP) with the City of Gilroy for such services, through which ICS was selected as the most qualified firm to provide the services. ICS was also the lowest overall cost as a result of the RFP. ICS has offered to provide its services for an additional year without an increase to their current fees. The City plans on conducting another RFP within the fiscal year. Therefore, staff recommends that Council approve the Fourth Amendment to Agreement, increasing the contract amount by \$34,380 to a revised not to exceed amount of \$240,980.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of the recommended fourth amendment to the agreement.

ALTERNATIVE ACTIONS:

The Council could choose not to approve the fourth amendment to the agreement with ICS and direct staff to conduct an RFP or consider a different third-party administrator for workers' compensation in the interim.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the City's current agreement with ICS on May 18, 2016, as well as subsequent amendments.

FISCAL AND RESOURCE IMPACT:

The fourth amendment to the agreement would increase the compensation by \$34,380 over one year. Costs for these services are budgeted and paid from the Workers' Compensation Fund (770) (GL#:770.8220.42231).

CEQA (California Environmental Quality Act):

This is an administrative action that will not result in physical changes in the environment.

**FOURTH AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This FOURTH AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fourth 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" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars (\$103,460.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars (\$172,220.00).
5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of June 29, 2021, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to Two Hundred Six Thousand Six Hundred and no/100 dollars (\$206,600.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are 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 June 14, 2016, until June 30, 2023."
 - 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 TWO HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY AND NO/100 DOLLARS (\$240,980.00) and shall be billed based on the rate and basis set forth in revised Exhibit B dated March 28, 2022.

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Fourth Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Fourth 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: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney

By: _____

Date: _____

Christina J. Turner, City Manager

Date: _____

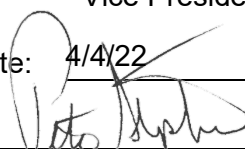
INNOVATIVE CLAIMS SOLUTIONS, INC.


By: _____
Title: Dan Greco, VP of Client Services

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 4/4/22 _____


By: _____
Title: Pete Stephens, CFO

Print Name and Title of Signer.

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

Date: 4/4/22 _____

EXHIBIT 1

**THIRD AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on 6/29/2021 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on June, 23, 2021.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars (\$103,460.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars (\$172,220.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are 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 June 14, 2016, until June 30, 2022."

B. Rates as described in Exhibit B dated May 22, 2019, are continued in place through June 30, 2022.

C. 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 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.”

D. Paragraph 9 shall be amended and replaced in its entirety by the following to correct reference from SERVICE PROVIDER to CONSULTANT:

"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."

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Signatures on the Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Third 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: 6/29/2021

APPROVED AS TO FORM:
Donald A. Larkin, City Attorney

DocuSigned by:
Donald Larkin
45E6F0273EA2464...
By: Donald Larkin
Date: 6/24/2021

CITY OF MORGAN HILL

DocuSigned by:
Christina Turner
Christina J. Turner, City Manager
Date: 6/29/2021

INNOVATIVE CLAIMS SOLUTIONS, INC.

Ceryl Westgren
By: Ceryl Westgren
Title: President & COO
Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date: 6/27/2021
Gary Archibald
By: GARY ARCHIBALD
Title: President & COO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 6/3/2021

12604-14-053

EXHIBIT 1

**SECOND AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This 11/4/19 SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/4/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

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 JUNE 20, 2019
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00). The CONSULTANT 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 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 June 14, 2016, until June 30, 2021."

B. Effective July 1, 2019, CONSULTANT'S billing rates are set forth in the revised Exhibit "B" dated May 22, 2019, approved by CITY and attached hereto and incorporated herein by this reference. 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 SEVENTY-TWO THOUSAND TWO HUNDRED TWENTY AND NO/100 DOLLARS (\$172,220.00) and shall be billed based on the rate and basis set forth in Exhibit B.

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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.

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

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.

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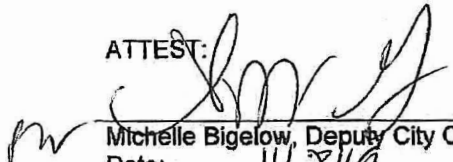
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2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall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

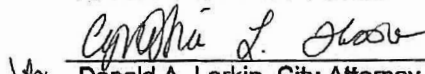
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:


Michelle Bigelow, Deputy City Clerk
Date: 11/8/19

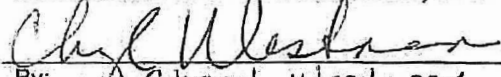
APPROVED AS TO FORM:

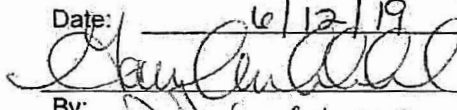

Donald A. Larkin, City Attorney
Date: 10-28-19

CITY OF MORGAN HILL


Christina J. Turner, City Manager
Date: 11/4/19

INNOVATIVE CLAIMS SOLUTIONS, INC.


By: Cheryl Westover
Title: President & COO
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 6/12/19

By: Gary Archibald
Title: President & CIO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer
Date: 6-12-19

REVISED EXHIBIT B

**INNOVATIVE CLAIMS SOLUTIONS, INC. – SECOND AMENDMENT TO AGREEMENT
MAY 22, 2019**

City shall pay CONSULTANT:

- 1. An annualized fee of \$34,380 for the period of July 1, 2019 – June 30, 2020; and**
- 2. an annualized fee of \$34,380 for the period of July 1, 2020 – June 30, 2021.**

The payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"

**FIRST AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 7, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, INNOVATIVE CLAIMS SOLUTIONS, 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 May 18, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("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 June 14, 2016, until June 30, 2019."

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 THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00) and shall be billed based on the rate and basis set forth in the revised Exhibit B dated May 17, 2018, attached hereto and incorporated herein by this reference."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"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 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 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.

9.3 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.

9.4 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."

[Signatures on 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 CONSULTANT, 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:

[Signature]

City Clerk
Date: 06/13/18

APPROVED AS TO FORM:

[Signature]

City Attorney
Date: 5-21-18

CITY OF MORGAN HILL

[Signature]

City Manager
Date: 6-7-18

INNOVATIVE CLAIMS SOLUTIONS, INC.

[Signature]

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

Date: 5-21-2018
[Signature]

By:
Title: Gary Archbold President & CEO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5-21-2018

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC. - FIRST AMENDMENT TO AGREEMENT

MAY 17, 2018

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2018 – June 30, 2019, and payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"**CONSULTANT AGREEMENT**
Innovative Claims Solutions, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/14/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Innovative Claims Solutions, 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 action of the Morgan Hill City Council taken on MAY 12, 2016.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 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 workers compensation claims administration as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$69,080.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed sixty nine thousand eighty 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 during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly 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. 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 on behalf of CITY.

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

7.1.5.3. 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) 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.

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

7.2.1. General Liability.

7.2.1.1. 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.

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.

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

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. 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. 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. 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.

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:

Innovative Claims Solutions, Inc.
P.O. Box 5128
San Ramon, CA 94583

Address of CITY is as follows:

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

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

15. Maintenance of Records.

15.1. 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.

15.2. 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.

15.3. 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.

16. **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.

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

18. **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.

19. **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.

20. **Defense and Indemnification.**

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

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

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

20.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) 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.

20.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall

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

21. 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.

22. 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.

23. 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.

24. 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.

25. Binding Agreement. Notwithstanding the provisions of Section 18 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.

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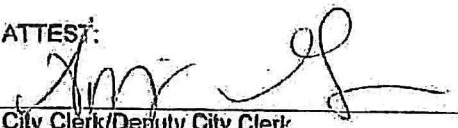
26. Authority to Execute: Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

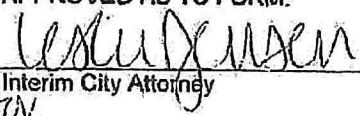
ATTEST:


City Clerk/Deputy City Clerk:

 Michelle Wilson
Print Name

Date: 6/14/16

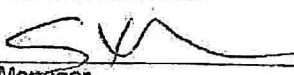
APPROVED AS TO FORM:


Interim City Attorney

 Gary Baum
Print Name

Date: 06/14/16

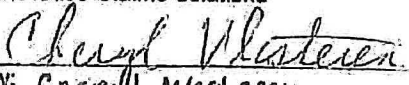
CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

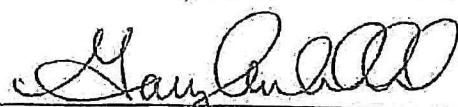
Date: 6/14/16

Innovative Claims Solutions


By: Cheryl Western

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

Date: 5/9/16


By: Gary Andrade

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

Date: 5/9/16

**EXHIBIT A
SCOPE OF SERVICES**

Claims Administration. ICS shall adhere to the following claims administration standards and procedures:

1. ICS shall review and process reported claims for workers' compensation benefits that have not been closed as of the Effective Date of this Agreement and closed claims that reopen on or after the Effective Date. ICS shall have no responsibility other than custody of files and statistical reporting for claims closed prior to the Effective Date.
2. Determine liability for claimed injuries and illnesses in accordance with California Workers' Compensation Laws.
3. Review and process all claims in accordance with rules and regulations established by the Division of Industrial Relations, Department of Self-Insurance Plans.
4. Establish files containing medical and factual information on each reported claim together with complete accounting records and maintain same in accordance with statutory time requirements.
5. ICS shall make all workers compensation disability payments and send all notices in a timely and accurate manner and in conformance in all material respects with all applicable provisions of the California Labor Code and the California workers' compensation laws, rules and regulations.
6. Determine nature and extent of permanent disability and arrange for informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.
7. Explain to and assist employee in completing necessary forms for permanent disability ratings.
8. Review compute and pay all informal rating, findings and awards, life pensions or compromise and release settlements.
9. Maintain and establish reserve estimates for each reported claim.
10. Arrange for and supervise all necessary investigations to determine eligibility for compensation benefits and/or liability of negligent, third parties.
11. Identify, recommend and obtain special fraud investigations after obtaining advance authority from the CLIENT.
12. As a service to the CLIENT, ICS will report all excess claims to excess reinsurance carrier, although the final responsibility for reporting such claims is that of the CLIENT's.
13. Arrange and supervise rehabilitation services where indicated.
14. Arrange for and set up system for payment of benefits and allocated expenses in accordance with CLIENT's needs.
15. ICS shall prepare with the assistance of the CLIENT all reports, which are now, or will be required by the State of California or other government agencies with respect to self-funded programs.

16. ICS shall subscribe to and pay for enrollment in the Index Bureau System and will report to the Index Bureau on each and every indemnity claim. The per claim cost of this service shall be posted as an allocated expense to the CLIENT.

17. On behalf of the Client, ICS will perform all workers compensation claim reporting services required by the Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS) for the periods identified in this contract.

18. ICS will comply with the performance standards as required by the City's excess carrier. ICS will advise if there are any exceptions, or when compliance with new standards may impact our annual fee.

B. Medical Administration. ICS shall adhere to the following medical administration standards:

1. Authorize, review and monitor all medical treatment required on injury or illness claims.
2. Audit and pay all medical expenses in a timely manner, and within statutory guidelines.
3. Maintain close contact with treating physicians to ensure employees receive proper medical treatment and are returned to full employment at earliest date.
4. Arrange for medical-legal opinions in disputed cases, conferring with medical examiners, CLIENT, and legal counsel where indicated.
5. Consult as required with CLIENT on those cases where injury residual might involve restriction and/or retirement potential.

C. Legal Administration. ICS shall adhere to the following legal administration standards:

1. Refer litigated cases, when needed, to attorneys recommended by ICS and approved by CLIENT for purposes of defending CLIENT's interests before Workers' Compensation Appeals Board and the court.
2. Work closely with counsel in preparing defense of litigated cases.
3. Obtain CLIENT's authorization on all settlements or stipulations when required.
4. Work closely with applicant's attorney and legal counsel in informal dispositions of litigated cases.
5. Attend, when required, Workers' Compensation Appeals Board hearings.
6. Discharge on behalf of CLIENT, all legal obligations to its injured employees imposed by Workers' Compensation Appeals Board and higher courts.
7. Protect and preserve CLIENT's interests in all potential subrogation cases.

D. Medical Cost Containment Services. ICS shall adhere to the following medical cost containment services standards:

1. ICS shall use and cooperate fully with the designated medical cost containment vendor (bill review and utilization review service provider) to review the medical bills for the CLIENT and other medical charges and provide necessary utilization review services relating to treatment requests on all claims of industrial injury or illness.

2. Unless otherwise directed, ICS will select the service provider to be utilized and CLIENT will pay for such services. The City of Morgan Hill shall be responsible for all Managed Care Services and Loss Adjustment Expenses. Managed Care Services shall include medical bill review, utilization review, and medical case management. Costs for such services are documented in Exhibit B; however, bill review services shall be billed at a rate not to exceed \$30.00 per bill. Loss Adjustment Expenses shall include all reasonable expenses necessary to the adjustment of a claim in accordance with the Service Agreement, including, but not limited to, fees for engaging defense counsel, court reporters, expert witnesses and field investigators, incurred on behalf of the City of Morgan Hill.

E. Information Systems. ICS will provide a computer system with appropriate data base management capabilities to maintain records related to the administration of the Client's workers' compensation program. ICS shall coordinate data entry for employees in the program and for services supplied by ICS. The CLIENT shall have access to the computer system during normal working hours and access to the database through its own computers at its own expense. ICS shall provide computer-generated reports that are reasonably requested on a regular basis as detailed in section F below.

F. Statistical. ICS will adhere to the following statistical report production obligations and provide all required reports to the client at agreed to intervals:

1. Report to CLIENT, monthly status of claim payments and reserves on an individual claim basis and in the aggregate.
2. Report to CLIENT, quarterly loss analysis of claims filed by frequency and severity.
3. Assist in the preparation of all reports required by the State of California or other Governmental agencies relating to Workers' Compensation claims.
4. ICS will prepare the federal information return (Form 1099) by the statutory deadline for all payments subject to 1099 reporting made by ICS on behalf of the CLIENT during the term of this Agreement.
5. Additional ad-hoc reports will be provided to CLIENT at their request at no additional cost. Special report requests that require programming time will be charged to CLIENT at \$150 per hour, which is our direct cost. Our system is capable of generating standardized reports as follows:

Claim Logs
Claim Activity
Claim Cost Detail
Claim Cost Summary
Claim Cost Summary by Year
Examiner Activity
Examiner Case Log
Frequency Reports
Location Summary
Management Summary
Multiple Claims Listing
Occurrence Cost
OSHA
Payment Type Totals
Vendor Payments Summary
State Annual Report

6. Ad-hoc reports queries, which require no specific programming will be provided at no cost to CLIENT.

G. Banking Services. ICS will adhere to the following services standards, as directed by the clients:

1. The CLIENT agrees to establish, fund and replenish an account at a financial institution agreed upon by the CLIENT and ICS for the purpose of paying benefits to workers or care providers and to pay Allocated Loss Adjustment Expenses.

2. All funds in the CLIENT Account belong to the CLIENT. ICS shall have authority to write checks on the CLIENT Account, however, two signatures may be required at client's requested level.

3. ICS shall have authority to pay Allocated Loss Adjustment Expenses from the CLIENT Account to vendors. ICS shall provide the CLIENT with detailed accountings of the expenditures from the CLIENT Account.

4. ICS agrees to make records pertinent to the CLIENT's account available to CLIENT for audit purposes at all reasonable times with at least 24 hours' notice.

5. ICS agrees to maintain CLIENT's trust fund account, if CLIENT elects such arrangement. Otherwise, CLIENT is responsible for all reconciliation and banking processes involved with CLIENT account.

6. Additional services, including but not limited to, field and investigative services, legal expenses, managed care services, index bureau inquiries, bill review and all services which are provided by outside vendors on behalf of the CLIENT shall be paid out of the CLIENT's account, or trust account.

H. Assignments. ICS shall not assign this Agreement, nor any part thereof.

I. File Storage. Pursuant to RR 15400.2 Of the California Code of Regulations all files closed for more than 5 (five) years shall be identified. UPON CLIENT direction ICS shall return the file(s) to CLIENT, destroy file(s) or maintain file(s) at CLIENT expense with an off-site storage facility.

J. Cooperation. In the event of early termination or non-renewal, both parties will cooperate in good faith to implement a transition to a new service provider with minimum disruption to the provision of benefits to workers. ICS will make available to client, and to a new service provider, all files, summary data, records and information developed with respect to this Agreement, including all loss records and a record layout describing the format of the data tapes. Such information shall be made available electronically whenever possible. The CLIENT shall assume all responsibility for open claims as of the effective date of termination.

K. Files All claims files, records, reports and other documents pertaining to employee claims are the property of the CLIENT and CLIENT may audit or inspect the files at any time during normal business hours. ICS shall turn over possession of all files and other documents to the CLIENT or its designee promptly upon the effective date of termination or non-renewal of this Agreement. The CLIENT shall allow ICS to review all files and other documents with information relating to its performance pursuant to this agreement.

L. Penalties and Fines. ICS and client agree to the following standards, protocols and principals relating to the fines and penalties:

1. ICS and CLIENT hereto acknowledge the various penalties and administrative fines that contained in The California Workers' Compensation Reform Act of 1989 (effective January 1, 1990 and January 1, 1991) that may be imposed on both employers and claim administrators.
2. ICS will be responsible for any fines or penalties associated with questionable or converted claims that ICS denies without first consulting and obtaining approval by the CLIENT for denial of the claim(s). ICS will not be responsible for any fines or penalties levied by the Division of Workers' Compensation or any other judicial or quasi-judicial organization for improper denial of a claim(s) if, over the objections of ICS, ICS has denied said claim(s) at the direction of the CLIENT.
3. The CLIENT shall be responsible for all penalties where ICS has not been given sufficient notice such that ICS has had at least seven (7) working days in which to investigate the claim and to pay temporary disability or send the required wage continuation notice before the penalties were assessed. ICS shall be responsible for all penalties in which it has had seven (7) or more working days in which to investigate and pay temporary disability or send a wage continuation notice. For the purposes of this section "working day" means all days except Saturdays, Sundays, and commonly observed holidays.
4. The services as described in this Agreement shall be performed in all material respects in accordance with applicable laws, rules, regulations and standards of governmental authorities including, in particular, applicable Workers' Compensation Laws of the State of California.
5. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California and the venue for any disputes is the county of Santa Clara as requested by the CLIENT.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2016 - June 30, 2017 and an annualized fee of \$34,700 for the period of July 1, 2017 - June 30, 2018.

For FY 16/17, payments will be made in equal monthly installments \$2,865.00 and for FY 17/18, payments will be made in equal monthly installments of \$2,891.66.

REVISED EXHIBIT B
INNOVATIVE CLAIMS SOLUTIONS, INC.-FOURTH AMENDMENT TO AGREEMENT
MARCH 28, 2022

CITY shall pay CONSULTANT:

An annualized fee of \$34,380 for the period of July 1, 2016-June 30, 2017

An annualized fee of \$34,700 for the period of July 1, 2017-June 30, 2018

An annualized fee of \$34,380 for the period of July 1, 2018-June 30, 2019

An annualized fee of \$34,380 for the period of July 1, 2019-June 30, 2021

An annualized fee of \$34,380 for the period of July 1, 2021-June 30, 2022; and

An annualized fee of \$34,380 for the period of July 1, 2022-June 30, 2023.

The payments will be made in equal monthly installments of \$2,865.00 for the current term July 1, 2022-June 30, 2023.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Yat Cho, Senior Project Manager

APPROVED BY: City Manager

AWARD EAST DUNNE AVENUE REHABILITATION PROJECT AND APPROVE CONSULTANT AGREEMENT WITH CSG CONSULTANTS, INC. FOR FEDERAL-AID PROJECT SUPPORT AND CONSTRUCTION INSPECTION SERVICES

RECOMMENDATION(S)

1. Approve the East Dunne Avenue Rehabilitation Project plans and specifications;
2. Award contract to A. Teichert & Son, Inc. DBA Teichert Construction for the East Dunne Avenue Rehabilitation Project in the amount of \$2,153,195;
3. Authorize the expenditure of construction contingency funds not to exceed \$430,639;
4. Authorize the City Manager to execute and administer the construction contract with A. Teichert & Son, Inc. DBA Teichert Construction; and
5. Approve and authorize the City Manager to execute and administer a consultant agreement with CSG Consultants, Inc. in the amount of \$175,000 for Federal-Aid project support and construction inspections.

Estimated Time: Not Applicable

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The East Dunne Avenue Rehabilitation Project is included in the adopted 2021-22 through 2025-26 Capital Improvement Program (CIP). The project will replace, repair and/or overlay pavement along East Dunne Avenue between lower Thomas Grade to

the eastern City limit (See Attachment 1).

For Fiscal Year (FY) 2021-22, the Federal Highway Administration (FHWA) and Caltrans have programmed the City's East Dunne Avenue Pavement Rehabilitation Project to receive federal grant funding for the construction phase of this project. This project is programmed to receive \$857,000 in federal-aid funding through the One Bay Area Grant Program (OBAG 2) and the City is required to comply with FHWA and Caltrans construction administration procedures and requirements in order to receive the grant reimbursement for this construction project. The project received FHWA and Caltrans authorization to proceed with the project bidding in February 2022 and was advertised for the project starting on February 25, 2022. The bid opening was held on March 23, 2022 and six (6) bids received are listed below:

BIDDER:	TOTAL BID AMOUNT:
A. Teichert & Son DBA Teichert Construction*	\$2,153,195.00
Granite Construction Company	\$2,162,805.00
McKim Corporation	\$2,230,750.90
Monterey Peninsula Engineering, Inc.	\$2,544,784.00
<i>O'Grady Paving, Inc. **</i>	<i>\$1,908,580.00</i>
<i>Graniterock Company**</i>	<i>\$2,163,016.00</i>

*Lowest responsive and responsible bidder

**Non-responsive bids

Upon review of the bid proposals, O'Grady Paving, Inc. and Granite Rock Company did not provide the required federal forms with their bid proposals, as part of the bid submittal process, and their bid proposals were considered non-responsive. Teichert Construction was the second lowest bidder that submitted all of the required federal forms and required City forms with their bid proposal, and therefore is the lowest responsive and responsible bidder for this project's contract award. Teichert Construction is an experienced contractor with many years of paving construction experience and recently completed the 2021 Pavement Resurfacing Project for the City. Teichert Construction's bid amount of \$2,153,195, is approximately 10% under the engineer's estimate of \$2,400,000. Staff recommends the award of the contract to Teichert Construction for \$2,153,195 and anticipates construction to commence in June 2022 and be completed by October 2022.

The federal grant funds secured for this project will require the City to follow the procedures and guidelines from the Caltrans Local Assistance Procedures Manual (LAPM) that include but are not limited to: civil rights and disadvantaged business

enterprises; advertisement and award of the project; construction contract administration and inspection; and project completion. The City is required to maintain project records to support the adequacy of the field supervision, inspection and testing; conformance to contract specifications; and payments to the contractor. The project's files will be reviewed by Caltrans Construction Oversight Engineers throughout construction for compliance with federal and state requirements. The project requires additional federal administration and inspection support by an outside consultant. Additionally, due to the very significant work occurring across the City additional general inspection services are required as well. City staff are recommending a contract services agreement with CSG Consultants, Inc. to comply with federal and state requirements and maintain eligibility for federal grant reimbursements for the construction costs. CSG Consultants' services shall include federal aid support to the City's CIP team related to the project's construction administration files, preparing Caltrans LAPM forms and reporting, construction inspections, preparing construction invoicing to Caltrans, and project closeout with Caltrans. Staff recommends the approval of the proposed CSG Consultants, Inc. in the amount of \$175,000 to complete this project. CSG Consultants were selected as an on-call consultants by the City through a competitive RFP process. However, due to the size of this funding and unique requirements, a separate consultant agreement is necessary. CSG has extensive experience and has previously supported pavement inspection work with the City.

The plans and specifications may be found on the City's web page under the Government tab and the Community Projects site (<https://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>)

COMMUNITY ENGAGEMENT:

Inform

Once the project is awarded, City staff will be coordinating communication efforts prior to and during the project through citywide emails, social media posts, and routine updates on the website. Regular updates will be made frequently to inform the community of impacts, roadway closure, and other inconveniences that may arise due to construction. The contractor will provide written notifications to affected residents and businesses in advance of any construction activities.

ALTERNATIVE ACTIONS:

City Council may elect not to award this construction contract and request the project be re-bid. Staff does not recommend this alternative as the project is programmed and authorized to receive federal grant funding during FY2021-22. Rebidding this project may not yield any additional savings, delay the project for a minimum of three months, and potentially jeopardize the City's \$857,000 federal grant funding for this project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On March 2, 2022, City Council received an update regarding pavement rehabilitation planning for calendar years 2021 through 2024.
- On October 20, 2021, the City Council approved CALTRANS Disadvantaged

Business Enterprise (DBE) Implementation Agreement in association with the East Dunne Pavement Rehabilitation Project.

- On June 17, 2020, City Council adopted the FY 2020-21 through 2025-26 Capital Improvement Project.
- On April 3, 2019, City Council approved a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.
- On April 4, 2018, the City Council approved a resolution of local support for this specific project and authorized the filing of the grant application.

FISCAL AND RESOURCE IMPACT:

If the award of the construction contract to Teichert Construction is approved, the total authorization for this project would be \$2,583,834, which includes a 20% contingency of \$430,639.

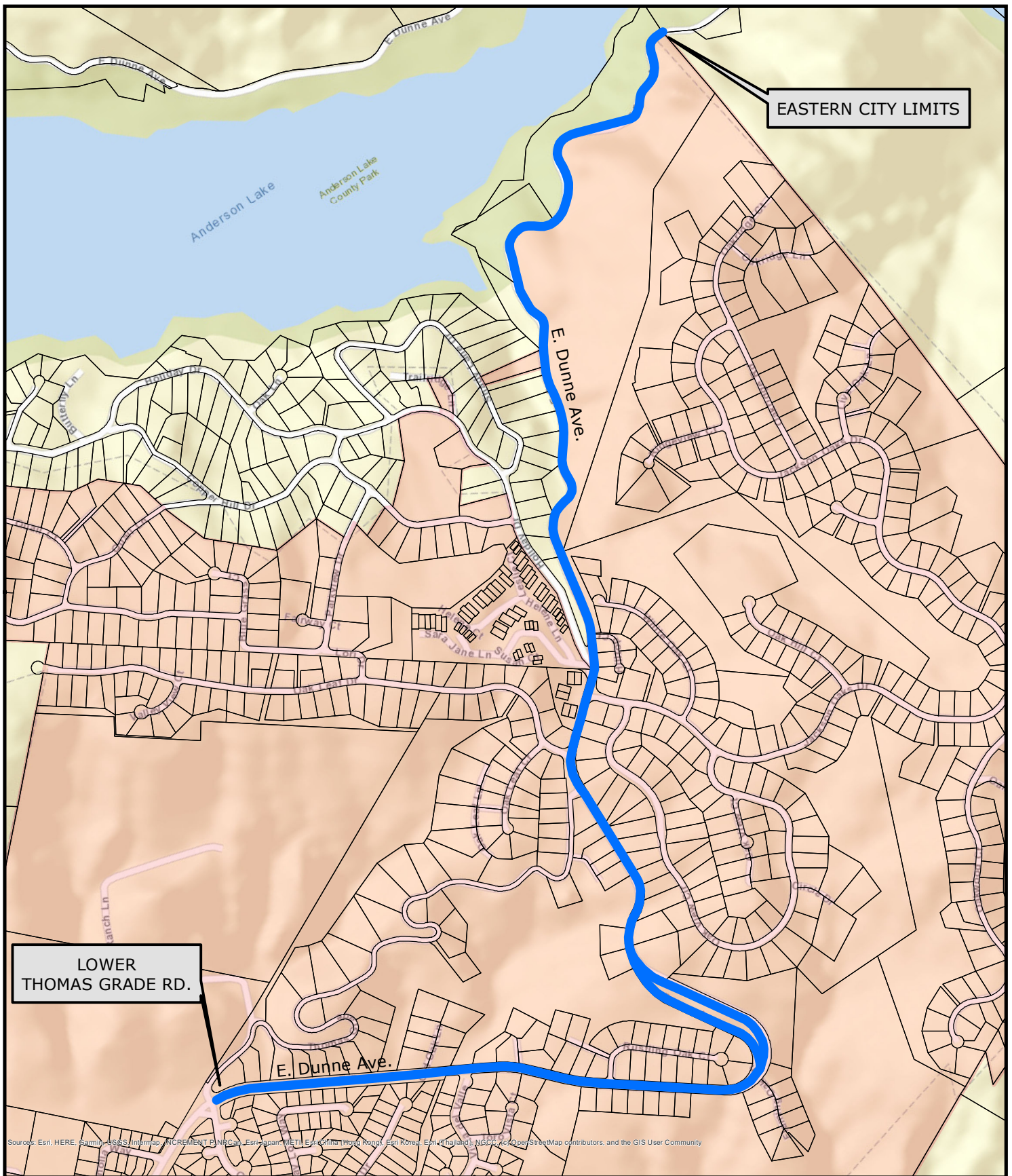
If the consultant agreement with CSG Consultants, Inc. is approved, the total authorization for the services would be \$175,000.

There are sufficient funds within the FY2021-22 Budget for this project (519000). The Street CIP Fund (308) is funded through a variety of dedicated funding sources that are specific for the rehabilitation and maintenance of City roadways and cannot be used for other purposes.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

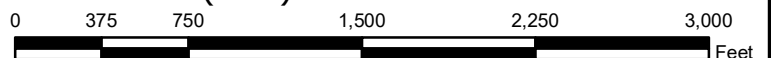


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Swisstopo, Esri Korea, Esri (Thailand), NGIS, IGN, OpenStreetMap contributors, and the GIS User Community



Engineering and Utilities Division
Capital Improvement Program

PROJECT MAP EAST DUNNE AVENUE REHABILITATION PROJECT STPL-5152(022)



CONSULTANT AGREEMENT
CSG Consultants, Inc.

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until 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 provide construction inspection and Federal-aid project support services as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$175,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Seventy-Five 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.

7.1.7. **Crime/Fidelity Bond.** If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.

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

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

7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.

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

7.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.

7.2.2. **Workers Compensation.**

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

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

CSG Consultants, Inc.
550 Pilgrim Drive
Foster City, CA 94404

Address of CITY is as follows:

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

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

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

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

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

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

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

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

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

25. **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

Michelle Bigelow
Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin
Print Name

Date: _____

City Manager

Christina J. Turner
Print Name

Date: _____

CSG Consultants, Inc.

By: _____

Cyrus Kianpour, PE, President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 4/7/22

By: _____

Nourdin Khayata, PE, Secretary

Print Name and Title of Signer.

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

Date: 4/7/22

EXHIBIT A
SCOPE OF SERVICES

Scope Of Work

CSG has provided construction inspection services on projects for clients throughout California. Our approach to performing construction inspection promotes flexibility, efficiency and providing the right expertise to match the project's specific needs. We have managed projects from the advertise bid award phase through project close out. Provided below is a breakdown of CSG's typical construction inspection approach.

CONSTRUCTION PHASE

After the award of a project and prior to start of construction, CSG will lead or participate in the following steps.

Utility Company Coordination—Utility work can greatly impact the progress of a construction project. To minimize the impact, it will be critical to work with the City to establish a working relationship with the utilities for the life of the project, identify all utility work and anticipate potential conflicts as soon as possible, incorporate the utility companies into the project team meetings, clarify protocols and construction crews' availabilities, and strategize contingencies for unforeseen circumstances.

During the Construction Phase, CSG will be responsible and will enforce requirements typically requested by jurisdictions.

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| • <i>Providing detailed documentation using the City-preferred form of documentation</i> | • <i>Tracking weekly statements of working days</i> |
| • <i>Daily inspector's report</i> | • <i>Tracking Buy America and other contract requirements</i> |
| • <i>Tracking of any subcontractor's work</i> | • <i>Documenting contractor's detours, lane closures and staging plans</i> |
| • <i>Any safety issues regarding contractor</i> | • <i>Documenting contractors' labor compliance performance</i> |
| • <i>Maintaining project files</i> | • <i>Approve "Schedule of Values" submitted by contractor</i> |
| • <i>Date and time stamping of all documents</i> | • <i>Provide monthly reports documenting construction progress, etc.</i> |
| • <i>Maintaining Submittal Logs</i> | • <i>Provide expenditure report</i> |
| • <i>Maintaining Submittal Distribution Lists</i> | • <i>Tracking progress pay estimates and overall project budget</i> |
| • <i>RFI log (submittal, review, and return)</i> | |
| • <i>Correspondence logs and tracking</i> | |
| • <i>Tracking status of contract change orders</i> | |
| • <i>Tracking status of RFI's</i> | |
| • <i>Tracking potential claims</i> | |
-

Monitor Contractor's Performance—Throughout the project, the inspectors will enforce all requirements of applicable codes, specifications, and contract drawings. There will be daily communication and coordination with the contractor. This will limit miscommunication, resolve issues on the field level to anticipate project progress, address deficiencies, and minimize delays. CSG's Construction Manager will assist City staff in preparation of bi-weekly and monthly updates that include schedule status, work progress, key issues, anticipated impacts, potential change orders and budget status projections. Our CM Team will also schedule and coordinate third party material testing and sampling as required by the City's QAP and per specifications.

Construction Schedule Monitoring—Our staff will conduct weekly project meetings to review the project's status, update the project schedule, discuss any outstanding items, resolve disagreements and work collaboratively towards the successful completion of each phase of the project. The contractor's construction schedule will be used during these meetings as a tool to track the progress of construction relative to the allowable working days and approved budget. All changes that impact the baseline schedule will be closely monitored and discussed at the weekly meetings. Schedule updates are critical for accurately monitoring the Contractor's progress and evaluating potential claims and CCO's that might arise.

Weekly Statement of Working Days—CSG’s Inspectors will monitor and document working days weekly per the Caltrans Local Assistance Procedures Manual (LAPM). This includes contract times and documenting time extensions.

Daily Inspector Report—CSG uses an effective and detailed report system that tracks contractor personnel and equipment, work progress and field changes while coordinating with the contractor daily to reduce confusion. This system has proved to be a useful and important component in the reduction of future issues. Our Inspector’s report will be accompanied by daily photos.

Maintaining Photos and Videos—Photos will be taken continuously during construction. All signage and lane closure setups will be documented, and photos taken to illustrate prior striping and, in case of accidents, to provide documentation of the change associated with the ongoing work. A similar procedure undertaken at the beginning of construction will also be done at project closeout. Photos will be taken of the completed project and will be part of the final package to be submitted to the City with all project documents.

Managing Change Orders—Inspectors will bring any unforeseen changes to the attention of the City Resident Engineer or Project Manager. Some of our Inspectors are well versed in drafting change orders and can take on this task if needed by the City. Upon the issuance of a change order, the work will be monitored and tracked, including labor, equipment and materials. On a force account change order, our inspectors employ a technique of requiring the Contractor’s foreman to agree to and sign the work order to eliminate disputes at the time of payment.

Our primary approach to managing change orders will be to utilize bid item prices as much as possible, if applicable. Otherwise, an agreed upon lump sum and force account will be applied as a last resort if an agreement cannot be established or time is of the essence. In the case of an urgent change, an authorization to proceed with a not-to-exceed amount will be provided. All changes will promptly be brought to the attention of the City’s Project Manager prior to authorization of any additional expenditure.

Managing Claims—CSG’s knowledgeable staff will utilize its understanding of the design process, contract language, scheduling, construction techniques and costs to provide the City with critical information it needs to manage construction claims. CSG will provide the City with an assessment of the outstanding issues. Our staff will assist in developing a strategy to resolve claims and disputes.

Record Keeping / Contract Administration- With this project being federally funded CSG will bring their experience administering such contracts and provide the services needed to comply with the Local Assistance Procedure Manual. This includes

- Establishing logs for material testing, change orders, RFIs, Submittals
- Conducting employee interviews
- Requesting and reviewing Subcontractor’s request and DBE forms
- Monitoring the DBE goal on a monthly basis
- Ensuring the material submitted to site matches the approved submittals
- Reviewing the bid / award documents for compliance
- Developing quantity sheets for progress payments
- Writing memorandum of understanding for all change orders
- Performing an independent cost analysis for every change order

Requests for Information (RFI’s)/ Design Clarifications—Our staff will receive and process all RFI’s from the contractor. They will conduct meetings if required to define, clarify, and resolve all RFI’s expeditiously. They will prepare responses to RFI’s to the extent possible. All of their direct responses will be in writing and will be answered within 24 hours. If an RFI requires the input of the designer, they will immediately provide a copy (via e-mail or fax) of the RFI to the designer and will follow-up with a phone call to discuss the nature of the request. The City’s Project Manager will be kept informed of all design-related RFI’s. Records of all RFI’s and responses to the contractor will be properly filed and will be available at all times.

Progress Payments—Our staff will be responsible for reviewing and recommending progress payments to contractor. Progress payment records will be maintained, and measurement and payment will be made in accordance with the contract documents and the City’s procedures for progress payments. Inspector records

will be used to corroborate contractor requests. Our staff will meet with the contractor representative to compare item quantities at the end of each shift or when the contractor is performing item quantity measurements. This procedure eliminates most, if not all, conflicts at the time of progress payment submittal and processing.

Our team will also submit a monthly budget status review document to the City's Project Manager that provides an overview of project's financial status, a projection for anticipated future costs, and an update of the overall budget status versus the contractor's construction progress. CSG's inspectors will measure and track quantities on a daily basis, in conjunction with preparation of the daily field report. These quantities will be measured and compared with the measurements taken by the contractor's superintendent so that potential conflicts can be resolved prior to the submission of a progress payment. At the end of the agreed upon pay period, the Contractor's progress payments will be reviewed for accuracy.

Labor Compliance—Inspectors will verify the contractor's compliance with labor laws, including performing spot check labor surveys and interviews and verifying certified payrolls to make sure the contractor is paying prevailing wages to its employees. They will report their findings to the City's labor compliance officer in a manner and frequency that is acceptable to the labor compliance office.

Non-Compliant Work—Inspectors will use the mini memo out on the project to inform the Contractor of non-compliance of the Project Plans or Specifications. In addition, they will include the non-compliance in the inspector's daily diary. Our inspectors will immediately report non-compliance work, so that an official letter is prepared to communicate to contractor and City Project Manager. All reporting of non-compliance work will be accomplished within 48 hours after the occurrence to facilitate the Contractor's timely correction of the deficiencies.

Final Inspection Punch List—With every project, the inspector generates a document listing work that does not conform to contract specifications. The inspector will work with the contractor to ensure proper completion of all projects prior to final payment. A walkthrough with all stakeholders will be conducted, and a punch list will be developed for the contractor to complete. No project is fully completed until all punch list work is addressed and finalized.

Record File—Inspectors will ensure that the contract administration, documentation and filing system are prepared and maintained in accordance with CSG's Construction Management Filing System. Our construction managers have used this program successfully on several large construction projects to monitor, coordinate, review and respond to, for example, submittals, RFI's, potential changes, and change orders. The construction management filing system allows the project manager to track all areas of coordination to ensure complete and timely accomplishment of critical or time-sensitive items. This system can be tailored to each job and access can be provided to key members of the project team including City staff, the designer, and the contractor. The system enables the team to remain updated on the latest status of submittals, RFI's, and action item ownership. The CM team will upload all project record files to the City's project filing system (E-Builder) at the end of the project or as directed by the Project Manager.

Environmental Compliance—CSG staff will review all documents associated with project including EIR's or Negative Declaration documents to ensure contractor's full compliance before/during and possibly after construction.

POST-CONSTRUCTION PHASE

A project is only truly completed when all construction is complete, including the punch list items; the final payment is approved and accepted; the project paperwork is completed and archived, and as-builts are complete. Tasks performed under this phase include:

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| <ul style="list-style-type: none">▶ <i>Completion of all project documentation change order summary, final detailed estimate, project acceptance documentation, and a claims management/resolution</i>▶ <i>Final walkthrough involving the contractor, the City, engineering and maintenance staff, the designer and other relevant stake holders</i>▶ <i>Completion of all items on the final construction punch list</i> | <ul style="list-style-type: none">▶ <i>Preparation of final payment estimate and resolving all of the contractor's exceptions to proposed final estimate</i>▶ <i>Preparing a final construction project report per Chapter 17 of the LAPM</i>▶ <i>Preparation of final "As-Built" records including record drawings and all discovered utility locations and changes</i> |
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EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Cost Proposal

Provided below is CSG's breakdown of hours and proposed cost. We understand this project is scheduled for 75 calendar days. CSG is proposing construction inspection, as well as an additional ¼ time inspector for peak periods of construction. Material testing has not been included in our cost, as we understand the City will contract these services separately.

Construction Inspection and Construction Support Services for East Dunne Avenue Rehabilitation Project						
Services	Hourly Rate	Working Days	Hours	Precon / Closeout	Total Hours	Cost
			per Day			
Federal Aid Support	\$230					\$38,500
Construction Inspector	\$150	75	8	120	720	\$108,000
Additional Construction Inspector	\$150	75	2	40	190	\$28,500
TOTAL COST:						\$175,000



2022 Engineering Division Hourly Rates

CSG services are billed on a time-and-materials basis according to our Standard Rates, shown below.

Professional Engineering Services	2022 Hourly Rate
Engineering Trainee	\$70
Administrative Assistant	\$80
Analyst	\$135
Engineering Designer/CASp Inspection & Consultation	\$145
Construction Inspector	\$150
Senior Analyst	\$160
Assistant Resident Engineer	\$175
Assistant Engineer	\$150
Associate Engineer	\$180
Senior Construction Inspector	\$165
Senior Engineer	\$205
Senior Land Surveyor	\$205
Resident Engineer	\$210
Structure Representative	\$210
Senior Structural Engineer	\$225
Senior Project Manager	\$225
Principal Engineer	\$240
Senior Principal Engineer	\$260
Two-Person Survey Crew	\$340
Sustainability Program Management Services	Hourly Rate
Sustainability Program Analyst	\$140
Sustainability Program Senior Analyst	\$165
Sustainability Program Manager	\$195

All hourly rates include overhead costs including, but not limited to, salaries, benefits, Workers Compensation Insurance, travel and office expenses. CSG will coordinate the pickup and return of plans to and from CSG offices. Overtime work will be billed at 1.5x the hourly rates indicated in the table above. On each anniversary of the contract start date, CSG will initiate a rate increase based on change in CPI-U for the applicable region. CSG will mail/email an invoice every month for services rendered during the previous month.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Consultant shall provide services as outlined in the scope of services as needed and as directed by City staff during the construction of the project.

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 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 20, 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 20, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



TAX AND EQUITY FISCAL RESPONSIBILITY ACT (TEFRA) HEARING VILLAGE AT MADRONE APARTMENTS



TEFRA HEARING:



- City is required to hold public hearing to allow the community an opportunity to speak in favor of or against use of tax-exempt bonds for financing of a Project
- Council's only role is to listen to public testimony regarding appropriateness of bond financing
- Following close of hearing, City must approve issuance of bonds through resolution
- City has no financial obligation or legal risk with bond issuance

TEFRA HEARING (cont.)



- Approving the issuance of bonds to finance the acquisition and construction of Village at Madrone Apartments, owned and operated by Jemcor Development Partners
- Jemcor applied and received an award for Federal Low Income Housing Tax Credits from the California Tax Credit Allocation Committee and a tax-exempt bond allocation
- Jemcor requested that the California Municipal Finance Authority serve as the issuer of the tax-exempt revenue bonds in an amount not to exceed \$85,000,000

TEFRA HEARING (cont.)



- The proceeds of the bonds will be used to finance the acquisition, construction, equipping, and improvement of Village at Madrone Apartments
- The Project meets the Council's goals of creating affordable communities and leveraging outside financing
- Notices were published in the Morgan Hill Times on March 25, 2022



Village at Madrone Apartments 249 Units

RECOMMENDATION:



- 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
- Adopt resolution approving the issuance of bonds by the California Municipal Finance Authority, for the acquisition, construction, equipping and improvement of Village at Madrone Apartments

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Attorney

APPROVE DONATION OF MONUMENT SIGNS FROM LEADERSHIP MORGAN HILL

RECOMMENDATION(S)

1. Review new City of Morgan Hill monument signs proposed by Leadership Morgan Hill;
2. Approve installation of monument signs at proposed locations;
3. Approve the design of the monument signs; and
4. Authorize the Public Services Director to execute agreements as needed with Leadership Morgan Hill and associated contractors to complete the installation.

Estimated Time: 30 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

REPORT NARRATIVE:

The 2022 Class of Leadership Morgan Hill has reached out to the City looking to coordinate their annual class project. Each year Leadership Morgan Hill hosts a leadership class for community members specific to Morgan Hill. Part of completion of the program requires the class to complete a public service project. The class of 2022 has proposed the development and construction of two monument signs within the City. The class has also proposed the installation of bicycle safety signage at multiple locations throughout the City. The donation of the monument signs require the approval of the City Council.

The Class has proposed the installation of the two monument signs along Monterey Road. The locations for the monument signs are at the northwest corner of the intersection of Monterey Road and old Monterey Road and the southeast corner of the intersection of Monterey Road and Butterfield Boulevard. The locations are further shown in Attachment 1. City staff concur with the recommendation for these locations and believe the proposed signs will enhance the City by providing welcoming gateway signage.

The proposed design for the signs was completely created by the Class and is included as Attachment 2. The City staff believe that in general the signs are designed well. The Council may want to consider providing additional direction on sign design. Additionally, the signs include the term "A Caring Community Est. 1906". The class has developed this phrasing. The Council may wish to provide direction to the class in this area as well. City staff intend to require that wording approved at this time related to the term be installed in a way that can be removed/replaced in the future should the Council determine another alternate term is more appropriate for the City. Finally, the Leadership Class would like the City to provide direction on the color scheme of the signs. City staff would plan to work with the Leadership class on the final color scheme, but the Council could choose to provide additional feedback on the color scheme as well.

In addition to the monument sign, the class has proposed developing artwork for the rear side of the sign at Monterey and Old Monterey Roads. This artwork has not yet been provided and will need to be reviewed by the Library, Culture and Arts Commission before returning to the Council. The class is also proposing the cleaning and landscaping of the City-owned property located near the sign at Monterey and Old Monterey, which will be an additional benefit to the City.

In total, the preliminary estimate for the value of all the work is \$30,000. The class intends to raise funds and secure in-kind donations to fund the project. To recognize those supporting the project, the Class has proposed installation of engraved pavers next to signs and smaller signage on the back of the signs. Since the signage is adjacent to City roadways, City staff shall work with the class to ensure that recognition signage is not easily visible from the roadway.

COMMUNITY ENGAGEMENT:

Empower

The project was brought forward by community members enrolled in Leadership Morgan Hill (Class) and will be implemented by these community members.

ALTERNATIVE ACTIONS:

As an alternative to approving the monument signs, the Council may choose any of the following alternatives or provide the class and City staff with other direction.

1. Approve the project concept, but request additional design work or changes occur to the sign before approving. In this scenario, City staff would work with the Commission to update designs based upon the City Council direction.
2. Approve the project concept, but refer the sign design to the Library, Culture and Arts Commission or Planning Commission for review of the signage. City staff would work with the designated Commission to provide additional review before returning to Council.
3. Approve the project with specific changes and requirements as designated by the

Council.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has worked with Leadership Morgan Hill on various class projects over the last two decades. The City Council has most recently approved the utility box art project conducted in 2018 and the installation of artistic bike racks in the Downtown in 2019.

FISCAL AND RESOURCE IMPACT:

The installation of the monument signs in the proposed location is not anticipated to create significant ongoing operational expenses. The maintenance of the signs themselves shall be limited to graffiti removal and repair associated with the signs.

CEQA (California Environmental Quality Act):

Categorical Exemption

Minor alterations to existing City facilities, including the installation of signs, falls within the CEQA categorical exemption of Class 1, Existing Facilities.



City of Morgan Hill

Public Services Department



LOCATION PLAN

Leadership MH Sign Locations

Date: 4/13/22

Drwn by: CG

PAGE 1 OF 2



City of Morgan Hill

Public Services Department



CITY OF MORGAN HILL

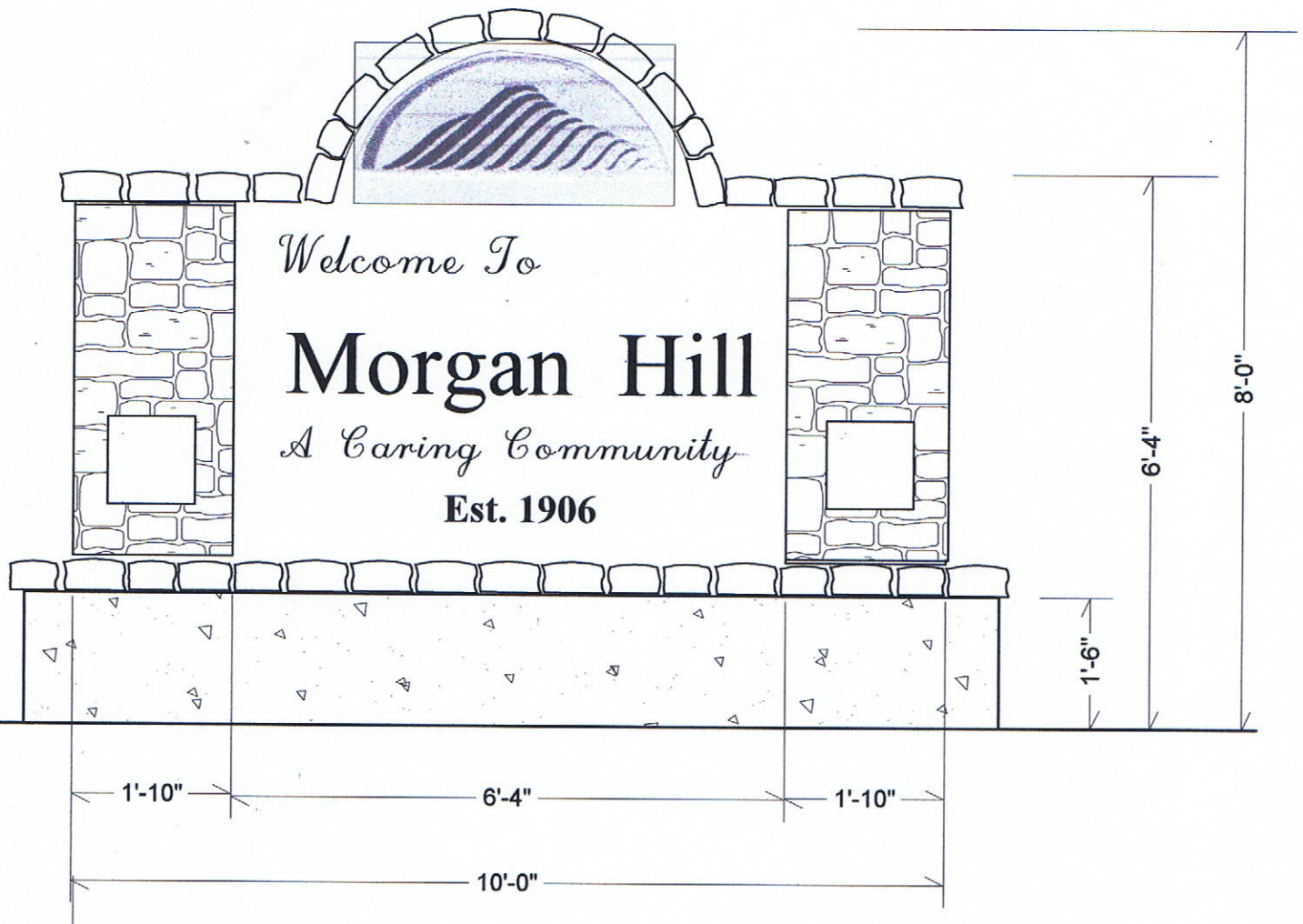
LOCATION PLAN

Leadership MH Sign Locations

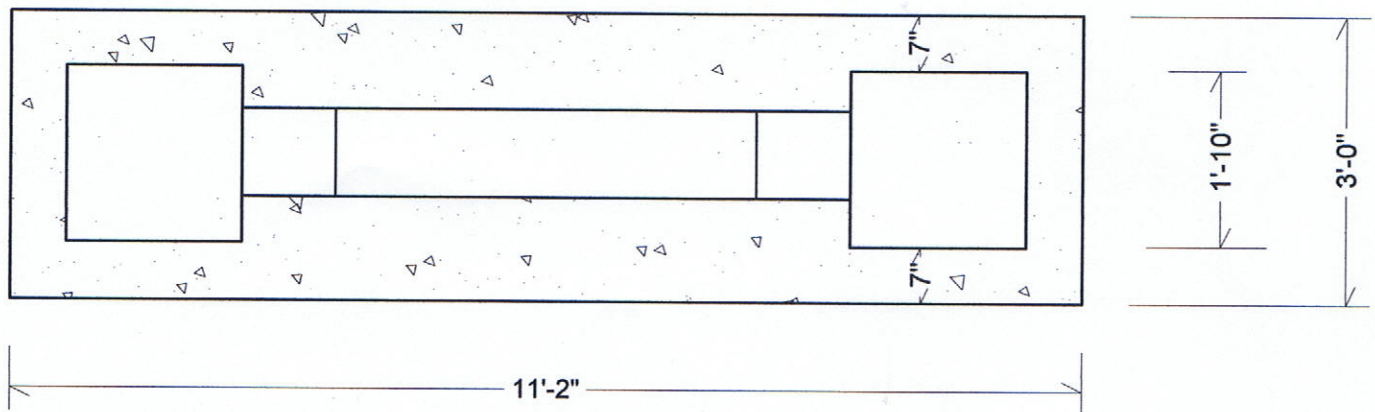
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PAGE 2 OF 2



FRONT VIEW



PLAN VIEW

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Nichole Martin, Community Services Coordinator

APPROVED BY: City Manager

PROVIDE POLICY DIRECTION FOR FY 22-23 COMMUNITY FUNDING REQUESTS

RECOMMENDATION(S)

Provide policy direction regarding requests for community funding.

Estimated Time: 30 minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Preserving our Community History

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

Economic Development

REPORT NARRATIVE:

Annually, the City Council considers funding requests from local non-profit organizations that host community-wide events. In November 2021, City Council adopted Council Policy CP-21-02 (Attachment 1), to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from City Council.

To be considered for this funding, the following criteria must be met:

- a. The organization requesting funding must be a nonprofit.
- b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
- c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
- d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.

e. Existing programs and events may be given priority.

On February 11, 2022, staff provided Community Funding Request Applications to organizations that have previously received fee waivers for facility use, event support, or program support from the City of Morgan Hill. The applications were provided via email to these contacts. The application and information about the process was also posted on the City's website, in the weekly 411, and on the City's Facebook page. Applications were due on March 18, 2022, at 5:00 pm.

The City of Morgan Hill received applications from nineteen (19) organizations, for a total of twenty-five (25) applications. Some organizations submitted multiple applications for different events. The funding requests total approximately \$285,000 (for comparison purposes, the FY 21-22 budget is \$116,000). The requests include 11 new fee waiver requests and 8 organizations requesting significant increases in funding. The funding breakdown includes approximately \$50,000 in fee waivers for use of the Community Center, \$115,000 in funding to support events, and \$120,000 to support programs.

City Staff are requesting direction from City Council on how to evaluate the applications and make a recommendation, which will be presented at the Budget Workshop scheduled for May 25, 2022. Specifically, City staff desire to have the following questions answered by the City Council:

1. Should the approved policy be the guide for prioritizing available funding?
2. Shall existing events and programs that have received funding in the past receive priority?
3. Should fee waiver requests at the CCC that are less likely to impact rental revenue be prioritized?
4. Are there any other priorities the Council would like to include?

Additionally, one item related to public art may be eligible for use of City Art Funds. City staff intend to take that item to the Library, Culture and Arts Commission to make a recommendation to the City Council ahead of the Council Budget Workshop.

COMMUNITY ENGAGEMENT:

Inform and Involve

The Community Funding Request Applications were sent via email to organizations that have recently received Council support for events, fee waivers/facility use, or for partnership program support. Additionally, the application was posted to the website through a Newsflash, in the weekly 411, and on the City's Facebook page, providing information on the annual process. Allowing community organizations to propose funding involves the community in the decision-making process of allocating City funds for community use.

ALTERNATIVE ACTIONS:

Provide City Staff with additional policy direction for Community Funding funding requests that have been received as part of this process.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Annually, the City Council has made decisions to provide funding to support non-profit community events that benefit the entire community. In November 2021, City Council adopted Council Policy (CP-21-02) Council Funding Requests. With this policy in place, the City is bringing forward all funding requests through a single process.

FISCAL AND RESOURCE IMPACT:

Community Funding is budgeted within the City Council's budget, and funded from the General Fund (010). The requested funding totals \$285,000; for comparison purposes, the FY 21-22 budget is \$116,000. City Staff will make a recommendation to City Council for Community Funding Requests as a part of the May 25, 2022 Budget Workshop.

CEQA (California Environmental Quality Act):

Not a Project

Council funding ultimately supports events held on public property. The support and permitting of the City to allow these events is categorically exempt under Class 1 Existing facilities, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-21-02

SUBJECT: CITY COUNCIL FUNDING REQUESTS

EFFECTIVE DATE: NOVEMBER 3, 2021

REVISED DATE: NA

ORIGINATING DEPARTMENT: COMMUNITY SERVICES DEPARTMENT

Purpose

The purpose of this policy is to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. The policy is intended to allow the City Council to fully evaluate all funding requests at one time along with budget appropriation.

Policy

1. Applicant Criteria
 - a. The organization requesting funding must be a nonprofit.
 - b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
 - c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
 - d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
 - e. Existing programs and events may be given priority.
2. Application Availability and Deadline
 - a. Applications for the next Fiscal Year (July-June) will be available on the City's website annually in February.
 - b. Completed applications will be due annually in March.
3. Review and Approval Process
 - a. Applications will be reviewed by the City staff.
 - b. Funding applications and details will be included annually in the Budget Development or Mid-Cycle Budget Review process.
 - c. The City Manager will make recommendations on funding to the City Council based on established Council priorities and funding constraints.
 - d. The City Council shall award and include final funding within the Budget.
4. Reporting Requirements

- a. Within thirty days following the conclusion of the funded activity, the organization must submit a report to the City reporting out pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior fiscal year.
 - b. The report shall include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community.
5. Late Requests
 - a. Requests received after the deadline shall not be accepted by City staff.
6. Council Member Initiated Event and Fee Waiver Requests
 - a. A member of the City Council may request a fee waiver or funding be provided for an event by applying with the above application process by the March deadline.
 - b. All Council Member initiated requests occurring after the March deadline must be provided to the City Manager 90 days in advance of the event to allow sufficient time to bring to City Council for approval.
 - c. The City Staff shall prepare a report for the City Council for approval of any Council Member initiated requests.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

02EAE5B057884E7

RICH CONSTANTINE, MAYOR

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Bill Norman, Police Sergeant

APPROVED BY: City Manager

INTRODUCE AN ORDINANCE ESTABLISHING ENFORCEMENT EFFORTS FOR SIDESHOW PARTICIPANTS AND SPECTATORS

RECOMMENDATION(S)

1. Waive first and second reading of the ordinance; and
2. Introduce an ordinance establishing a process to prohibit spectators from participating in illegal speed contests, exhibitions of speed or reckless driving exhibitions.

Estimated Time: 5 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Preserving and Cultivating Public Trust

Guiding Documents

Public Safety Master Plan

REPORT NARRATIVE:

Due to the recent popularity of various movies, TV shows, and social media posts, illegal street racing has become more than just a few vehicles racing on a lonely road.

Instead, in many of the cities throughout the Bay Area, these gatherings have become major events with very large crowds. With the growing popularity statewide of “sideshows”, these events have become more and more difficult to safely handle and control due to limited staffing and the lack of officers who possess the knowledge to properly enforce state vehicle codes related to illegal street racing.

In an effort to combat these issues, many cities statewide have begun to adopt spectator ordinances in order to address illegal street racing and sideshow events.

These ordinances have allowed police officers to issue a misdemeanor citation to spectators who are found gathering at either an illegal street race/sideshow, or preparation areas for a street race/sideshow. These spectator ordinances have proven to be effective in not only preventing spectators from gathering but in reducing the

number of people willing to break the law by watching these illegal events. They have also reduced the number of spectators who have been injured or killed.

The illegal street racing crowds tend to look for areas within different cities where enforcement action by police officers is less likely to occur. Typically, when these large groups are confronted by law enforcement, they tend to have backup meeting areas within other nearby locations. By utilizing different social media platforms, these large groups can find different locations very quickly so they can continue their law-breaking behavior uninterrupted. People within these groups often show a lack of concern for anyone else's safety, especially for any spectators surrounding the events. As recently as fall 2021, there were several reports in the Bay Area where spectators suffered life-threatening injuries.

Since the spectator ordinance is being presented as a municipal code, citations will be issued by police officers and misdemeanor cases will be heard by the City Attorney instead of being heard via traditional court hearings. This will ensure that each person associated with these events will be prosecuted to the fullest extent of the law by our City Attorney's Office.

With the growing amount of support from the community and law enforcement leaders, now is the perfect time to set forth this ordinance in order to address the growing public safety concern and quality-of-life issues. The Morgan Hill Police Department has responded to one sideshow in our City and prevented nearly a dozen others from occurring in the past two years.

COMMUNITY ENGAGEMENT:

This Staff Report serves to inform the community of the Police Department's desire to establish an ordinance prohibiting spectators at illegal speed contests, exhibition of speed or reckless driving exhibitions.

ALTERNATIVE ACTIONS:

Should the City Council decline to adopt this ordinance, the Police Department will be hampered in their efforts to reduce illegal "sideshows", preserve public safety and prevent future acts from occurring.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not Applicable

FISCAL AND RESOURCE IMPACT:

With the adoption of this proposed ordinance, enforcement costs would be minimal and absorbed within existing duties.

CEQA (California Environmental Quality Act):

Not a project.

This ordinance is not a project as defined in Section 15378 of the State CEQA guidelines as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

ORDINANCE NO. XXXX, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 9.18 ("SIDESHOWS") TO TITLE 9 ("PUBLIC PEACE, MORALS AND WELFARE) OF THE MORGAN HILL MUNICIPAL CODE TO PROHIBIT SPECTATORS AT ILLEGAL SPEED CONTESTS, EXHIBITIONS OF SPEED OR RECKLESS DRIVING EXHIBITIONS

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN
AND ENACT AS FOLLOWS:**

SECTION 1. Chapter 9.18 ("Sideshows") of Title 9 ("Public Peace, Morals and Welfare") is hereby added to read as follows:

"9.18.010—Definitions

For purposes of this section, the following definitions shall apply:

- A. "Illegal motor vehicle speed contest" and "exhibition of speed" shall have the same meaning as in California Vehicle Code Section 23109 subsections (a) and (c), as may be amended;
- B. "Reckless Driving Exhibition" shall have the same meaning as in California Vehicle Code Section 23103, as may be amended.
- C. "Off-street Parking Facility" shall have the same meaning as California Vehicle Code Section 12500 subsection (c), as may be amended.
- D. "Spectator" shall mean any person who is present at an illegal motor vehicle speed contest, exhibition of speed or reckless driving exhibition for the purpose of viewing, observing, watching, or witnessing the event as it progresses. A "spectator" includes any person at the location of the event without regard to whether the person arrived at the event by driving a vehicle, riding as a passenger in a vehicle, walking, or arriving by some other means;
- E. A person is "present" at the illegal motor vehicle speed contest, exhibition of speed or reckless driving exhibition if that person is within 150 feet of the location of the event, or within 150 feet of the street or highway where preparations are being made for the event;
- F. "Preparations" means any of the following acts done for the purpose of a motor vehicle speed contest or exhibition of speed:
 - 1. One or more motor vehicles or persons has arrived at a predetermined location for the purpose of participating in or being a spectator at the event;

2. One (1) or more persons have gathered on, or adjacent to, a public street or highway;
3. One (1) or more persons have gathered in an off-street Parking Facility;
4. One (1) or more persons have impeded the free public use of a public street, highway, or off-street Parking Facility by acts, words or physical barriers;
5. One (1) or more motor vehicles have lined up on a public street, highway, or off-street Parking Facility with motors running;
6. One (1) or more drivers are revving a motor vehicle's engine or causing the motor vehicle's tires to spin; or
7. A person is standing or sitting in a location to act as a race starter

9.18.020—Spectators Prohibited at Illegal Motor Vehicle Speed Contest, Exhibition of Speed and Reckless Driving Exhibitions

It shall be unlawful for any person to:

- A. Be knowingly present as a Spectator at an illegal motor vehicle speed contest or exhibition of speed conducted on a public street or highway; or
- B. Be knowingly present as a Spectator at a reckless driving exhibition conducted on a public street or highway or in an off-street Parking Facility.
- C. Be knowingly present as a Spectator where Preparations are being made for an illegal motor vehicle speed contest or exhibition of speed conducted on a public street or highway; or.
- D. Be knowingly present as a Spectator where Preparations are being made for a reckless driving exhibition conducted on a public street or highway or in an off-street Parking Facility.
- E. Nothing in this Section prohibits peace officers or their agents who are acting in the course of their official duties from being Spectators at an illegal motor vehicle speed contest, exhibition of speed or reckless driving exhibition or Spectators at the location of Preparations for either of these activities.

9.18.030—Encouraging Spectators to Gather at Illegal Motor Vehicle Speed Contest, Exhibition of Speed and Reckless Driving Exhibition Prohibited.

- A. It shall be unlawful for any person to knowingly encourage, promote, instigate, assist, facilitate, aid, or abet:
 1. The gathering of persons as Spectators at an illegal motor vehicle speed contest or exhibition of speed conducted on a public street or highway; or

2. The gathering of persons as Spectators at a reckless driving exhibition conducted on a public street or highway or in an off-street Parking Facility.
- B. It shall be unlawful for any person to knowingly encourage, promote, instigate, assist, facilitate, aid, or abet:
1. The gathering of persons as Spectators where Preparations are being made for an illegal motor vehicle speed contest or exhibition of speed conducted on a public street or highway; or
 2. The gathering of persons as Spectators where Preparations are being made for a reckless driving exhibition conducted on a public street or highway or in an off-street Parking Facility.

9.18.040—Relevant Circumstances.

Notwithstanding any other provision of law, to prove a violation of this chapter, admissible evidence may include, but is not limited to, any of the following:

- A. The nature of and circumstances surrounding the incident, and the nature of a subject individual's participation in or spectating at an incident, including such factors as the time of day, description of the scene, number of people and/or vehicles present, location of the individual charged relative to the involved vehicles, and actions taken by the individual charged (including photography or videography, reporting to authorities, etc.); or
- B. That the person charged has previously participated in, or been a spectator at, a speed contest or reckless driving exhibition; or
- C. That the person charged has previously aided and abetted a speed contest or reckless driving exhibition; or
- D. That the person charged was previously present at a location where preparations were being made for a speed contest or reckless driving exhibition; or
- E. Evidence of these prior acts may be admissible, to the fullest extent permissible by law, to show the opportunity, intent, plan, knowledge, identity, or the absence of a mistake or accident, or propensity of the defendant to be present as a spectator at a speed contest or a reckless driving exhibition if the prior act or acts occurred within three years of the presently charged offense. These prior acts may always be admissible to show knowledge on the part of the defendant that a speed contest or a reckless driving exhibition was taking place at the time of the presently charged offense. Prior acts are not limited to those that occurred within the City of Morgan Hill.

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

SECTION 3. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

The foregoing ordinance was introduced, and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the 20th day of April 2022, and was finally adopted at a regular meeting of said Council on the ____ day of ____ 2022, and said ordinance was duly passed and adopted in accordance with law.

PASSED AND ADOPTED by the City Council of Morgan Hill at the regular meeting held on the __th 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

∞ 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. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the XX XX 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 20, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE; MARCH 2022 FINANCIAL AND INVESTMENT REPORTS; AND CITY MANAGER AUTHORITY REPORT

RECOMMENDATION(S)

Accept and file report.

Estimated Time: 10 minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the March 2022 financial and investment reports.

March 2022 Financial Report

The Revenue and Expense Summary through March 2022 is included on the page 4 of the monthly financial report. Overall, General Fund revenues total \$27.7 million or about 55% of the budget. Expenditures, including encumbrances, amounted to \$35.6 million or 70% of the budget.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on March 16, 2022. Recreation Services revenues continue trending below budget. The indoor mask mandate which previously served as an important tool to prevent the spread of coronavirus, regardless of vaccination status, had a negative impact to the membership drive. In addition, facility rental revenue for the year is

expected to be minimal compared to prior years and staff does not expect any meaningful improvement until next fiscal year. However, staff expects that the overall net impact won't be significant as several cost containment strategies have been implemented to offset the reduction in revenue.

City Manager's Authority Report

Pursuant to the City Council Policy 18-05 – Report on delegation of authority to City Manager, Page 20 of the Attachment lists the contracts and or agreements between \$25,000 to \$60,000, or the limit of the California Uniform Public Construction Cost Accounting Act (CUPCCAA), entered into by the City Manager since the last report from January 13, 2022 through April 6, 2022.

COMMUNITY ENGAGEMENT:

Inform

Finance staff prepares these financial reports to inform City officials, the Council, the community, and various lenders and stakeholders about the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item. Beginning in FY 2020-21, budget reports are presented to the Council monthly.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project

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

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
March 31, 2022 - 75% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION

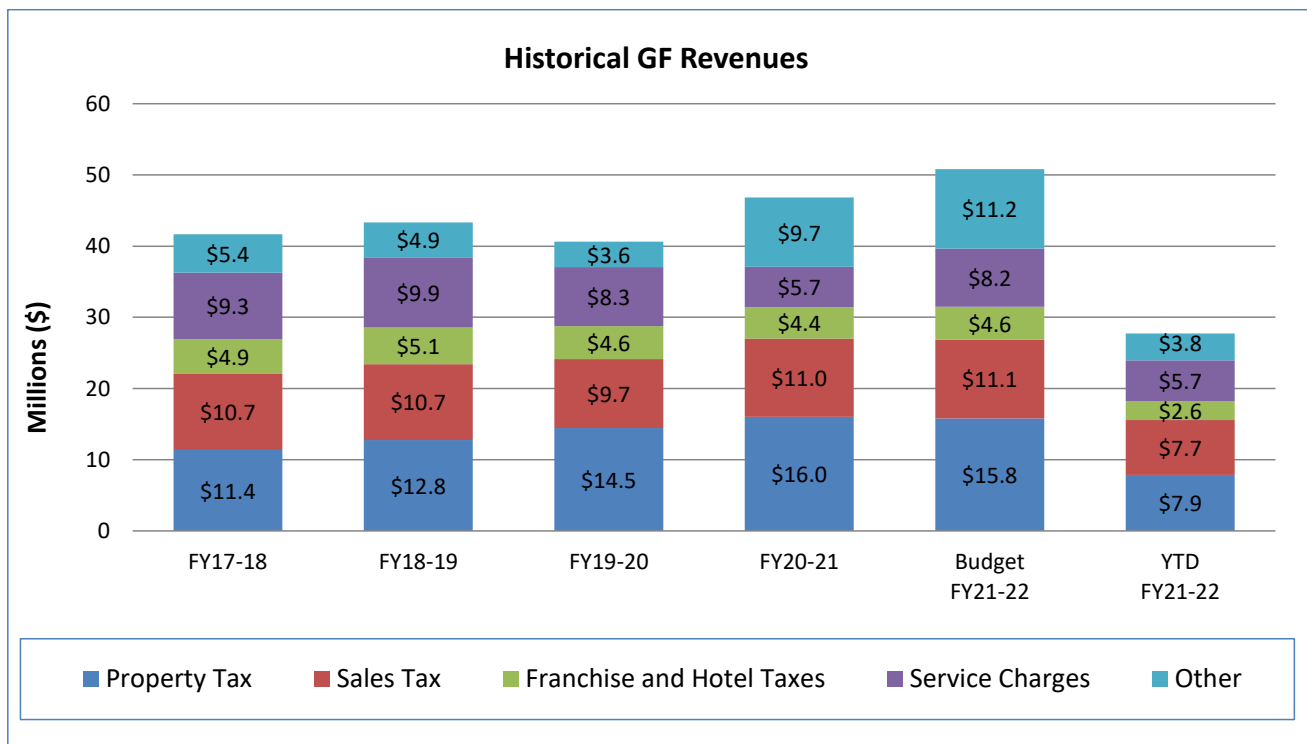


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED MARCH 2022 – 75% OF YEAR COMPLETE

- **General Fund** – Revenues through March totaled \$27.7 million, or about 55% of the budgeted revenues. With respect to the property tax revenue forecast, on August 20, 2021, the Controller-Treasurer’s Department of the County of Santa Clara notified the cities and agencies within the County that the State of California Controller’s Office agreed with the County’s methodology of calculating excess Educational Revenue Augmentation Fund (ERAF), therefore, set aside provision is no longer required. The City of Morgan Hill is expecting to receive an additional \$650,000 in excess ERAF for FY2021-22. However, the County cautioned cities and agencies in planning and budgeting this source of revenue as future legislation could impact the calculation methodology. The increase in excess ERAF distribution is mainly due to the growth of property tax outpacing the growth of school funding requirement and this revenue stream is becoming a large revenue category for the City in recent years. Morgan Hill began to receive excess ERAF distribution in FY2013-14 in the amount of \$13,000 and it has grown to about \$1.9 million in FY2020-21.

As for sales tax, the latest projection from our sales tax revenue consultant estimated this year’s revenue, before sales tax rebates, to be about \$12.0 million versus about \$11.0 million budgeted. Pandemic based economic recovery contributed significantly to this upside forecast as well as the addition of a car dealership. One of the industries hit hardest across the state during the pandemic was the restaurants group which has experienced a strong rebound.

The chart below shows historical General Fund revenues by major revenue category from FY17-18 through FY20-21 Actual, FY21-22 Budget, and YTD as of March 31, 2022.

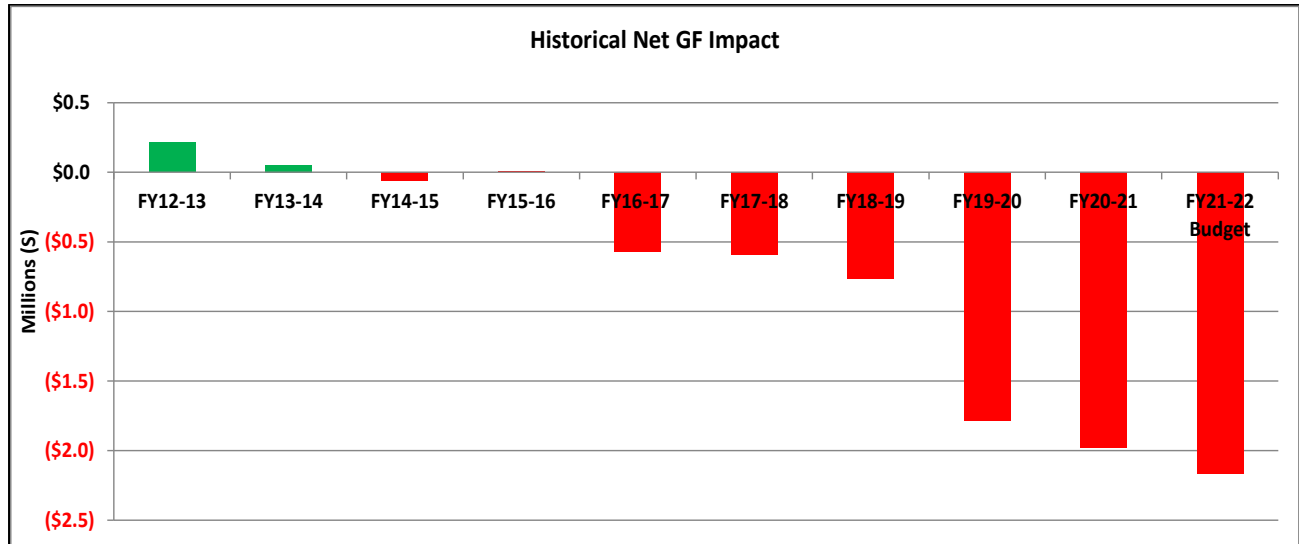


General Fund expenditures and encumbrances as of March 31, 2022 totaled \$35.6 million, of which approximately \$1.4 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED MARCH 2022 – 75% OF YEAR COMPLETE

- **Community Services** – The Community Services Department’s recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.6 million as of March 31, 2022. The large budgeted operating loss for recreation operations reflects the restrictions and limited opening of recreation facilities since March 2020 due to the shelter-in-place order as a result of the coronavirus pandemic and the continued indoor mask mandate which is having a negative impact to the membership drive.



Due to longstanding governmental accounting and budgeting convention, the City’s recreation operations are not charged for indirect costs (known in Morgan Hill as “General Fund Administration”) from the central services departments of City Attorney, City Manager, and Administrative Services. The City’s other governmental funds, such as Development Services, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City’s indirect cost allocation plan, prepared in compliance with the guidelines set forth in the Code of Federal Regulations Title 2, Chapter II, Part 200 (formerly OMB Circular No. A-87), which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through February totaled \$3.6 million. Expenditures, including encumbrances, totaled \$4.2 million. The fund is budgeted at a higher revenue at \$5.3 million compared to recent years’ actuals primarily due to the higher fees anticipated from the completion of the updated fee study. Even with higher projected revenue, the fund is still anticipated to end the year with a net deficit of approximately \$200,000 mainly because of the certain activities that are not meant to be full cost recovery such as public counter/general information services, strategic initiative and special projects, and subsidized services. These activities need to be supplemented by other funding sources.
- **Debt Service Funds** – Expenditures through March totaled \$0.5 million. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED MARCH 2022 – 75% OF YEAR COMPLETE

for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.

- **Wastewater Operations** – Revenues from Sewer Operations through March totaled \$9.8 million. Expenditures and outstanding encumbrances totaled \$10.2 million or 72% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY17-18 through FY20-21 Actual, FY21-22 Budget, and YTD as of March 31, 2022.

(amount in millions)	FY17-18	FY18-19	FY19-20	FY20-21	Budget FY21-22	YTD FY21-22
Revenues	10.3	11.4	11.9	13.3	14.1	9.8
Expenditures	10.8	11.4	12.3	13.3	14.1	10.2
Operating Margin	(0.5)	-	(0.4)	-	-	(0.4)
Operating Margin without Encumbrances	(0.3)	0.4	(0.1)	-	-	(0.3)

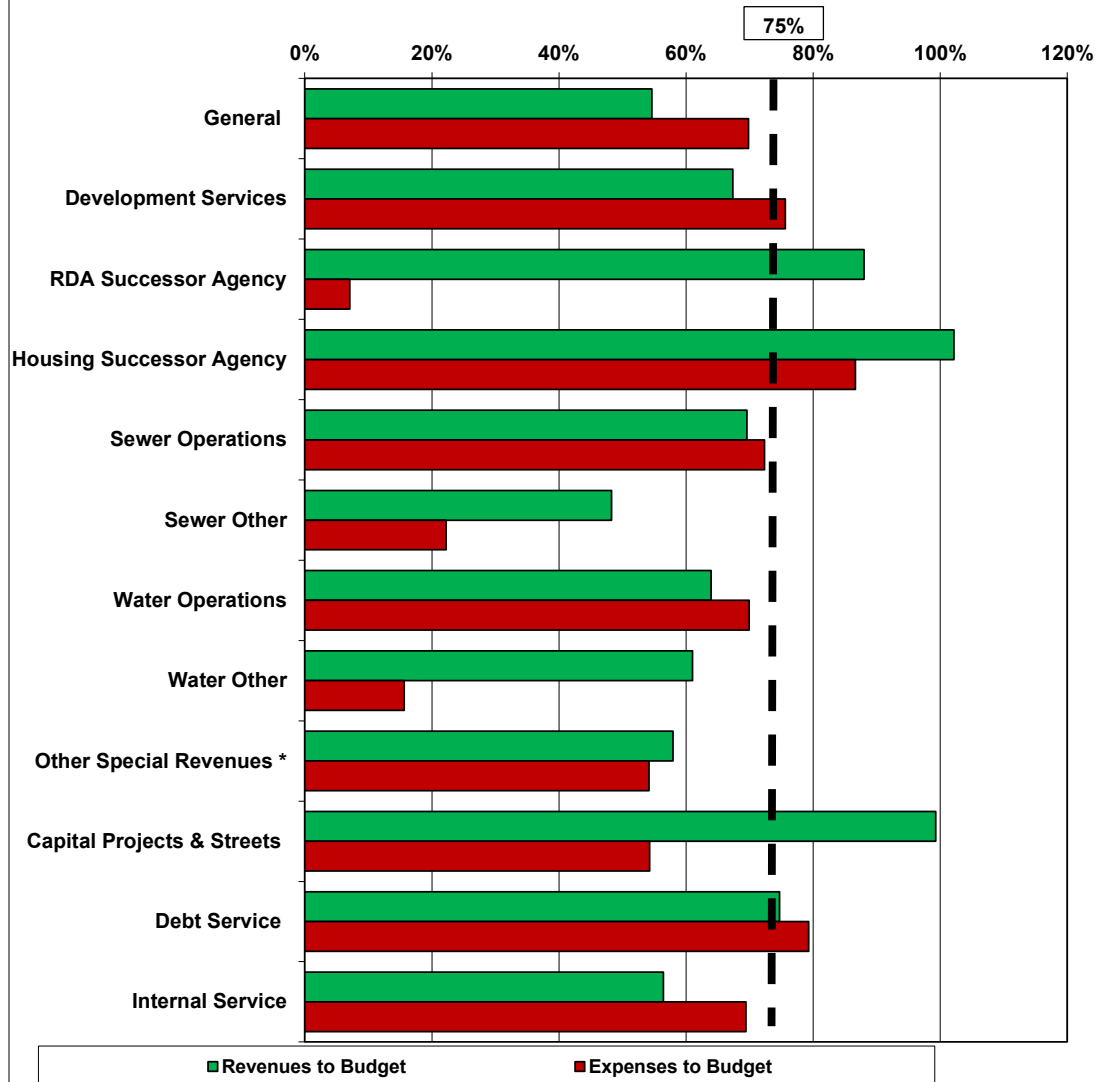
- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through March totaled \$10.4 million. Water Operations expenditures, including outstanding encumbrances, totaled \$11.5 million through March. The table below shows Water Operations revenues and expenditures from FY17-18 through FY20-21 Actual, FY21-22 Budget, and YTD as of March 31, 2022.

(amount in millions)	FY17-18	FY18-19	FY19-20	FY20-21	Budget FY21-22	YTD FY21-22
Revenues	13.0	14.2	15.3	16.5	16.3	10.4
Expenditures	12.1	14.3	16.4	16.5	16.4	11.5
Operating Margin	0.9	(0.1)	(1.1)	-	(0.1)	(1.1)
Operating Margin without Encumbrances	1.4	0.8	(0.1)	-	(0.1)	(0.4)

- **Investments** – Three securities were purchased. Total interest earnings received on investments were \$150,000 during the month.



Morgan Hill YTD Revenue & Expense Summary March 31, 2022 - 75% of Year Complete



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 27,741,235	55%	\$ 35,582,449	70%
Development Services	3,565,850	67%	4,199,903	76%
RDA Successor Agency	6,246,678	88%	491,354	7%
Housing Successor Agency	219,937	102%	869,662	87%
Sewer Operations	9,822,149	70%	10,219,470	72%
Sewer Other	5,778,805	48%	10,009,721	22%
Water Operations	10,443,571	64%	11,490,048	70%
Water Other	4,293,221	61%	1,535,930	16%
Other Special Revenues *	3,227,707	58%	3,072,972	54%
Capital Projects & Streets	22,841,439	99%	36,392,229	54%
Debt Service	517,612	75%	550,635	79%
Internal Service	7,332,558	56%	7,745,925	69%
TOTAL FOR ALL FUNDS	\$ 102,030,763	66%	\$ 122,160,297	52%

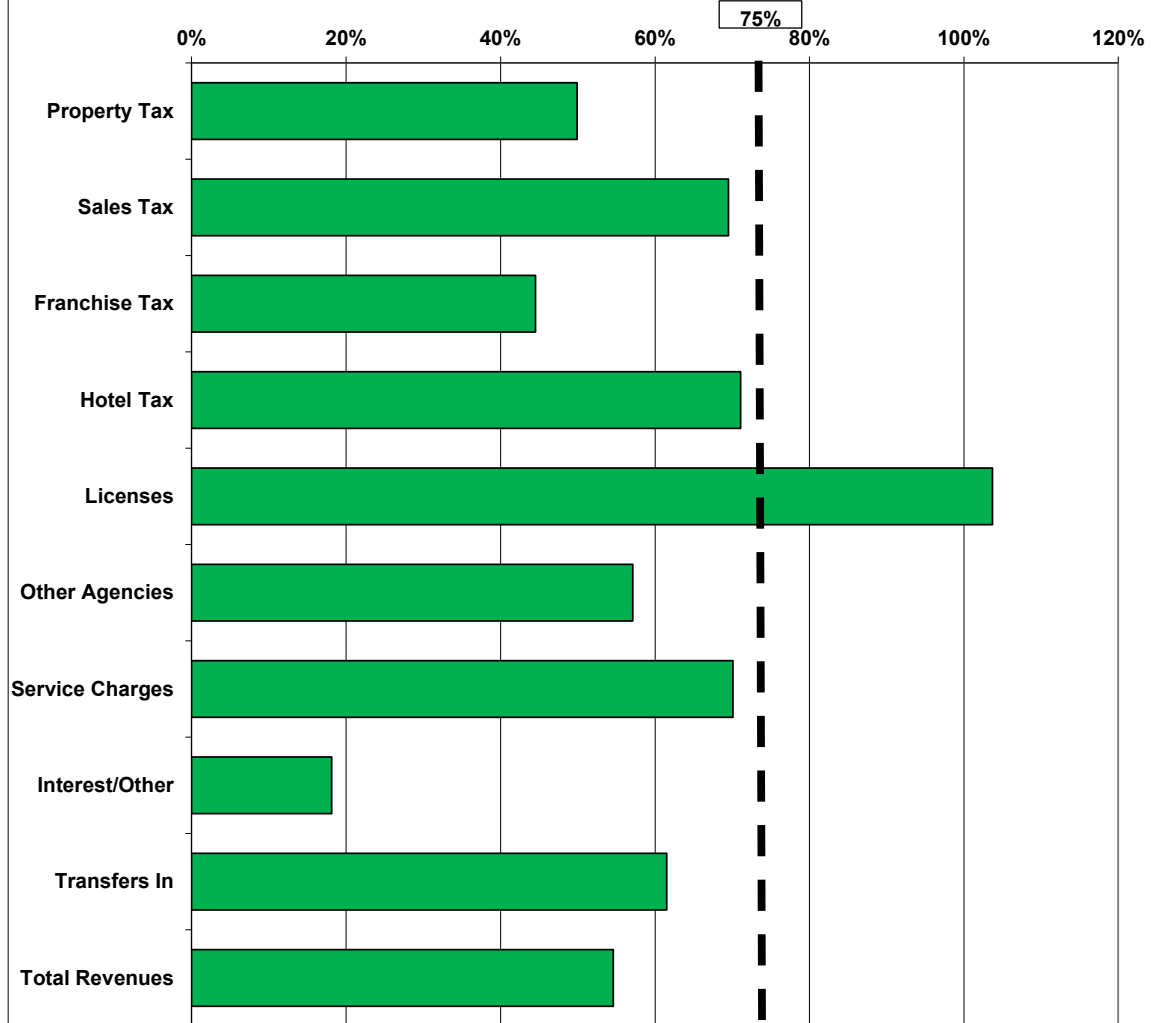
* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.



Morgan Hill YTD General Fund Revenues

March 31, 2022 - 75% of Year Complete

Percent of Actual to Budget



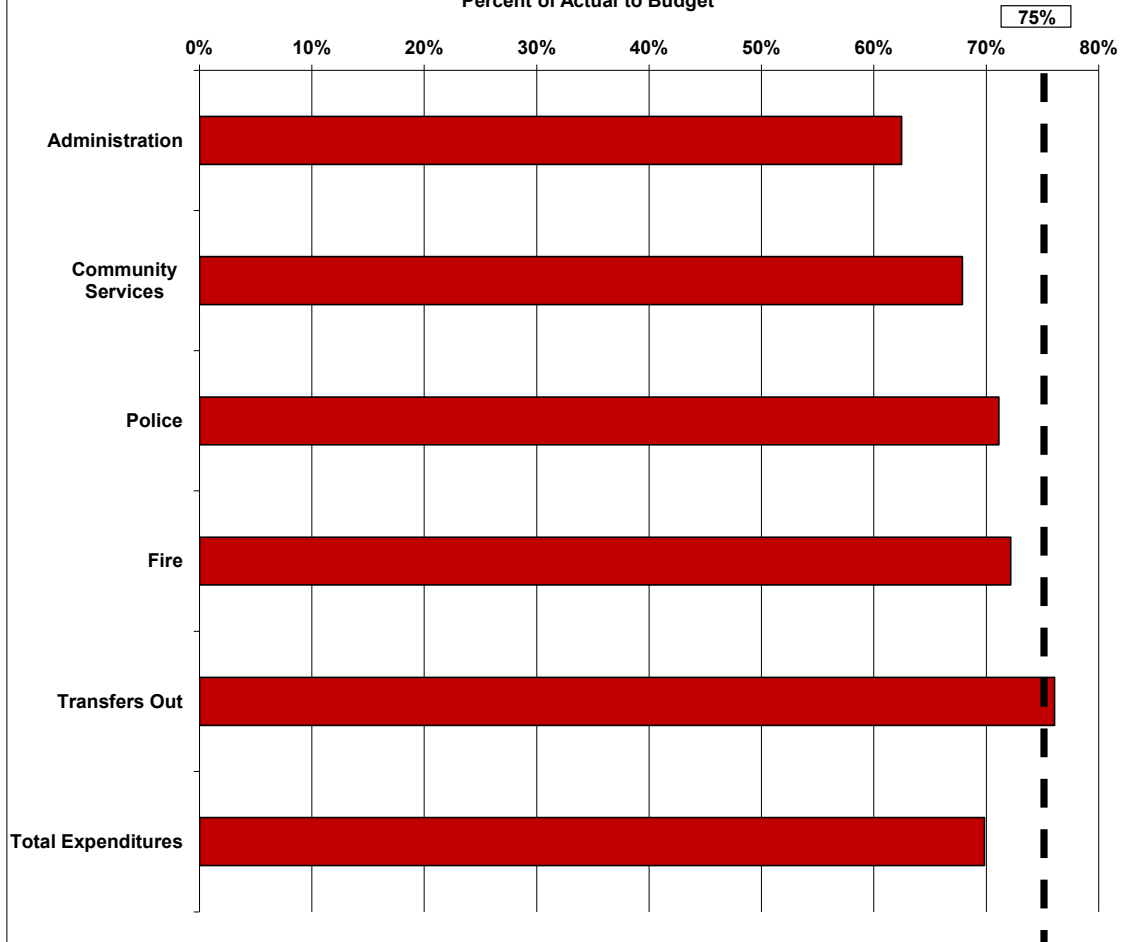
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 15,771,000	\$ 7,873,376	50%	\$ 7,781,241	1%
Sales Tax	11,098,601	7,713,891	70%	6,224,598	24%
Franchise Tax	2,375,000	1,056,341	45%	987,626	7%
Hotel Tax	2,235,300	1,589,372	71%	921,187	73%
Licenses	198,825	206,209	104%	139,947	47%
Other Agencies	653,658	373,093	57%	320,698	16%
Service Charges	8,164,851	5,722,317	70%	3,833,099	49%
Interest/Other	7,230,495	1,305,571	18%	1,055,152	24%
Transfers In	3,093,579	1,901,065	62%	1,872,661	2%
TOTAL REVENUES	\$ 50,821,309	\$ 27,741,235	55%	\$ 23,136,208	20%



Morgan Hill YTD General Fund Expenditures

March 31, 2022 - 75% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,793,826	\$ 3,618,828	62%	\$ 3,452,654	5%
Community Services	13,947,066	9,467,317	68%	8,201,101	15%
Police	19,133,242	13,608,937	71%	12,478,566	9%
Fire	7,788,401	5,620,125	72%	5,355,206	5%
Transfers Out	4,294,211	3,267,243	76%	428,373	663%
TOTAL EXPENDITURES	\$ 50,956,746	\$ 35,582,449	70%	\$ 29,915,901	19%

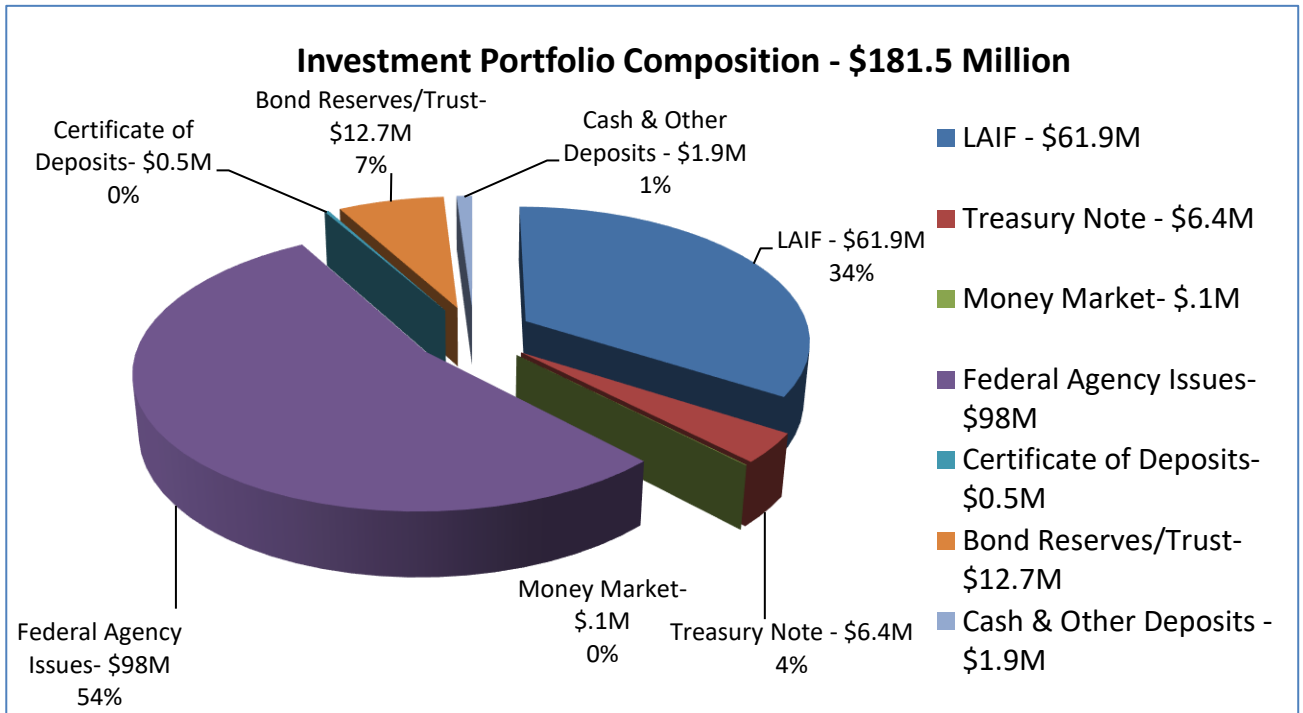


**City of Morgan Hill
Recreation Report - Fiscal Year 2021-22
For the Month and Nine Months Ended March 31, 2022
75% of Year Complete**

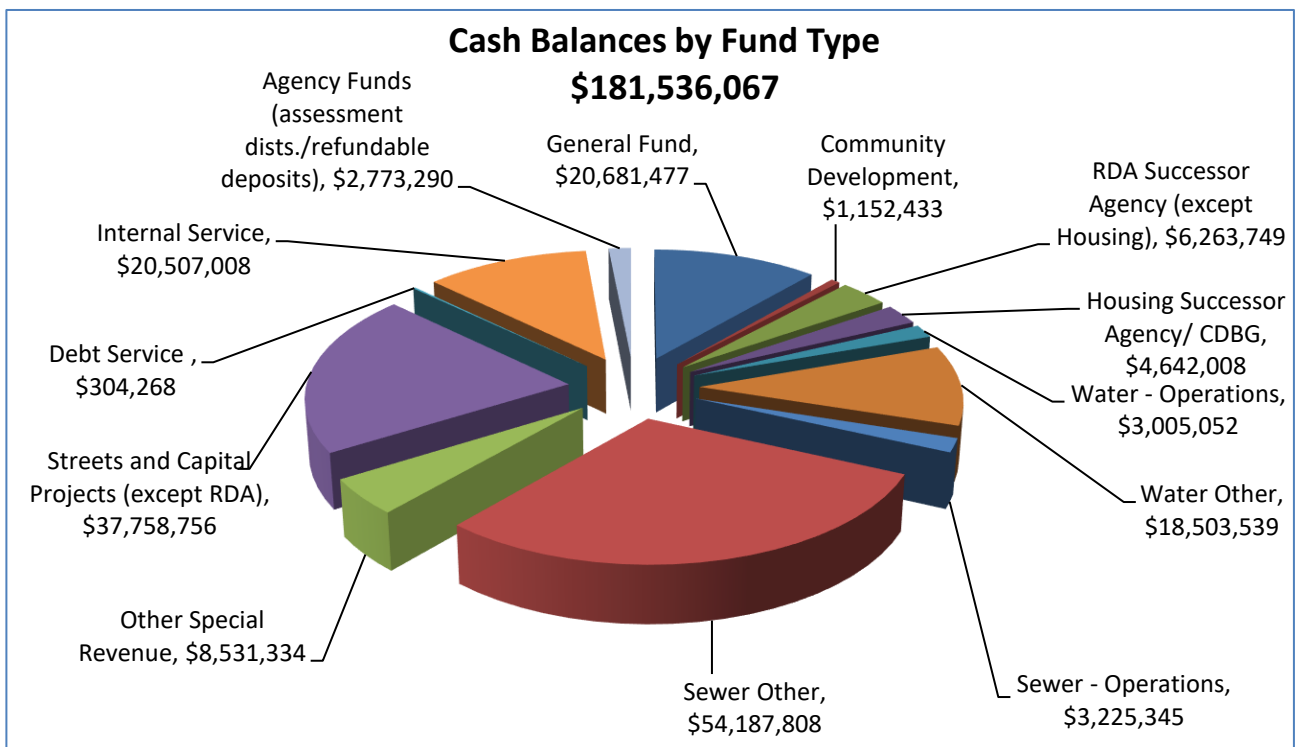
	<u>Budget</u>	<u>March 2022</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 4,713,801	\$ 463,719	\$ 3,168,487	
Facility Rentals	506,683	97,122	485,898	
Community Services	79,000	1,001	106,012	
Transfers in	75,000	6,250	56,250	
Total Revenues	<u>\$ 5,374,484</u>	<u>\$ 568,091</u>	<u>\$ 3,816,648</u>	71%
Less: Expenditures				
Membership & Program Services	\$ 6,240,277	\$ 633,733	\$ 3,946,391	
Facility Rentals	716,081	45,433	398,962	
Community Services	641,554	48,458	371,514	
Total Expenditures	<u>\$ 7,597,913</u>	<u>\$ 727,623</u>	<u>\$ 4,716,867</u>	62%
Net Impact without encumbrances	<u>\$ (2,223,429)</u>	<u>\$ (159,531)</u>	<u>\$ (900,219)</u>	
Encumbrances	-	-	745,657	
Net Impact with encumbrances	<u><u>\$ (2,223,429)</u></u>	<u><u>\$ (159,531)</u></u>	<u><u>\$ (1,645,876)</u></u>	

City of Morgan Hill Monthly Investment Report - March 31, 2022

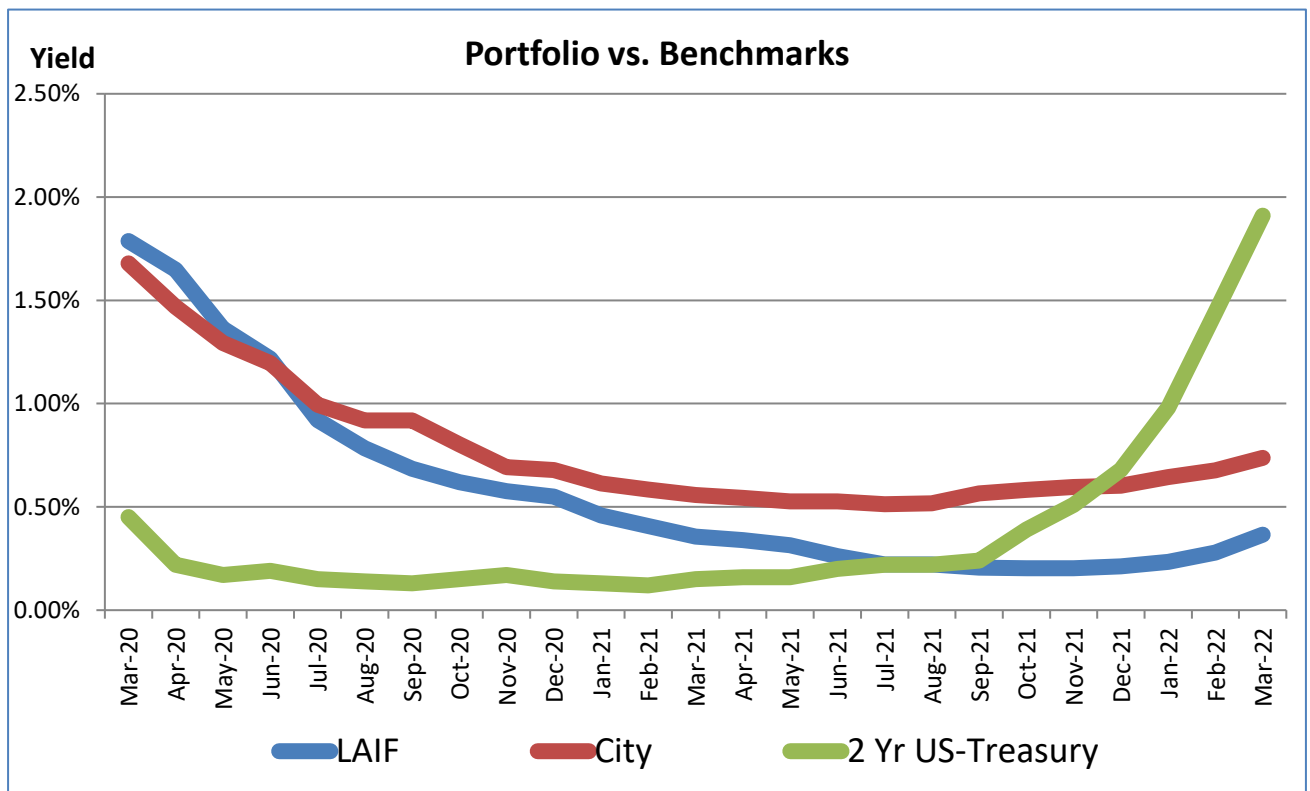
The following are the snapshots of City's investment portfolio as of March 31, 2022. The first chart shows the portfolio composition by investment type:



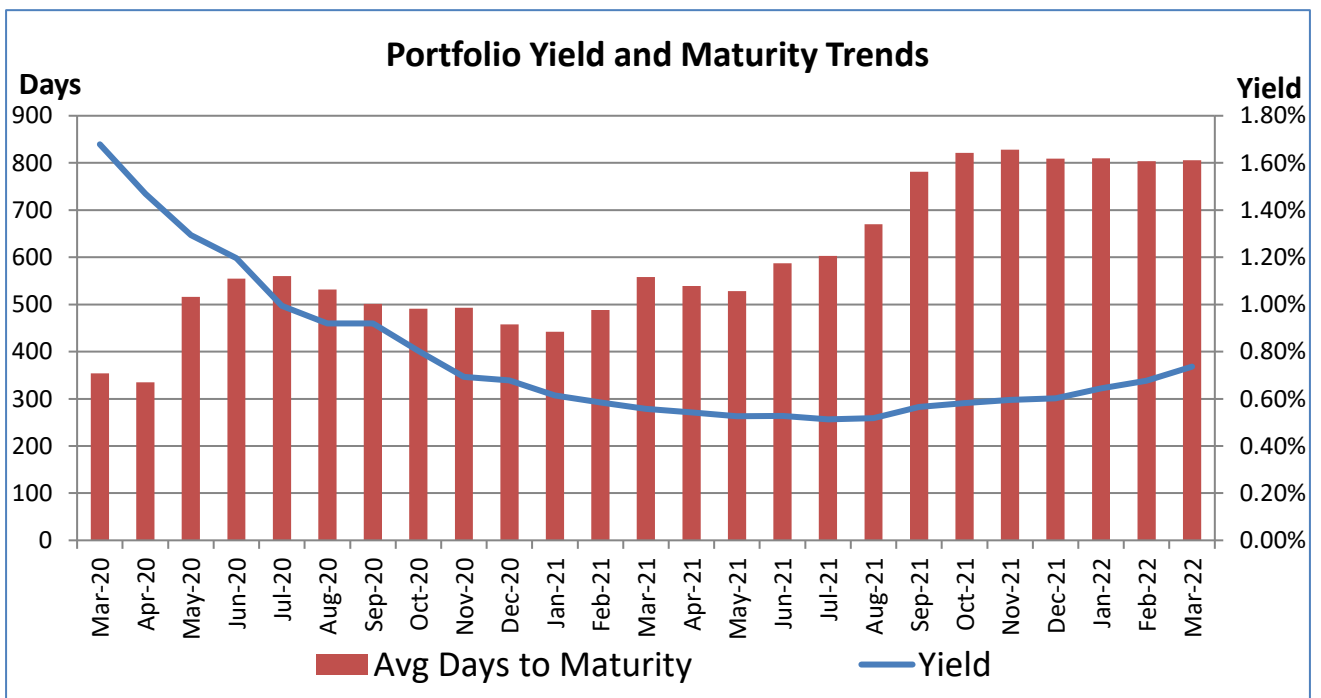
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of March 31, 2022

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 61,947,048	34.12%	\$ 61,788,409	0.37%		
City Managed							
Treasury Note	4/30/2018	4,448,558	2.45%	4,489,470	2.73%	3/31/2023	3/31/2023
Treasury Note	10/8/2021	1,988,838	1.10%	1,861,640	0.88%	9/30/2026	9/30/2026
Treasury Note	1/4/2022	1,999,242	1.10%	1,948,120	0.77%	12/31/2023	12/31/2023
Treasury Note	1/19/2022	1,990,717	1.10%	1,948,120	1.02%	12/31/2023	12/31/2023
Treasury Note	2/11/2022	1,979,440	1.09%	1,949,060	1.44%	1/31/2024	1/31/2024
Treasury Note	3/28/2022	1,996,334	1.10%	1,994,680	2.34%	4/30/2024	4/30/2024
FFCB Bond	4/8/2020	2,000,000	1.10%	1,940,400	0.88%	4/8/2022	4/8/2024
FFCB Bond	5/27/2020	2,000,000	1.10%	1,886,500	0.73%	5/27/2022	5/27/2025
FHLMC Bond	6/3/2020	2,000,000	1.10%	1,903,940	0.60%	6/3/2022	12/3/2024
FHLMC Bond	10/20/2020	2,000,000	1.10%	1,862,420	0.60%	4/20/2022	10/20/2025
FHLMC Bond	10/27/2020	2,000,000	1.10%	1,873,680	0.63%	4/27/2022	10/27/2025
FHLMC Bond	11/2/2020	2,000,000	1.10%	1,940,280	0.32%	5/2/2022	11/2/2023
FFCB Bond	11/3/2020	2,000,000	1.10%	1,862,300	0.54%	5/3/2022	11/3/2025
FNMA Bond	11/18/2020	2,000,000	1.10%	1,873,740	0.65%	5/18/2022	11/18/2025
FHLMC Bond	11/24/2020	2,000,000	1.10%	1,866,680	0.64%	5/24/2022	11/24/2025
FFCB Bond	11/24/2020	1,000,000	0.55%	931,000	0.60%	5/24/2022	11/24/2025
FHLMC Bond	11/25/2020	3,000,000	1.65%	2,818,020	0.63%	5/25/2022	11/25/2025
FHLMC Bond	11/30/2020	2,000,000	1.10%	1,862,480	0.65%	5/26/2022	11/26/2025
FFCB Bond	12/22/2020	2,000,000	1.10%	1,863,320	0.47%	6/22/2022	12/22/2025
FHLB Bond	1/22/2021	2,000,000	1.10%	1,853,060	0.63%	7/22/2022	1/22/2026
FNMA Bond	1/28/2021	2,000,000	1.10%	1,866,880	0.55%	7/28/2022	1/28/2026
FHLB Bond	1/28/2021	2,000,000	1.10%	1,873,660	0.65%	7/28/2022	1/28/2026
FHLB Bond	2/24/2021	2,000,000	1.10%	1,852,480	0.75%	8/24/2022	2/24/2026
FHLB Bond	2/25/2021	2,000,000	1.10%	1,871,640	0.66%	8/25/2022	2/25/2026
FHLB Bond	2/26/2021	2,000,000	1.10%	1,856,840	0.65%	8/26/2022	2/26/2026
FHLB Bond	3/10/2021	2,000,000	1.10%	1,880,060	0.85%	9/10/2022	3/10/2026
FHLB Bond	3/16/2021	2,000,000	1.10%	1,872,660	0.70%	9/16/2022	3/16/2026
FHLB Bond	3/16/2021	2,000,000	1.10%	1,876,000	0.80%	9/16/2022	3/16/2026
FHLB Bond	6/9/2021	2,000,000	1.10%	1,894,040	1.08%	6/9/2022	6/9/2026
FHLB Bond	6/30/2021	2,000,000	1.10%	1,884,720	1.00%	6/30/2022	6/30/2026
FHLB Bond	7/15/2021	3,000,000	1.65%	2,838,300	1.13%	7/15/2022	7/15/2026
FHLB Bond	7/15/2021	2,000,000	1.10%	1,904,160	0.85%	7/15/2022	7/15/2025
FHLB Bond	8/26/2021	2,000,000	1.10%	1,873,640	0.80%	8/26/2022	8/26/2026
FHLB Bond	8/26/2021	3,000,000	1.65%	2,828,970	1.00%	8/26/2022	8/26/2026
FHLB Bond	8/26/2021	2,000,000	1.10%	1,873,020	0.90%	8/26/2022	8/26/2026
FHLB Bond	9/13/2021	2,091,960	1.15%	1,948,840	0.82%	9/11/2022	9/11/2026
FFCB Bond	9/28/2021	1,984,710	1.09%	1,855,140	0.98%	9/10/2022	9/10/2026
FHLB Bond	9/29/2021	3,000,000	1.65%	2,801,460	1.13%	9/29/2022	9/29/2026
FHLB Bond	9/30/2021	2,000,000	1.10%	1,869,500	0.88%	9/30/2022	9/30/2026
FHLB Bond	9/30/2021	3,000,000	1.65%	2,821,830	1.05%	9/30/2022	9/30/2026
FHLB Bond	9/30/2021	3,000,000	1.65%	2,818,530	1.02%	9/30/2022	9/30/2026
FHLB Bond	10/19/2021	2,000,000	1.10%	1,870,800	1.00%	4/19/2022	10/19/2026
FHLB Bond	11/18/2021	2,000,000	1.10%	1,902,920	1.30%	5/18/2022	11/18/2026
FHLB Bond	12/29/2021	2,000,000	1.10%	1,953,000	0.75%	6/29/2022	12/29/2023
FHLB Bond	1/19/2022	2,000,000	1.10%	1,921,420	1.74%	1/19/2024	1/19/2027
FHLB Bond	1/25/2022	2,000,000	1.10%	1,947,440	1.51%	1/25/2023	7/25/2025
FHLB Bond	3/10/2022	2,000,000	1.10%	1,976,180	3.48%	6/10/2022	3/10/2027
FHLB Bond	3/30/2022	3,000,000	1.65%	2,996,910	1.62%	9/30/2022	3/30/2023
CD - Goldman Sachs Bank USA	5/13/2020	250,000	0.14%	250,015	0.50%	5/13/2022	5/13/2022
CD - American Nat'l Bank	5/20/2020	250,000	0.14%	249,983	0.40%	5/20/2022	5/20/2022
Sub Total/Average		\$ 104,979,799	57.83%	\$ 99,759,948	1.03%		
Money Market		\$ 85,113	0.05%	\$ 85,113	0.16%		
Total City Managed/Average		\$ 167,011,960	92.00%	\$ 161,633,469	0.79%		
Bond Reserve Accounts - Held By Trustees		\$ 7,473,690	4.12%	\$ 7,473,690			
Cash/Deposits		\$ 1,863,013	1.03%	\$ 1,863,013			
PARS and CALPERS CERBT Trust		\$ 5,187,404	2.86%	\$ 6,182,776			
GRAND TOTAL/AVERAGE		\$ 181,536,067	100%	\$ 177,152,949			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF MARCH 31, 2022
FOR THE FISCAL YEAR OF 2021-22

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	0.37%	\$ 45,441,165	25.03%	\$ 45,324,795
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	0.37%	16,505,883	9.09%	16,463,614
Federal Issues	All Funds Pooled	0.94%	98,042,404	54.01%	94,770,480
US Treasury Notes	All Funds Pooled	1.73%	6,437,395	3.55%	4,489,470
Certificate of Deposits	All Funds Pooled	0.45%	500,000	0.28%	499,998
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.16%	85,113	0.05%	85,113
	SUBTOTAL		\$ 167,011,960	92.00%	\$ 161,633,469
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility	Debt Service	0.01%	3	0.00%	3
Blackrock Liq Fund					
Zions Bank - MH Police Facility Lease Revenue Bonds	Debt Service	0.01%	4	0.00%	4
Blackrock Liq Fund					
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.01%	6,262,932	3.45%	6,262,932
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.01%	614,302	0.34%	614,302
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.01%	596,450	0.33%	596,450
	SUBTOTAL		7,473,690	4.12%	7,473,690
Other Cash/Deposits					
General Checking	All Funds		1,825,901	1.01%	1,825,901
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
CALPERS CERBT - OPEB Trust			3,487,404	1.92%	4,194,950
PARS - PENSION Trust			1,700,000	0.94%	1,987,827 **
	SUBTOTAL		7,050,417	3.88%	8,045,789
Total Cash and Investments			\$ 181,536,067	100.00%	\$ 177,152,949

** As of 02/28/2022

CASH ACTIVITY SUMMARY
FY 2021-22

Fund Type	07/1/21 Balance	Change in Cash Balance	3/31/2022 Balance
General Fund	\$ 19,007,873	\$ 1,673,604	\$ 20,681,477
Community Development	1,077,499	74,934	1,152,433
RDA Successor Agency (except Housing)	508,427	5,755,321	6,263,749
Housing Successor Agency/ CDBG	4,307,419	334,589	4,642,008
Water - Operations	2,573,349	431,704	3,005,052
Water Other	15,405,786	3,097,753	18,503,539
Sewer - Operations	1,593,140	1,632,205	3,225,345
Sewer Other	57,221,072	(3,033,264)	54,187,808
Other Special Revenue	7,425,644	1,105,689	8,531,334
Streets and Capital Projects (except RDA)	37,931,830	(173,075)	37,758,756
Debt Service	337,123	(32,855)	304,268
Internal Service	19,378,242	1,128,766	20,507,008
Agency Funds (assessment dists./refundable deposits)	3,356,940	(583,651)	2,773,290
Total	\$ 170,124,346	\$ 11,411,721	\$ 181,536,067

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:

Gina Nazareno, Senior Accountant

Approved by:

Caitlin Jachimowicz, Treasurer

Reviewed by:

Dat Nguyen, Finance Director



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Nine Months Ended March 31, 2022
75% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 13,485,000	13,485,000	\$ 6,937,151	51%	\$ 6,382,380	\$ 554,771	9%
Property Tax - RPTTF Residual Distribution	2,144,000	2,144,000	808,731	38%	1,123,570	(314,839)	-28%
Property Tax - Supplemental Roll	142,000	142,000	127,494	90%	275,291	(147,798)	-54%
Sales Tax	10,699,601	10,699,601	7,434,322	69%	6,031,292	1,403,029	23%
Public Safety Sales Tax	399,000	399,000	279,570	70%	193,305	86,264	45%
Transient Occupancy Taxes	2,235,300	2,235,300	1,589,372	71%	921,187	668,185	73%
Franchise (Refuse ,Cable ,PG&E)	2,375,000	2,375,000	1,056,341	44%	987,626	68,715	7%
Property Transfer Tax	541,000	541,000	475,204	88%	399,886	75,318	19%
TOTAL TAXES	32,020,901	32,020,901	18,708,184	58%	16,314,538	2,393,647	15%
LICENSES/PERMITS							
Business License	159,135	159,135	167,024	105%	136,766	30,259	22%
Other Permits	39,690	39,690	39,185	99%	3,181	36,004	1132%
TOTAL LICENSES/PERMITS	198,825	198,825	206,209	104%	139,947	66,262	47%
FINES AND PENALTIES							
Parking Enforcement	8,240	8,240	2,860	35%	2,336	524	22%
Bails & Fines	75,854	75,854	27,467	36%	26,229	1,238	5%
Administrative Citations	10,331	10,331	-	n/a	13,803	(13,803)	-100%
TOTAL FINES AND PENALTIES	94,425	94,425	30,328	32%	42,368	(12,041)	-28%
OTHER AGENCIES							
Motor Vehicle in-Lieu	26,026	26,026	-	n/a	6,286	(6,286)	-100%
Other Revenue - Other Agencies	437,794	653,658	373,093	57%	320,698	52,396	16%
TOTAL OTHER AGENCIES	463,820	679,684	373,093	55%	326,984	46,110	14%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	31,340	31,340	20,123	64%	38,649	(18,526)	-48%
Business License Application Review	38,007	38,007	31,613	83%	33,694	(2,081)	-6%
Membership Services & Rec Programs	4,238,989	4,713,801	3,168,487	67%	2,005,557	1,162,930	58%
Facility Rentals	945,931	506,683	485,898	96%	97,449	388,449	399%
Community Services	126,449	79,000	106,012	134%	14,290	91,722	642%
General Administration Overhead	1,825,440	1,825,440	1,374,228	75%	1,335,654	38,574	3%
Other Charges Current Services	970,580	970,580	535,955	55%	307,806	228,150	74%
TOTAL CURRENT SERVICES	8,176,736	8,164,851	5,722,317	70%	3,833,099	1,889,218	49%
OTHER REVENUE							
Use of money/property	823,436	823,436	580,258	70%	269,342	310,916	115%
Other Revenues	5,961,472	5,745,608	219,781	4%	337,269	(117,488)	-35%
TOTAL OTHER REVENUE	6,784,908	6,569,044	800,039	12%	606,611	193,428	32%
TRANSFERS IN							
One Time Transfer	180,000	180,000	134,991	75%	153,738	(18,747)	-12%
Public Safety Facilities Fund	25,000	25,000	18,747	75%	18,750	(3)	0%
Supplemental Law Enforcement Fund	100,000	100,000	100,000	100%	100,000	-	n/a
Countywide Solid Waste	324,763	649,526	243,573	38%	-	243,573	n/a
Streets	699,735	699,735	324,267	46%	524,772	(200,505)	-38%
Park Maintenance	650,000	650,000	487,503	75%	487,503	-	n/a
Sewer Operations	357,159	357,159	267,867	75%	265,824	2,043	1%
Water Operations	357,159	357,159	267,867	75%	265,824	2,043	1%
Park Development	75,000	75,000	56,250	75%	56,250	-	n/a
TOTAL TRANSFERS IN	2,768,816	3,093,579	1,901,065	61%	1,872,661	28,404	2%
TOTAL GENERAL FUND	50,508,431	50,821,309	27,741,235	55%	23,136,208	4,605,028	20%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	699,735	699,735	439,072	63%	475,439	(36,368)	-8%
Interest / Other Revenue/Other Charges	-	-	503	n/a	794	(291)	-37%
202 STREET MAINTENANCE	699,735	699,735	439,574	63%	476,234	(36,659)	-8%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Nine Months Ended March 31, 2022
75% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	858	858	838	98%	853	(15)	-2%
Police Grant/SLEF/JAG	100,000	100,000	111,285	111%	98,393	12,892	13%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	100,858	100,858	112,123	111%	99,246	12,876	13%
206 DEVELOPMENT SERVICES							
Building Fees	3,195,787	3,195,787	2,271,913	71%	2,145,789	126,124	6%
Planning Fees	766,776	766,776	632,946	83%	791,431	(158,485)	-20%
Engineering Fees	999,810	999,810	508,430	51%	585,728	(77,298)	-13%
Other Revenue/Current Charges	330,747	330,747	152,560	46%	116,997	35,563	30%
206 DEVELOPMENT SERVICES	5,293,120	5,293,120	3,565,850	67%	3,639,945	(74,096)	-2%
207 LONG RANGE PLANNING	869,266	869,266	556,322	64%	557,706	(1,384)	0%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,173	3,173	251	8%	38,571	(38,321)	-99%
215 and 216 HCD BLOCK GRANT	3,173	3,173	251	8%	38,571	(38,321)	-99%
225 ASSET SEIZURE	1,931	1,931	526	27%	732	(206)	-28%
229 LIGHTING AND LANDSCAPE	2,573	2,573	105,088	4084%	104,314	774	1%
230 COMMUNITY FACILITIES DISTRICT	1,240	1,240	11,937	963%	20,394	(8,457)	-41%
232 ENVIRONMENTAL PROGRAMS	481,008	481,008	383,158	80%	445,710	(62,552)	-14%
234 MOBILE HOME PARK RENT STAB.	757	757	8,071	1066%	3,742	4,328	116%
235 SENIOR HOUSING	3,869	3,869	900	23%	1,198	(298)	-25%
236 HOUSING MITIGATION	2,446,028	2,596,028	934,892	36%	1,919,011	(984,119)	-51%
237 BEGIN	-	-	54,539	n/a	902	53,636	5945%
238 CAL HOMES	-	-	312	n/a	81,037	(80,726)	-100%
240 EMPLOYEE ASSISTANCE	29,089	29,089	8,425	29%	11,506	(3,081)	-27%
246 COUNTYWIDE SOLID WASTE	-	1,481,421	1,048,667	71%	-	1,048,667	n/a
247 ENVIRONMENTAL REMEDIATION	2,448	2,448	1,398	57%	1,210	189	16%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,100,496	7,100,496	6,246,678	88%	888,931	5,357,747	603%
255 HOUSING SUCCESSOR AGENCY	215,318	215,318	219,937	102%	301,227	(81,290)	-27%
260 PUBLIC ART	-	-	1,100	n/a	-	1,100	n/a
TOTAL SPECIAL REVENUE FUNDS	17,250,910	18,882,331	13,699,747	73%	8,591,616	5,108,131	59%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,748,480	7,131,498	5,973,344	84%	2,382,850	3,590,494	151%
302 PARK MAINTENANCE	360,613	360,613	524,662	145%	97,839	426,823	436%
303 LOCAL DRAINAGE	1,675,036	1,675,036	271,314	16%	1,934,652	(1,663,338)	-86%
304 LOCAL DRAINAGE/NON AB1600	80,692	80,692	89,080	110%	23,609	65,471	277%
306 AGRICULTURE & OPEN SPACE PRESERVATION	180,385	180,385	141,812	79%	238,523	(96,711)	-41%
308 STREET CIP	4,050,523	4,050,523	3,497,611	86%	1,614,198	1,883,413	117%
309 TRAFFIC IMPACT	1,468,388	1,468,388	7,151,085	487%	1,978,609	5,172,476	261%
315 PUBLIC SAFETY FACILITIES IMPACT	864,417	864,417	164,095	19%	378,754	(214,658)	-57%
346 PUBLIC FACILITIES NON-AB1600	611,488	1,122,018	1,859,622	166%	885,359	974,263	110%
347 PUBLIC FACILITIES IMPACT	265,536	265,536	39,955	15%	234,808	(194,853)	-83%
348 LIBRARY	1,077,617	1,077,617	189,355	18%	484,373	(295,018)	-61%
350 UNDERGROUNDING	86,073	86,073	405,712	471%	106,684	299,028	280%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	591,967	591,967	961,644	162%	299,901	661,743	221%
360 COMMUNITY/REC IMPACT FUND	1,730,018	1,730,018	224,785	13%	720,642	(495,857)	-69%
375 QUIMBY FEE	1,623,552	1,623,552	907,787	56%	-	907,787	n/a
TOTAL CAPITAL PROJECTS FUNDS	16,414,785	22,308,333	22,401,864	100%	11,380,802	11,021,063	97%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	307,385	307,385	229,356	75%	232,841	(3,485)	-1%
441 POLICE FACILITY BOND	385,639	385,639	288,256	75%	388,175	(99,918)	-26%
TOTAL DEBT SERVICE FUNDS	693,024	693,024	517,612	75%	621,015	(103,403)	-17%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Nine Months Ended March 31, 2022
75% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	13,812,501	13,812,501	9,556,291	69%	8,627,025	929,266	11%
Interest Income/Transfers	37,425	37,425	9,890	26%	16,832	(6,942)	-41%
Other Revenue/Current Charges	268,241	268,241	255,967	95%	827,428	(571,461)	-69%
640 SEWER OPERATION	14,118,167	14,118,167	9,822,149	70%	9,471,285	350,864	4%
641 SEWER EXPANSION							
Interest Income	220,194	220,194	90,414	41%	116,890	(26,475)	-23%
Development Impact Fee	6,845,919	6,845,919	2,023,331	30%	2,336,990	(313,659)	-13%
641 SEWER EXPANSION	7,066,113	7,066,113	2,113,746	30%	2,453,880	(340,134)	-14%
642 SEWER RATE STABILIZATION	195,311	195,311	123,052	63%	13,752	109,301	795%
643 SEWER-CAPITAL PROJECT	4,707,648	4,707,648	3,542,007	75%	3,341,865	200,142	6%
TOTAL SEWER FUNDS	26,087,239	26,087,239	15,600,954	60%	15,280,781	320,173	2%
650 WATER OPERATION							
Water Sales	15,179,148	15,179,148	9,379,584	62%	9,951,584	(572,000)	-6%
Meter Install & Service	25,215	25,215	73,016	290%	101,964	(28,948)	-28%
Transfers-In / Interest Income	546,952	546,952	378,086	69%	347,796	30,290	9%
Other Revenue/Current Charges	585,381	585,381	612,885	105%	813,603	(200,718)	-25%
650 WATER OPERATION	16,336,696	16,336,696	10,443,571	64%	11,214,948	(771,377)	-7%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	64,003	64,003	12,928	20%	16,795	(3,867)	-23%
Development Impact Fee	1,782,143	1,782,143	361,604	20%	1,086,913	(725,309)	-67%
651 WATER EXPANSION	1,846,146	1,846,146	374,532	20%	1,103,708	(729,176)	-66%
652 Water Rate Stabilization	141,222	141,222	106,074	75%	49,126	56,948	116%
653 Water Capital Project	5,047,350	5,047,350	3,812,615	76%	3,662,251	150,364	4%
TOTAL WATER FUNDS	23,371,414	23,371,414	14,736,792	63%	16,030,033	(1,293,240)	-8%
TOTAL ENTERPRISE FUNDS	49,458,653	49,458,653	30,337,747	61%	31,310,814	(973,067)	-3%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,952,577	2,247,577	1,688,487	75%	1,413,046	275,441	19%
740 BUILDING MAINTENANCE	3,409,334	3,409,334	848,063	25%	2,381,343	(1,533,280)	-64%
741 BUILDING REPLACEMENT	745,508	755,508	539,392	71%	510,321	29,071	6%
745 CIP ADMINISTRATION	1,798,889	1,798,889	1,106,267	61%	801,451	304,816	38%
760 UNEMPLOYMENT INSURANCE	2,513	2,513	1,251	50%	75,526	(74,275)	-98%
770 WORKERS COMPENSATION	913,504	913,504	571,413	63%	535,630	35,783	7%
790 EQUIPMENT REPLACEMENT	1,086,223	1,086,223	830,184	76%	1,055,356	(225,173)	-21%
791 EMPLOYEE BENEFITS	1,043,858	1,043,858	456,742	44%	448,890	7,852	2%
795 GENERAL LIABILITY INSURANCE	1,504,188	1,737,188	1,290,759	74%	647,612	643,146	99%
TOTAL INTERNAL SERVICE FUNDS	12,456,594	12,994,594	7,332,558	56%	7,869,176	(536,618)	-7%
TOTAL FOR ALL FUNDS	\$ 146,782,397	\$ 155,158,244	\$ 102,030,763	66%	\$ 82,909,631	\$ 19,121,133	23%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month and Nine Months Ended March 31, 2022
75% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 7,364	\$ 348,850	\$ 256,938	\$ 72,664	\$ 329,602	94%	\$ 209,963
	CITY ATTORNEY	70,656	802,889	524,500	108,942	633,442	79%	487,146
	CITY MANAGER	50,429	638,262	471,391	7,000	478,391	75%	376,791
	HUMAN RESOURCES	61,003	830,904	527,475	-	527,475	63%	471,404
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	46,955	672,320	443,634	1,600	445,234	66%	415,292
	Elections	2,797	28,180	19,403	-	19,403	69%	208,985
	COUNCIL SVCS & RECORDS MGMT	49,752	700,500	463,037	1,600	464,637	66%	624,277
	FINANCE	117,872	2,472,421	1,150,944	34,336	1,185,280	48%	1,044,764
	TOTAL ADMINISTRATION	357,076	5,793,826	3,394,286	224,542	3,618,828	62%	3,214,345
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	633,733	6,240,277	3,946,391	681,443	4,627,834	74%	3,234,380
	Recreation Facility Rentals	45,433	716,081	398,962	12,473	411,434	57%	659,677
	Community Services	48,458	641,554	371,514	51,741	423,255	66%	329,627
	Park Maintenance	73,799	1,179,250	762,669	56,478	819,147	69%	754,108
	Environmental Services	18,651	349,129	156,540	-	156,540	45%	144,748
	Countywide Solid Waste Program	20,117	303,550	155,866	-	155,866	51%	
	Street Maintenance	181,701	2,662,248	1,594,574	96,863	1,691,437	64%	1,569,363
	Downtown Maintenance	13,092	318,869	188,863	23,789	212,652	67%	162,890
	Cable Television	2,742	34,272	34,652	-	34,652	101%	16,175
	COMMUNITY SERVICES	1,037,726	12,445,230	7,610,031	922,786	8,532,816	69%	6,870,968
	CODE COMPLIANCE	14,766	174,873	131,219	-	131,219	75%	117,235
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	23,235	356,583	249,908	-	249,908	70%	252,235
	ECONOMIC DEVELOPMENT PROGRAMS	51,281	970,380	512,342	41,032	553,374	57%	416,954
	TOTAL COMMUNITY SERVICES	1,127,009	13,947,066	8,503,500	963,817	9,467,317	68%	7,657,392
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	135,331	1,421,383	1,250,374	31,250	1,281,624	90%	1,143,140
	Field Operations	756,907	9,314,988	6,761,784	125,285	6,887,068	74%	5,962,777
	Support Services	194,306	2,596,110	1,893,646	-	1,893,646	73%	1,661,664
	Emergency Services/Haz Mat	18,631	202,072	145,880	-	145,880	72%	131,158
	Special Operations	298,392	3,700,816	2,060,185	6,334	2,066,519	56%	2,210,385
	Dispatch Services	145,444	1,897,873	1,334,199	-	1,334,199	70%	1,206,675
	POLICE	1,549,011	19,133,242	13,446,068	162,869	13,608,937	71%	12,315,801
	FIRE	567,601	7,788,401	5,579,514	40,611	5,620,125	72%	5,346,934
	TOTAL PUBLIC SAFETY	2,116,612	26,921,643	19,025,582	203,480	19,229,062	71%	17,662,734
IV. TRANSFERS								
	Other	110,559	4,294,211	3,267,243	-	3,267,243	76%	428,373
	TOTAL TRANSFERS	110,559	4,294,211	3,267,243	-	3,267,243	76%	428,373
	TOTAL GENERAL FUND	3,711,255	50,956,746	34,190,610	1,391,839	35,582,449	70%	28,962,844



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month and Nine Months Ended March 31, 2022
75% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	361	704,068	327,516	-	327,516	47%	527,940
205	PUBLIC SAFETY/SUPP.LAW	604	107,245	105,436	-	105,436	98%	105,301
206	DEVELOPMENT SERVICES FUND							
	Planning	188,709	1,956,314	1,478,154	28,641	1,506,795	77%	1,130,538
	Building	185,922	2,233,914	1,575,772	1,642	1,577,414	71%	1,447,831
	Engineering	123,728	1,366,129	1,108,088	7,605	1,115,694	82%	946,044
206	DEVELOPMENT SERVICES FUND	498,359	5,556,356	4,162,014	37,889	4,199,903	76%	3,524,413
207	LONG RANGE PLANNING	133,116	861,202	512,750	61,183	573,932	67%	659,208
215/216	CDBG	458	5,499	4,122	-	4,122	75%	4,023
225	ASSET SEIZURE	-	54,232	14,232	-	14,232	26%	-
229	LIGHTING AND LANDSCAPE	5,647	168,130	110,865	10,824	121,689	72%	117,310
230	COMMUNITY FACILITIES DISTRICT	1,827	42,093	17,962	-	17,962	43%	17,942
232	ENVIRONMENT PROGRAMS	34,896	508,715	301,456	1,971	303,427	60%	292,074
234	MOBILE HOME PARK	37	449	333	-	333	74%	333
236	HOUSING MITIGATION	78,927	1,495,875	529,179	91,965	621,144	42%	489,961
237	BEGIN	-	-	50,000	-	50,000	n/a	-
240	EMPLOYEE ASSISTANCE	86	28,531	9,785	-	9,785	34%	10,658
246	COUNTYWIDE SOLID WASTE PROGRAM	325,800	1,481,421	693,771	552,771	1,246,543	84%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	577	6,939,408	491,354	-	491,354	7%	5,015,227
255	HOUSING SUCCESSOR AGENCY	83,239	1,003,785	802,995	66,667	869,662	87%	769,969
260	PUBLIC ART	375	23,500	4,368	-	4,368	19%	-
TOTAL SPECIAL REVENUE FUNDS		1,164,308	18,980,509	8,138,138	823,269	8,961,408	47%	11,535,880
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	939,052	9,738,856	5,817,939	1,758,523	7,576,462	78%	3,961,985
302	PARK MAINTENANCE	54,167	745,776	502,499	-	502,499	67%	494,943
303	LOCAL DRAINAGE	22,840	6,997,265	64,967	42,558	107,525	2%	285,020
304	LOCAL DRAIN. NON-AB1600	240	833,046	3,815	48,135	51,950	6%	186,605
306	AGRICULTURE & OPEN SPACE PRESERVATI	2,249	5,480,009	5,476,996	-	5,476,996	100%	20,052
308	STREET CIP	5,052	6,587,142	2,901,775	347,064	3,248,839	49%	2,801,864
309	TRAFFIC IMPACT	184,201	30,480,782	7,417,176	7,948,974	15,366,149	50%	1,439,737
315	PUBLIC SAFETY FACILITIES IMPACT	45,648	565,180	261,418	812,700	1,074,118	190%	194,475
346	PUBLIC FAC.NON AB1600	648	1,351,905	122,826	49,229	172,055	13%	170,030
347	PUBLIC FACILITIES IMPACT	2,277	27,331	20,493	-	20,493	75%	38,886
348	LIBRARY IMPACT	18,059	216,704	164,159	-	164,159	76%	650,046
350	UNDERGROUNDING	95	139,398	855	-	855	1%	828
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	1,809	1,160,466	1,152,763	113,053	1,265,816	109%	1,067,961
360	COMM/REC CENTER IMPACT	4,714	1,454,834	228,991	807,678	1,036,669	71%	1,521,927
375	QUIMBY FEE	-	600,000	130	-	130	0%	-
TOTAL CAPITAL PROJECTS FUNDS		1,281,052	66,378,693	24,136,800	11,927,913	36,064,713	54%	12,834,359
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	1,656	304,947	236,370	-	236,370	78%	233,899
441	POLICE FACILITY BOND DEBT	1,318	389,497	314,265	-	314,265	81%	305,841
TOTAL DEBT SERVICE FUNDS		2,974	694,444	550,635	-	550,635	79%	539,740



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month and Nine Months Ended March 31, 2022
75% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,523,998	14,126,884	10,099,647	119,823	10,219,470	72%	9,798,725
641	SEWER CAPITAL EXPANSION	282,576	22,987,165	1,891,016	1,162,497	3,053,513	13%	639,103
642	SEWER RATE STABILIZATION	95	1,138	855	-	855	75%	837
643	SEWER-CAPITAL PROJECTS	558,341	22,004,075	6,141,429	813,924	6,955,353	32%	2,544,233
TOTAL SEWER FUND(S)		2,365,009	59,119,262	18,132,946	2,096,244	20,229,190	34%	12,982,897
WATER								
	Water Operations	1,129,433	15,292,037	9,981,107	676,926	10,658,033	70%	10,064,839
	Utility Billing	66,047	985,735	675,257	26,801	702,058	71%	617,114
	Water Conservation	15,119	157,768	87,060	42,896	129,956	82%	52,653
650	WATER OPERATIONS	1,210,600	16,435,540	10,743,424	746,624	11,490,048	70%	10,734,606
651	WATER CAPITAL EXPANSION	64,023	2,281,063	605,241	55,003	660,244	29%	450,201
652	WATER RATE STABILIZATION	31	371	279	-	279	75%	270
653	WATER-CAPITAL PROJECTS	20,686	7,534,033	566,644	308,763	875,407	12%	466,647
TOTAL WATER FUND(S)		1,295,340	26,251,006	11,915,588	1,110,390	13,025,978	50%	11,651,724
TOTAL ENTERPRISE FUNDS		3,660,349	85,370,268	30,048,534	3,206,634	33,255,168	39%	24,634,621
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	171,503	2,732,628	1,296,135	170,940	1,467,075	54%	1,316,701
740	BUILDING MAINTENANCE	90,500	1,287,566	830,937	88,111	919,048	71%	1,840,298
741	BUILDING REPLACEMENT	8,322	610,000	201,982	48,854	250,836	41%	50,543
745	CIP ADMINISTRATION	140,927	1,735,361	1,265,642	5,748	1,271,390	73%	1,177,757
760	UNEMPLOYMENT	-	20,000	7,757	-	7,757	39%	17,495
770	WORKERS COMPENSATION	4,662	876,877	748,899	-	748,899	85%	546,156
790	EQUIPMENT REPLACEMENT	46,712	1,546,014	570,635	372,570	943,205	61%	991,309
791	EMPLOYEE BENEFITS FUND	23,014	625,000	575,339	-	575,339	92%	520,930
795	GEN. LIABILITY INSURANCE	61,749	1,724,061	1,562,375	-	1,562,375	91%	1,240,334
TOTAL INTERNAL SERVICE FUNDS		547,390	11,157,508	7,059,702	686,223	7,745,925	69%	7,701,524
REPORT TOTAL		\$ 10,367,328	\$ 233,538,168	\$ 104,124,419	\$ 18,035,879	\$ 122,160,297	52%	\$ 86,208,968



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2021-22
For The Nine Months Ended March 31, 2022
75% of Year Complete

Fund No.	Fund	Fund Balance 06-30-21	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 24,896,179	\$ 27,741,235	55%	\$ 34,190,610	67%	\$ (6,449,375)	\$ 1,391,839	\$ 17,054,965
TOTAL GENERAL FUND		\$ 24,896,179	\$ 27,741,235	55%	\$ 34,190,610	67%	\$ (6,449,375)	\$ 1,391,839	\$ 17,054,965
202	STREET MAINTENANCE	6,241	\$ 439,574	63%	\$ 327,516	71%	\$ 112,058	\$ -	\$ 118,299
205	PUBLIC SAFETY/SUPL. LAW	195,819	112,123	111%	105,436	81%	6,687	-	202,506
206	DEVELOPMENT SERVICES	(484,553)	3,565,850	67%	4,162,014	75%	(596,164)	37,889	(1,118,606)
207	LONG RANGE PLANNING	1,250,193	556,322	64%	512,750	60%	43,572	61,183	1,232,583
215 / 216	CDBG	34,893	251	8%	4,122	75%	(3,871)	-	31,022
225	ASSET SEIZURE	143,259	526	27%	14,232	n/a	(13,707)	-	129,552
229	LIGHTING AND LANDSCAPE	172,706	105,088	4084%	110,865	66%	(5,777)	10,824	156,105
230	COMMUNITY FACILITIES DISTRICT	137,840	11,937	963%	17,962	43%	(6,025)	-	131,815
232	ENVIRONMENTAL PROGRAMS	213,442	383,158	80%	301,456	59%	81,703	1,971	293,173
234	MOBILE HOME PK RENT STAB.	58,766	8,071	1066%	333	74%	7,738	-	66,504
235	SENIOR HOUSING	234,588	900	23%	-	n/a	900	-	235,488
236	HOUSING MITIGATION	5,407,291	934,892	36%	529,179	35%	405,713	91,965	5,721,039
237	BEGIN	320,727	54,539	n/a	50,000	n/a	4,539	-	325,266
238	CAL HOMES	276	312	n/a	-	n/a	312	-	588
240	EMPLOYEE ASSISTANCE	62,190	8,425	29%	9,785	34%	(1,360)	-	60,830
246	COUNTYWIDE SOLID WASTE		1,048,667	57%	693,771	47%	354,896	552,771	(197,875)
247	ENVIRONMENT REMEDIATION	135,927	1,398	57%	-	n/a	1,398	-	137,325
250	COMH-SUCCESSOR AGENCY-MHRDA	(493,066)	6,246,678	88%	491,354	7%	5,755,323	6,262,932	(1,000,674)
255	HOUSING SUCCESSOR AGENCY	4,287,939	219,937	102%	802,995	80%	(583,058)	66,667	3,638,214
260	PUBLIC ART	70,772	1,100	n/a	4,368		(3,268)	-	67,504
TOTAL SPECIAL REVENUE FUNDS		\$ 11,755,250	\$ 13,699,747	73%	\$ 8,138,138	43%	\$ 5,561,608	\$ 7,086,201	\$ 10,230,657
301	PARK DEV. IMPACT FUND	\$ 270,918	\$ 5,973,344	84%	\$ 5,817,939	60%	\$ 155,405	\$ 1,758,523	\$ (1,332,200)
302	PARK MAINTENANCE	2,815,081	524,662	145%	502,499	67%	22,163	-	2,837,244
303	LOCAL DRAINAGE	10,947,520	271,314	16%	64,967	1%	206,348	42,558	11,111,310
304	LOCAL DRAINAGE/NON-AB1600	1,268,597	89,080	110%	3,815	0%	85,265	48,135	1,305,727
306	AGRICULTURE AND OPEN SPACE PRESERV	6,011,689	141,812	79%	5,476,996	100%	(5,335,184)	-	676,505
308	STREET CIP	3,538,596	3,497,611	86%	2,901,775	44%	595,837	347,064	3,787,369
309	TRAFFIC IMPACT FUND	2,217,293	7,151,085	487%	7,417,176	24%	(266,090)	7,948,974	(5,997,771)
315	PUBLIC SAFETY FACILITIES IMPACT	3,650,943	164,095	19%	261,418	46%	(97,323)	812,700	2,740,920
346	PUBLIC FACILITIES NON-AB1600	1,100,016	1,859,622	166%	122,826	9%	1,736,796	49,229	2,787,583
347	PUBLIC FACILITIES IMPACT FUND	1,034,272	39,955	15%	20,493	75%	19,462	-	1,053,734
348	LIBRARY IMPACT FUND	1,487,275	189,355	18%	164,159	76%	25,197	-	1,512,472
350	UNDERGROUNDING	1,073,838	405,712	471%	855	1%	404,857	-	1,478,695
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	181,922	961,644	162%	1,152,763	99%	(191,119)	113,053	(122,250)
360	COMM/REC CTR IMPACT FUND	1,353,501	224,785	13%	228,991	16%	(4,206)	807,678	541,617
375	QUIMBY FEE	-	907,787	56%	130	0%	907,657	-	907,657
TOTAL CAPITAL PROJECT FUNDS		\$ 36,951,461	\$ 22,401,864	100%	\$ 24,136,800	36%	\$ (1,734,935)	\$ 11,927,913	\$ 23,288,612
420	CIVIC CENTER DEBT	\$ 165,528	\$ 229,356	75%	\$ 236,370	78%	\$ (7,014)	\$ 3	\$ 158,511
441	POLICE FACILITY BOND DEBT	171,762	288,256	75%	314,265	81%	(26,008)	4	145,750
TOTAL DEBT SERVICE FUNDS		\$ 337,290	\$ 517,612	75%	\$ 550,635	79%	\$ (33,022)	\$ 6	\$ 304,261



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2021-22
For The Nine Months Ended March 31, 2022
75% of Year Complete

Fund No.	Fund	Fund Balance 06-30-21	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
640	SEWER OPERATIONS	\$ 3,602,581	\$ 9,822,149	70%	\$ 10,099,647	71%	\$ (277,497)	119,823	3,205,261
641	SEWER IMPACT FUND*	22,121,700	2,113,746	30%	1,891,016	8%	222,730	1,162,497	21,181,933
642	SEWER RATE STABILIZATION	2,692,314	123,052	63%	855	75%	122,197	-	2,814,511
643	SEWER-CAPITAL PROJECTS	29,354,687	3,542,007	75%	6,141,429	28%	(2,599,422)	813,924	25,941,341
650	WATER OPERATIONS	3,580,575	10,443,571	64%	10,743,424	65%	(299,853)	746,624	2,534,098
651	WATER IMPACT FUND*	2,979,950	374,532	20%	605,241	27%	(230,708)	55,003	2,694,239
652	WATER RATE STABILIZATION	3,162,416	106,074	75%	279	75%	105,795	-	3,268,211
653	WATER -CAPITAL PROJECT	8,134,534	3,812,615	76%	566,644	8%	3,245,971	308,763	11,071,742
TOTAL ENTERPRISE FUNDS		\$ 75,628,757	\$ 30,337,747	61%	\$ 30,048,534	35%	\$ 289,213	\$ 3,206,634	\$ 72,711,336
730	INFORMATION SERVICES	\$ 849,651	\$ 1,688,487	75%	\$ 1,296,135	47%	\$ 392,352	\$ 170,940	\$ 1,071,063
740	BUILDING MAINTENANCE	6,945	848,063	25%	830,937	65%	17,126	88,111	(64,040)
741	BUILDING REPLACEMENT	3,561,339	539,392	71%	201,982	33%	337,410	48,854	3,849,895
745	CIP ENGINEERING	55,476	1,106,267	61%	1,265,642	73%	(159,376)	5,748	(109,648)
760	UNEMPLOYMENT	328,958	1,251	50%	7,757	39%	(6,506)	-	322,452
770	WORKERS COMPENSATION	2,115,661	571,413	63%	748,899	85%	(177,486)	30,000	1,908,175
790	EQUIPMENT REPLACEMENT	5,996,455	830,184	76%	570,635	37%	259,549	372,570	5,883,434
791	EMPLOYEE BENEFITS FUNDS	(28,785)	456,742	44%	575,339	92%	(118,597)	5,187,404	(5,334,786)
795	GEN. LIABILITY INSURANCE	1,236,516	1,290,759	74%	1,562,375	91%	(271,617)	-	964,899
TOTAL INTERNAL SERVICE FUNDS		\$ 14,122,216	\$ 7,332,558	56%	\$ 7,059,702	63%	\$ 272,856	\$ 5,903,627	\$ 8,491,445
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 24,896,179	\$ 27,741,235	55%	\$ 34,190,610	67%	\$ (6,449,375)	\$ 1,391,839	\$ 17,054,965
SPECIAL REVENUE GROUP		11,755,250	13,699,747	73%	8,138,138	43%	5,561,608	7,086,201	10,230,657
DEBT SERVICE GROUP		337,290	517,612	75%	550,635	79%	(33,022)	6	304,261
CAPITAL PROJECTS GROUP		36,951,461	22,401,864	100%	24,136,800	36%	(1,734,935)	11,927,913	23,288,612
ENTERPRISE GROUP		75,628,757	30,337,747	61%	30,048,534	35%	289,213	3,206,634	72,711,336
INTERNAL SERVICE GROUP		14,122,216	7,332,558	56%	7,059,702	63%	272,856	5,903,627	8,491,445
TOTAL ALL GROUPS		\$ 163,691,153	\$ 102,030,763	66%	\$ 104,124,419	45%	\$ (2,093,656)	\$ 29,516,220	\$ 132,081,277

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.

City Manager's Signature Authority**Contracts and Agreements Between \$25,000 to \$60,000 Entered Since 1/13/2022 to 4/6/2022**

Vendor Name	Description of Service	Begin Date	End Date	Department	Amount
TL Engineering	On-call Traffic Engineering Services	2/24/2022	6/30/2023	E&U	\$60,000
United Security Specialist	Inclement Weather Shelter Security Services	2/24/2022	6/30/2022	CSD	\$25,000
CSG Consultants, Inc	Plan review services for the Building Division	3/21/2022	3/1/2023	DS	\$60,000
TL Engineering	Dunne Ave Overpass pavement rehabilitation project with Caltrans	3/24/2022	12/31/2023	E&U	\$30,000
Kennedy/Jenks Consultants Inc.	East Dunne Ave Tank Project	2/10/2022	1/31/2023	E&U	\$55,000
Bay Alarm Company	Corp Yard Security System	2/17/2022	3/31/2027	E&U	\$38,400
Associated Right of Way Services	Sewer Trunk Project	3/30/2022	4/1/2023	E&U	\$25,000

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 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

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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

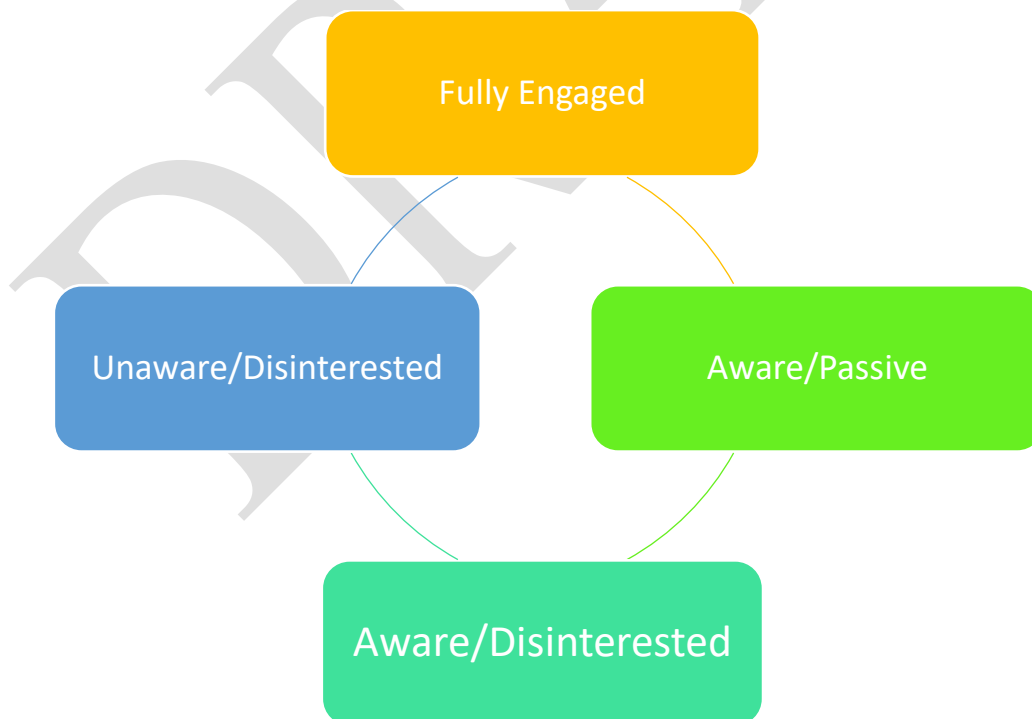
Just as City projects and initiatives should align with the Council's priorities, all communication efforts should also reflect and support City goals. This includes communication initiatives for teammates and external communications. This coordination ensures consistency, strengthens strategic message 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.

DRAFT

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.

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	

From: [D. Muirhead](#)
To: [PIO](#)
Subject: [EXTERNAL] Re: Morgan Hill's Communications, Outreach, and Engagement Plan
Date: Wednesday, March 30, 2022 12:40:54 PM

Hello PIO,
First, let me thank you for producing this plan. And for 9 days
(if not the agreed 10) to review it.

Second, while this may be the first "plan", you had the Council
"Adopt the Spectrum of Public Participation as the guiding document
for a City of Morgan Hill Public Participation/Engagement Plan."
on June 18, 2014, Too often in my opinion the section COMMUNITY
ENGAGEMENT in Staff Reports says the activity is your normal work
and so no effort was made to involve the public. This is not
"Engagement" nor "Public Participation".
Then on January 25, 2017 Maureen Tobin presented
"Communications Assessment Report and Recommendations".
I have never seen a follow-on to implementation or effectiveness
of those recommendations.

Having submitted many thousands of words on this subject to City
over the last decade, it is hard to figure out what to say for this
effort. Whatever I say is qualified by "in my opinion". And you never
told me what you consider "just Doug issues".

Two years ago I did some reading about education and persuasion
after some Engage members rejected my approach to a topic as not
meaningful to them.

Council Member McKay said at a Goals Workshop:

We don't have to persuade, just give residents good information.

Eugenia Cheng, The Art of Logic in an Illogical World

[pg 139] not all truth is relevant or helpful;

things that are true are not necessarily illuminating.

[pg 131] logic is a good way to verify truth, but this is not the same
as convincing others of truth (verify vs convey)

[pg 3] there are two ways to make something simpler - we can forget parts
of it or we can become cleverer so that things that used to seem
incomprehensible become clear to us.

[pg ix] excessive simplifications push us into fabricated black and white
situation when everything is really shades of grey and even
multi-colors.

[pg 104] category theory - highlighting relationships between things
is more illuminating than just thinking of things in isolation.

Doug McKenzie-Mohr, Fostering Sustainable Behavior

[pg 95] without capturing attention, persuasion is impossible
make information vivid, concrete, and personalized

[pg 101] engender feelings of common purpose and efficacy to deal
with a threat or you may cause people to avoid the issue.

As Swanee Edwards says, Ever Onward.

pg 2 Purpose "when communicating with the community"

I prefer "engaging with"

pg 4 For "variety of groups that make up our target audiences"

If you include "Critics of city government" then you should also include "Cheerleaders of city government".

pg 5 level of engagement: fully engaged, aware/passive, aware/disinterested, or unaware/disinterested.

I suggest "fully engaged" are divided into "cheerleaders" and "improvers" (my term) or "critics" (probably your term).

pg 6 City has several formal avenues for identifying emerging issues. The key mechanisms are: Community feedback

I still recommend that Council, City Manager, and Leadership Team pass on what they hear as "Pulse of the Community".

pg 6 areas that are important for the City to communicate.

What about traffic congestion and transportation alternatives to cars and recycled water?

pg 7 Crisis Management and Communications

Issues are topics of concern to one or more audiences

There is a critical distinction between emergencies and crises.

a crisis is a threat to the organization's financial health or reputation.

You disappoint me. You put your organization's reputation ahead of our residents ability to obtain needed services.

pg 7 For Issues requiring a response Appropriate staff and elected officials, if appropriate, will be briefed then the City will publicly respond

Be it wildfire or covid, I have seen messages from City Manager that I feel should come from our elected representatives.

pg 9 Strategies and Tactics

Priority #1: Create Opportunities for Meaningful Stakeholder Participation and Collaboration

Encourage engagement through audience-appropriate, two-way communication, and ensure opportunities for constructive feedback.

Look at the desire for Meaningful Participation compared to the recent responses on budget inputs and teaching tools being top down and considered by staff as secondary to core services.

pg 9 typo

"towards, building" -> "towards building"

pg 13 "Who Does What: understanding of the region versus City roles show operations and services by division, factsheet, employee stories

pg 13 Celebrate and Communicate Employee Accomplishments

pg 14 Provide On-Site Engagement

All things I have asked for in the past. Loved the Open House on Utilities held at CCC October 2011 and Budget Open House May 2012. Maureen argued at Mayor Coffee that cost-per-nose too high for open house depth vs social media [shallow] breadth. And Budget Open House deemed to have inadequate attendance but you did not promote it.

pg 15 Priority #4: Ensure a Well-Informed City Workforce

I had an encounter with a City contractor who did not want to explain what he was doing in the detention basin (tree company dumping shredded trees visible from road) and then got defensive demanding what right I had to have walked through an open gate to talk to him!

pg 16 STRATEGIES: Develop and implement the City's brand.

If this is what you want us to believe you are, how does it compare with what members of diverse communities see you as?

pg 18 Measurements of Progress and Success

The City will evaluate KPI metrics on a regular basis and compare them to earlier statistics

pg 18 continue to look for proven methods for monitoring other metrics.

You never share these with us. For example Maureen's "refresh" of the web site was done without measures of success from the previous rework and no measures of success for 2020. I use web ReportAConcern; does anyone else? Who calls main number? Who knows an employee and calls that person directly?

pg 23 ROLES AND RESPONSIBILITIES MATRIX

So will we see plans from Department Heads to turn your vision into reality? Will all employees have one or more items in their performance evaluations that are tied to implementing this plan?

So some questions of a broader nature.

- 1) I have always wanted more context in Staff Reports. How will you prioritize depth vs breadth?
- 2) I was personally offended by a City communication (probably covid but possibly wildfire) when it started with Abigail Adams quote "Great difficulties may be surmounted by patience and perseverance." I believe that what was really needed was preparation and practice.
- 3) I was personally offended by a City communication (probably MH411 from Maureen) where she said residents did not appreciate the work Larry and Chris did to get SJ to get Monterey repave high priority (it is very nice with bikeable shoulders). My comment to Maureen was how can we appreciate something that you don't let us know about!
- 4) I really like the MH411. I have visited your Saturday Info Booth and hope that it is only this April one that conflicts with Gilroy Mayor Coffee. You know that I want the retail in-person opportunity

and suggested a coffee table in front of a grocery store more than once. And if you have not talked to Rebecca about the breadth of her outreach to hard-to-engage persons, you should.
I am rooting for you. Regards, DougM

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From: Christina Turner

To: Michelle Bigelow; Kim Mancera

Subject: April 6, 2022 City Council Meeting Questions
Supplement for Item 18 - ADOPT THE COMMUNICATIONS, OUTREACH, AND ENGAGEMENT PLAN AND
APPROVE THE RECOMMENDED STAFFING CHANGES

Date: Wednesday, April 6, 2022

Question: Not knowing all the details of each position of the City Clerk and PIO, I am assuming both positions are full time and require full time hours, how do you plan on managing the combined position so that person doesn't get burned out or even worse gets into a situation where that person is overwhelmed?

Response: Over the last year, the current City Clerk has served in the dual role of City Clerk/PIO demonstrating the success of the position by staying on top of the workload and moving the needle in regard to our Communications and Engagement Efforts. To assist with the workload, the current City Clerk staff have taken on additional responsibilities, we have worked with consultants, and we have had part-time staffing assistance. The recommended staffing changes which include the addition of the Communications and Engagement Coordinator position and through the budget process, the reclassification of the two City Clerk staff positions, along with the previously approved change making the A/V Coordinator position a permanent full-time position, allow us to both distribute the current workload appropriately and add capacity to take on the work in the COE Plan. Lastly, through the budget process, staff will recommend dollars for consulting services to supplement our team and assist as needed.

Question: These changes are many and although I agree wholeheartedly with the changes, how will you manage these changes and provide first class services to the community?

Response: As we have for the last year, the team will manage this change and provide first class service to the community by implementing a team workplan with clear expectations of duties and responsibilities, evaluating and adjusting as needed and communicating with each other early and often.



Communications, Outreach, and Engagement Plan



Communications, Outreach, and Engagement Plan Goals



- Ensure Effective Community Engagement
- Build and Sustain Trust with the Community

Strategies



- 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

Next Steps

- Begin implementation of the Communications, Outreach, and Engagement Plan including:
 - Develop department/division communications plans
 - Train teammates on how to use the Plan
- Staffing updates

Staffing



- Combine the City Clerk and Public Information Officer positions
- Approve a new full-time Communications and Engagement Coordinator position
- Through the budget process, reclassify two City Clerk teammates to newly created Deputy City Clerk positions

Questions ?



CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 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;
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 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 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 as it has been since last summer. This schedule complies with the latest request from Valley Water.

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 for the April 6th meeting and then was continued to April 20th.

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 20TH DAY OF APRIL 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4TH DAY OF MAY 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 4th day of May 2022.

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

DATE: _____

Clerk

MICHELLE BIGELOW, City

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 ~~two hundred~~ 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 ~~nine~~ 9:00 a.m. and ~~seven~~ 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 ~~forty-eight~~ 48 hours after ~~one quarter~~ 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 ~~one inch per hour. However, at no time can any irrigation system be operated long enough to cause runoff~~ 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 ~~April~~ 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 ~~March~~ 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 ~~twenty-five percent~~25% or more of a ~~property's~~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~~suser'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: ~~Within one year of passage of this ordinance, all:~~ All commercial conveyor car wash systems must have installed operational ~~re-circulating~~recirculating water systems; or must have ~~secured~~ 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~~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 (~~eleven percent to twenty percent~~1% - 10% reduction): ~~A level 1 water supply shortage~~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 ~~eleven percent to twenty percent~~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~~Level 1 ~~water supply shortage~~Water Supply Shortage condition, the ~~following mandatory water conservation requirements, in addition~~City will implement an active communication campaign asking the community to the prohibited uses of water set forth in subsection B of this section, shall apply during such time thatconserve water in compliance with the level 1City's permanent water supply shortage is in effect. ~~use restrictions.~~

1. ~~Limits on Watering Days. During the months of April 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 March, 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 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.~~
2. ~~—Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within seventy-two hours of notification by the city unless other arrangements are made with the city.~~

D. ~~Level 2 Water Supply Shortage (twenty-one percent to forty percent~~11% - 20% reduction)~~); A level 2~~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 declares~~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 ~~twenty-one percent to forty percent~~ 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 2 water supply shortage~~ Level 4 Water Supply Shortage condition, the ~~following mandatory water conservation requirements, in addition to the prohibited uses of water set forth in subsections B and C of this section, shall apply during such time that the level 1 water supply shortage is in effect.~~ City will:

~~1. Watering Days.~~

1. ~~Actively enforce the following limited irrigation schedule:~~ During the months of ~~April~~ March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week ~~(as necessary to achieve reductions as determined in the discretion of the city manager)~~ on a schedule established and posted by the city. During the months of November through ~~March~~ 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. Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within forty-eight hours of notification by the city unless other arrangements are made with the city.~~
- ~~3. Limits on Filling Ornamental Lakes or Ponds. Filling or refilling ornamental lakes or ponds with potable water is prohibited, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a supply shortage level under this section.~~
- ~~4. 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.~~
- ~~5. Recirculating Water Required for Water Slides and Water Play Features. Operating a water slide or other water play feature that does not use recirculated water is prohibited.~~
- ~~6. Pool covering. Pools constructed after September 2, 2015 shall be covered at all times except when being actively used for recreational purposes or serviced.~~

~~2. E. Level 3 Continue implementing all other Level 3 response activities.~~

~~G. Level 5 Water Supply Shortage—Emergency Condition (Greater than forty percent (41% - 50% reduction).): A level 3 water supply shortage shall be referred to as a water shortage emergency. A level 3 condition~~ Level 5 Water Supply Shortage (“Emergency 1” stage) exists when the city council ~~declares~~ 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 emergency or threatened shortage exists and notifies its residents and businesses that a greater than forty percent reduction in 41% - 50% consumer demand reduction is necessary to maintain sufficient water supplies for public health and safety, pursuant to Water Code Section 350 et seq. 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~~ Level 5 Water Supply Shortage condition, the City will:

1. Actively enforce the following ~~mandatory water conservation requirements, in addition to the prohibited uses of water set forth in subsections B, C and D of this section, shall apply during such time that the level 3 water supply shortage is in effect.~~ limited irrigation schedule:
 1. ~~No Watering or Irrigating. Watering or~~ The watering or irrigating of lawn, landscape or other vegetated area with potable water ~~lawns and turf is prohibited. This restriction does not apply to the following categories of use, unless the city has determined that recycled water is available and may be applied to the use:~~
 - a. ~~Maintenance of vegetation, excluding lawns, that is watered using a hand-held bucket or similar container, hand-held hose equipped with a positive self-closing water shut-off nozzle or device;~~
 - b. ~~Maintenance of existing landscape necessary~~ except ~~for fire protection;~~
 - c. ~~Maintenance of existing landscape~~ turf utilized ~~for soil erosion control;~~
 - d. ~~Maintenance of plant materials identified to be rare or essential to the well-being of protected species;~~
 - e. ~~Maintenance of landscape within active recreation at a school, park, or public parks and playing fields, day care centers, golf course greens, and school grounds, provided that such irrigation does not exceed two days per week facility. Turf used for no more than fifteen minutes watering per day per station and is prohibited between the hours of nine a.m. and seven p.m. Pacific Standard/Daylight Savings Time, according to the schedule established in subsection D(1) or this section.~~
 - a. ~~f. Actively active recreation at a school, park, or public facility may be irrigated environmental mitigation projects in accordance with all other irrigation restrictions up to two times per week from March – October and one time per week from November – February;~~
 2. ~~Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within twenty-four hours of notification by the city unless other arrangements are made with the city.~~
 - b. ~~3. Limits on New Potable Water Service. Upon declaration of a level 3 water shortage emergency condition, the city may limit~~ 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~~ City may consider exemptions to the limitation that include, but are not limited to the following circumstances:

- a. ~~a.~~—A valid, unexpired building permit has been issued for the project;
~~or~~
 - b. ~~b.~~—The project is necessary to protect the public health, safety, and welfare; or
 - c. ~~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.
 - ~~d.~~—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
- 4. ~~Limits on Building Permits. Upon declaration of a level 3 water supply shortage emergency condition, the city manager is authorized to implement a program in his or her discretion to limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases which meet the city's adopted conservation offset requirements.~~
 - 5. ~~Discontinue Service. The city, in its sole discretion, may discontinue service to consumers who willfully violate provisions of this section.~~
 - 6. ~~No New Annexations. Upon the declaration of a level 3 water supply shortage condition, the city may suspend consideration of annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any immediate increased use of water.~~
 - 7. ~~Suspension of Swimming Pool Permit Issuance. The issuance of all permits for the initial construction of all swimming pools shall be suspended. Valid unexpired swimming pool construction permits issued prior to the declaration of level 3 water supply shortage shall remain valid if pool construction has begun prior to the declaration of the level 3 water supply shortage.~~
 - 8. ~~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 forty miles of the construction site.~~

3. ~~F~~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 ~~level 1, level 2 or level 3 water supply shortage~~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 applicable relating to each level 1, level 2 or level 3 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.

G

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~~. Section.

- 1.— Application—: Application for a waiver must be on a form prescribed by the ~~city manager~~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~~suser's property. An application for a waiver will be denied unless the ~~city manager~~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~~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~~City Manager shall be final.”

“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-.”

“13.04.400- - Violation—Penalty.

A. —It is unlawful for any person to violate or cause or the violation of any of the provisions of this chapter.

B. —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 ~~months period shall be~~ 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.

~~C.~~ a. In addition to any other fines or penalties, a person who violates provisions of ~~Section 13.04.330 shall be~~ 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.

~~D.~~ 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 herein shall be cumulative and not exclusive.

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 20, 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 20th 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 20th day of April 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

From: Christina Turner

To: Michelle Bigelow; Kim Mancera

Subject: April 6, 2022 City Council Meeting Questions
Supplement for Item 14 - INTRODUCE ORDINANCE UPDATING WATER WASTE ORDINANCE, ADOPT
WATER SHORTAGE RESOLUTION, AND ACCEPT REPORT ON WATER OFFSET PROGRAM

Date: Tuesday, April 5, 2022

Staff Report: 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.

Question: Why is staff recommending to go from Level 2 to Level 4 without first going to Level 3.

Response: Due to the changed numbering system in the new ordinance, the Level 2 of the past is roughly equal to the Level 4 in the new shortage response system. Staying at Level 2 or even going to Level 3 in the new system would represent a step backward in the City's response to the current drought. In fact, Level 4 in the new shortage response system is actually slightly less restrictive than the old Level 2 due to the elimination of some past restrictions that were difficult or impossible to enforce.

Staff Report: 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.

Question: How many gallons are in a unit of water?

Response: 748 gallons

Staff Report: 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.

Question: If a water offset program is adopted, how much more money will be added to a unit whether it's a single-family home, a townhome, or a restaurant?

Response: No data is currently available about the actual costs anticipated with water offsets. Calculating this would be part of the work ahead of us. While there are options as to how the program would be formulated, it is extremely likely that water offset costs will be based on the anticipated water

use of the property. Thus, factors like the number of bedrooms and the size of the landscaping will impact costs for residential uses. For nonresidential uses, a water-intensive use like a restaurant would have higher costs than a simple retail storefront.

Staff Report: Accept report on the development of a "water offset" program for new development.

Question: Who would pay for the water offset costs?

Response: The developers of new properties would almost certainly be responsible for obtaining water offsets just like they are responsible for paying water impact fees today.

Staff Report: Several other communities, primarily coastal communities, have implemented similar programs after recognizing that their water supplies were limited.

Question: Will the recycled water be potable or nonpotable?

Response: Establishing recycled water infrastructure in Morgan Hill is an entirely different body of work that is ongoing without regard to the water offset program. No decisions have been made in the recycled water area and both potable and nonpotable options are still being considered. Recycled water was mentioned in this report solely as an example as to how the program might work.

Introduce Ordinance Updating Water Waste Rules, Adopt Water Shortage Resolution, and Accept Report on Water Offset Program



Water Waste Ordinance

1

City has long had water waste rules

2

Urban Water Management Plan Adopted Last Year Contained New Response Plan

3

New 6-Stage Plan Feathers in Response

4

Ordinance Tonight Updates Municipal Code to Reflect Plan

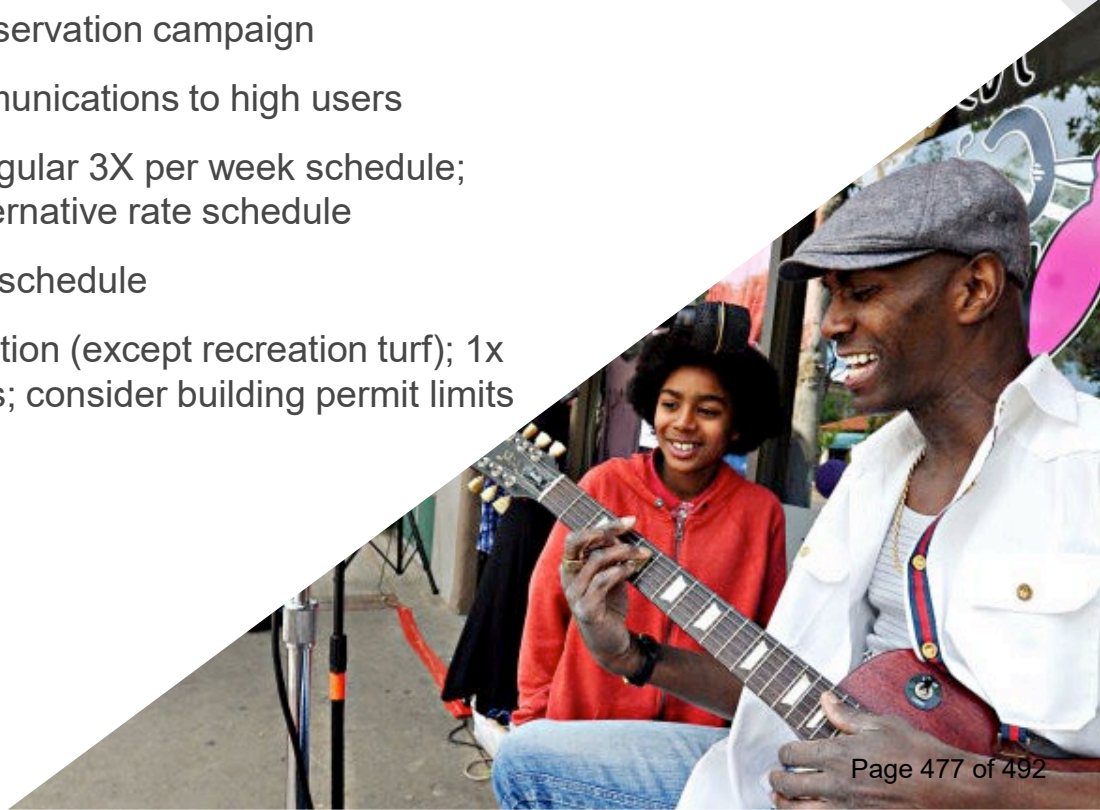
Six Stages of Water Shortage Response



Old plan created little change at Level 1 and then jumped to big change at Level 2 and even bigger change at Level 3

New plan allows for gradual ramping up of restrictions and eliminates impractical “empty” rules

- Stage 0 – continues baseline restrictions
- Stage 1 (1-10%) – activate call for conservation campaign
- Stage 2 (11-20%) – add targeted communications to high users
- Stage 3 (21-30%) – actively enforce regular 3X per week schedule; prohibit home car washing; impose alternative rate schedule
- Stage 4 (31-40%) – go to 2x per week schedule
- Stage 5 (41-50%) – eliminate turf irrigation (except recreation turf); 1x per week irrigation for trees and shrubs; consider building permit limits
- Stage 6 (>50%) – prohibit all irrigation





New Water Shortage Resolution

- City currently in declared Stage 2 water shortage
- Under new system, the 2x per week restrictions under Stage 2 are now found in Stage 4
- Resolution merely keeps City in roughly the same place by declaring Stage 4 shortage

Water Offset Program

New developments “find” new water

- Concept applied in other places
- Developers would fund some combination of conservation or water recycling projects equivalent to the anticipated demand of new development
- Next step is conducting study



Questions



CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO IMPLEMENT THE EMPLOYEE SHARE OF EMPLOYER CONTRIBUTION IN ACCORDANCE WITH SECTION 20516 OF THE CALIFORNIA GOVERNMENT CODE

RECOMMENDATION(S)

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement the pension cost share provision in accordance with California Government Code section 20516;
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce the ordinance.

Estimated Time: 5 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

On November 17, 2021, the City Council adopted a resolution adjusting the salary schedule for Management, Professional, and Confidential Employees (Resolution No. 21-050). The resolution also includes the employees sharing of employer's CalPERS rate of 6.12% beginning with the pay period including July 1, 2022. Subsequently, on

March 2, 2022, the City Council adopted Resolution No. 22-049, adding Section 20516 Cost Share to the Resolution No. 21-050 as one of the steps in the procedures required to amend the City's CalPERS contract in order to ensure that employees receive credit for their increased contributions.

The next step in the process is for the City Council to adopt a Resolution of Intent and conduct a first reading of the ordinance amending the California Public Employees Retirement System (CalPERS) contract. The final ordinance will return to Council for approval of the second reading and adoption on May 18, 2022. This date cannot be earlier than twenty (20) days after adoption of the Resolution of Intention and the effective date of the ordinance will be 30 days following the date of adoption. The effective date of the CalPERS amendment to the contract will be the pay period beginning June 26, 2022.

Although the cost share arrangements have already been agreed upon through Resolution 21-050, CalPERS requires this administrative step for Council to adopt a resolution in order to amend the pension contracts for the unrepresented group. The contract amendment will not impact the employees' cost share amount, but will give employees credit for their contributions. This amendment seeks to bring the CalPERS contract in alignment with the current adopted Resolution 21-050.

COMMUNITY ENGAGEMENT:

Public notice was published in the local newspaper on April 8, 2022, informing the community of the proposed amendment of the CalPERS contract.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 2, 2022, the City Council adopted Resolution No. 22-009 adding Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 21-050.

On November 17, 2021, the City Council approved the current Management, Professional, and Confidential Employees Resolution and corresponding salary schedules.

FISCAL AND RESOURCE IMPACT:

The additional employee contribution of the CalPERS employer contribution will be incorporated in the City budget.

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or

indirect physical changes in the environment.

**RESOLUTION OF INTENTION
TO APPROVE AN AMENDMENT TO CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
CITY COUNCIL
CITY OF MORGAN HILL**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of an additional 2.516% for local miscellaneous members in the Unrepresented Management group.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: _____
Presiding Officer

Title

Date adopted and approved



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Morgan Hill

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1964, and witnessed January 8, 1964, and as amended effective June 1, 1972, May 1, 1976, January 1, 1977, December 17, 1981, August 1, 1982, August 16, 1983, July 1, 1988, January 7, 1990, April 29, 1990, August 17, 1991, June 21, 1997, April 17, 1999, February 20, 2000, July 1, 2002, June 18, 2006 and April 19, 2020 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective April 19, 2020, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:
 - 1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local safety members and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1964 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after June 18, 2006 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after June 18, 2006 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).

12. Public Agency elected and elects to be subject to the following optional provisions:

- a. Section 21574 (Fourth Level of 1959 Survivor Benefits).
- b. Section 20903 (Two Years Additional Service Credit) for local miscellaneous members only.
- c. Section 20042 (One-Year Final Compensation) for classic members only.
- d. Section 20965 (Credit for Unused Sick Leave).
- e. Section 21024 (Military Service Credit as Public Service) for local police members only.
- f. Section 20516 (Employees Sharing Additional Cost):

From and after April 19, 2020, 3.604% for local miscellaneous members in the Morgan Hill Police Officers' Association, Community Service Officers' Association and American Federation of State, County, and Municipal Employees; 6.120% for classic local safety members in the Morgan Hill Police Officers' Association; and 1.329% for new local safety members in the Morgan Hill Police Officers' Association.

From and after April 19, 2020 and until the effective date of this amendment to contract, 3.604% for local miscellaneous members in the Unrepresented Management group.

From and after the effective date of this amendment to contract, 6.12% for local miscellaneous members in the Unrepresented Management group.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 16, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
15. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MORGAN HILL

BY _____
MELODY BENAVIDES, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. _____, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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

SECTION 1: That an amendment to the contract between the City of Morgan Hill and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2: The City Manager or his designee is authorized, empowered, and directed to execute said amendment for and on behalf of the City of Morgan Hill.

SECTION 3: This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

The foregoing ordinance was introduced and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the day of 2022, and was finally adopted at a regular meeting of said Council on the day of 2022, and said ordinance was duly passed and adopted in accordance with law.

PASSED AND ADOPTED by the City Council of Morgan Hill at the regular meeting held on the __th day of _____, 2022 by the following vote:

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

APPROVED:

RICH CONSTANTINE, MAYOR

ATTEST:

DATE:

MICHELLE BIGELOW, City Clerk

Effective:

⌘ 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 the meeting held on this _____ day of _____, 2022 and has been published pursuant to Government Code.

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

DATE: _____

Michelle Bigelow, City Clerk