



Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, June 26, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

Assistant City Attorney Cynthia Hasson

OTHER REPORTS

PROCLAMATIONS

PROCLAIMING JULY 2019 AS PARKS AND RECREATION MONTH

PRESENTATIONS

YAC PRESENTATION - ASSET #15 - POSITIVE PEER INFLUENCE

PUBLIC COMMENT

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)

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. APPROVE PROPERTY EXCHANGE AGREEMENT AND MAINTENANCE AND OPERATIONS AGREEMENT WITH VALLEY WATER

Recommendation:

Authorize the City Manager to execute and administer a property exchange agreement and a maintenance and operations agreement with Valley Water.

2. APPROVE AGREEMENT WITH WOODARD AND CURRAN, INC. FOR DESIGN OF CITY IMPROVEMENTS ASSOCIATED WITH VALLEY WATER'S FLOOD CONTROL PROJECT

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Woodard and Curran, Inc. for a not to exceed amount of \$457,271 for the design of City improvements associated with Valley Water's upcoming flood protection project.

3. APPROVE AMENDMENT TO AGREEMENT WITH THE COUNTY OFFICE OF SUPPORTIVE HOUSING FOR THE RAPID REHOUSING AND HOMELESS PREVENTION PROGRAM

Recommendation:

1. Authorize the City Manager to execute and administer the first amendment to the agreement with the County Office of Supportive Housing for the Rapid Rehousing and Homeless Prevention Program; and
2. Adopt resolution amending the Fiscal Year (FY) 2019-20 adopted budget to appropriate \$50,000 from the Housing Mitigation Fund (236) for the related expenditures.

4. APPROVE SECOND AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Second Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation for 5 years and a not to exceed amount of \$172,220.

5. APPROVE SMALL GOVERNMENT ENTERPRISE AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI) FOR GIS SOFTWARE LICENSING

Recommendation:

Approve and authorize the City Manager to execute a three-year Small Government Enterprise Agreement with Environmental Systems Research Institute, Inc. (Esri) for GIS software licensing for a total amount of \$105,000.

6. APPROVE FINAL MAP OF EVERGREEN VILLAGE (BUTTERFIELD & COCHRANE DEVELOPMENT), SUBDIVISION IMPROVEMENT AGREEMENT, AND STORMWATER BEST-MANAGEMENT-PRACTICES (BMP) OPERATIONS AND MAINTENANCE AGREEMENT

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Evergreen–Butterfield & Cochrane, L.L.C., an Arizona limited liability company;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement.

7. AWARD ANNUAL ON-CALL ELECTRICAL MAINTENANCE SERVICES AGREEMENTS

Recommendation:

1. Award Maintenance Service Agreements to Morgan Hill JET Electric, Inc., JT Electric, Inc. and Bear Electrical Solutions, Inc. for up to \$100,000 each for on-call electrical maintenance and repair services; and
2. Authorize the City Manager to execute and administer the Agreements.

8. AWARD ANNUAL ON-CALL PLUMBING MAINTENANCE SERVICE AGREEMENTS

Recommendation:

1. Award Maintenance Service Agreements to Burr Plumbing and Pumping Co, Inc., Ernie's Plumbing, and Century Commercial Service for \$100,000 each for on-call plumbing maintenance and repair services; and
2. Authorize the City Manager to execute and administer the Agreements.

9. AWARD OF JOINT TRUNK PIPELINE CONDITION ASSESSMENT CONTRACT AND APPROVAL OF RELATED COST SHARING AGREEMENT WITH THE CITY OF GILROY

Recommendation:

1. Approve and authorize the City Manager to execute and administer a Cost Sharing Agreement with the City of Gilroy for the Condition Assessment Project. This authorization is conditioned on the City of Gilroy approving the Cost Sharing Agreement prior to execution; and
2. Approve and authorize the City Manager to execute and administer an agreement with Water Works Engineers, LLC in the amount of \$602,567 for a Joint Trunk Pipeline Condition Assessment. This authorization is conditioned on the City of Gilroy approving the Cost Share Agreement prior to execution.

10. AWARD 2019 PAVEMENT RESURFACING PROJECT TO GRANITE ROCK COMPANY

Recommendation:

1. Approve the 2019 Pavement Resurfacing Project plans and specifications;
2. Award contract to Granite Rock Company for the 2019 Pavement Resurfacing Project in the amount of \$3,943,226;
3. Authorize expenditure of construction contingency funds not to exceed \$394,323; and
4. Authorize the City Manager to execute and administer the construction contract with Granite Rock Company pending review and approval by the City Attorney.

11. ACCEPT AND APPROVE GALVIN PARK PAR COURSE GRANT MEMORANDUM OF UNDERSTANDING AND RELATED BUDGET AMENDMENT

Recommendation:

1. Accept the *Meet Me at the Park* grant from the National Recreation and Park Association (NRPA);
2. Approve and authorize the City Manager to execute the Memorandum of Understanding; and
3. Adopt resolution amending the City's Adopted FY 2019-20 Budget to appropriate \$30,000 as grant revenue and \$60,000 as expenditures in the Park Impact Fund (301) for the Galvin Park Inclusive Par Course project.

12. ACCEPT PARKING STRUCTURE SAFETY ENHANCEMENT PROJECT

Recommendation:

1. Accept as complete, the Parking Structure Safety Enhancement Project in the amount of \$322,733;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

13. ACCEPT APRIL 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

14. APPROVE THE JUNE 5, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

15. APPROVE FISCAL YEAR 2019-20 WORK PLANS FOR PARKS AND RECREATION AND LIBRARY, CULTURE AND ARTS COMMISSIONS

Recommendation:

1. Approve the proposed Parks and Recreation Commission FY 2019-20 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2019-20 Work Plan.

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 michelle.wilson@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 michelle.wilson@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
- Maintaining Fiscal Responsibility
- 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

2019-2020 Strategic Priorities

- Agricultural Preservation
- Cannabis Policy
- Community Engagement and Messaging
- Economic Development
- Financial Stewardship
- High Speed Rail
- Homelessness
- Housing
- Infrastructure
- Telecommunications
- Traffic/Transportation





July is **PARKS AND RECREATION MONTH!**

Join us as we celebrate all month long with these FREE or discounted events!

Otter Pops and Downtown Splash Pad | Tuesday, July 2 | 12pm - 4pm | Morgan Hill Community and Cultural Center | Join us at the Splash Pad for free water play and otter pops!

4th of July Party | Wednesday, July 3 | 11:30am | Centennial Recreation Senior Center | Come join us for lunch as we celebrate our country's Independence Day.

Bike Party | Friday, July 5 | 7:30pm | Bike Therapy 17540 Depot Street | Join The Morgan Hill Bike Party for a themed "Freedom" ride. Decorate your bikes with red, white and blue and take a ride around town! Gathering starts at 7:30pm, ride at 8pm. All ages welcome must be able to ride safely. Music and lights encouraged.

Historical Tour | Saturday, July 13 | 10am to 12pm | Third Street Plaza 50 E. 3rd Street | Join the Historical Society for a FREE walking tour of Morgan Hill's Historic Downtown. For more information about this event and other upcoming events, please visit www.morganhillhistoricalsociety.org.

Resident Free Day at the Centennial Recreation Center | Friday, July 12 | 4:30am to 10pm | Centennial Recreation Center | Residents are welcome to spend the day using the fitness center, taking group exercise classes, swimming in our indoor pool and being a part of our CRC community for FREE with proof of residency. Visit www.mhcr.com for more details about this event.

Walk with your Pup | Tuesday, July 16 | 5:30pm | Morgan Hill Dog Park | Bring your dog and join other community members on this guided walk around Morgan Hill.

Free Family Movie Night at the Downtown Amphitheater | July 20 | 8pm | Morgan Hill Community and Cultural Center | The Poppy Jasper International Film Festival will be hosting a free viewing of Ella Enchanted! Bring your chairs and blankets and enjoy the show!

Resident Free Day at the Morgan Hill Aquatics Center | Friday, July 19 | 11:30am to 4:30pm | Morgan Hill Aquatics Center | Residents are welcome to spend the day splashing into fun at the Morgan Hill Aquatics Center for FREE with proof of residency. Visit www.mhaquaticscenter.com for more details about this event and for a complete list of pool and facility rules.

Summer Fun in the Park | Thursday, July 25 | 5:30pm to 8pm | Galvan Park | Join us at this FREE event as a part of the Summer Fun in the Park series. There will be entertainment, food, and resources for the entire family. We hope to see you there!

San Jose Earthquakes Game | Saturday, July 27 | 6:45pm | AVAYA Stadium in San Jose | Cheer on your San Jose Earthquakes as they take on the Colorado Rapids at Morgan Hill Neighborhood Night! Go to www.tinyurl.com/MHQuakes to purchase tickets and learn more about the special giveaway and on-field opportunities!

Outdoor Yoga Class | Tuesday, July 30 | 8:30am | Community Park-Stage Area | A free outdoor yoga class taught by one of the CRC fitness instructors. Bring a mat, water bottle and get ready for a little outdoor yoga class!

Questions? Contact Jennie Tucker at jennie.tucker@morganhill.ca.gov.



June

Developmental Asset

#15

Positive Peer Influence

Young person's best friends model responsible behavior.

Evaluating friendships.

- o Positive Characteristics
 - o Models responsible behavior
 - o Lives a healthy lifestyle
 - o Equal amounts of effort are put into the friendship
- o Third party views:
 - o A parent can offer an unbiased view of a friendship.
 - o Another trusted friend can give advice in a familiar way
 - o These insights can help one create a well rounded evaluation of a friendship



Benefits of a healthy friendship

- o Good friends will encourage and support you
- o They will console you when you are feeling down and congratulate you on your accomplishments.
- o It will increase self worth and belonging
- o Studies have shown that good friendships increase physical
- o and mental health





June Complementary Asset #35 Resistance Skills

Young person can resist negative peer pressure
and dangerous situations

How resistance skills apply to friendships

- o Avoidance of peer pressure and standing up for oneself
- o Standing up for oneself in risky situations.
- o Knowing how to say NO to those who are close to you
- o These skills can make you a positive influence on your friends



How did your close friendships help you in life?





CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Chris Ghione, Public Services Director
APPROVED BY: City Manager

APPROVE PROPERTY EXCHANGE AGREEMENT AND MAINTENANCE AND OPERATIONS AGREEMENT WITH VALLEY WATER

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a property exchange agreement and a maintenance and operations agreement with Valley Water.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Advancing Regional Initiatives

2019 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

For decades, the City has supported Valley Water in efforts to complete the Upper Llagas Creek Flood Protection Project. Completion of this project will provide flood control for the West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. Valley Water recently bid Phase 1 of the project, which includes construction south of Watsonville Road to Silveira Lake. Valley Water is working with City staff as it completes the design for Phase 2, which will include significant construction through the City. Valley Water hopes to complete design and obtain full funding for Phase 2 by this Fall.

Once complete, the project will be interconnected with the City's storm drain system. Various areas of the project are also planned for recreational trails through joint use agreements with the City. The proposed Maintenance and Operations Agreement outlines the future responsibilities of the District and City in relation to this interconnected system. The District shall maintain responsibility for the newly constructed flood control system, while the City will remain responsible for its storm drain systems and connections to the flood control system. Additionally, the City will be responsible for any areas utilized for recreational purposes through joint use agreements.

Phase 2 work includes the relocation of the drainage ditch next to Hale Avenue between Wright Avenue and Main Avenue. The ditch would be replaced by a large box culvert and pipe that will run underneath the roadway. The drainage ditch is currently owned by the County of Santa Clara. In preparation of the upcoming work, the property where the

ditch is located would be transferred to the City of Morgan Hill. Ultimately the property would be used by the City for additional roadway and sidewalk. Until the time the project is constructed, Valley Water will take on maintenance of the ditch via the associated maintenance agreement.

It should be noted that the exchange agreement also includes a transfer of ownership for a Valley Water facility to the County, outside of Morgan Hill. This transfer has no connection with the Flood Control Project or Morgan Hill and is only included as part of prior negotiations between Valley Water and the County.

COMMUNITY ENGAGEMENT: Inform

To this point the negotiation of this agreement has been internal to City, County and Valley Water staff. This report serves to inform the community on the progress of the project and the proposed agreements. The City is currently working with Valley Water on a communication plan for Phase 2 of the project and intends to have that completed by this Fall. Work on the Hale Avenue section of the project is still multiple years away. Once the schedule for Phase 2 of the project is more clearly defined, the City and Valley Water plan to begin extensive community outreach.

ALTERNATIVE ACTIONS:

There is no practical alternative action that would allow the high priority flood control project to move forward without delay. The City Council may provide further direction to the City staff to negotiate on terms of the agreements.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has taken numerous actions over the last several decades in support of the Upper Llagas Creek Flood Protection Project. The City Council received an update report on the Project from Valley Water on March 6, 2019.

FISCAL AND RESOURCE IMPACT:

There is no immediate fiscal impact associated with the recommended action. The maintenance and operations agreement allows for, but does not require the City to construct trails within Valley Water facilities. The capital and operational impacts of constructing and managing these trails would be outlined in future staff reports to the Council.

CEQA (California Environmental Quality Act):

Environmental Impact Report.

Valley Water, as the lead agency, certified an Environmental Impact Report in May 2014 for the Upper Llagas Creek Flood Control Project (State Clearinghouse No. 2012102032). A link to the Final EIR can be found [here](#). As a responsible agency, the City Council is required to consider the findings from the EIR before approval of this item.

LINKS/ATTACHMENTS:

1. Maintenance and Operations Agreement

2. Exchange Agreement w City Consent

**AGREEMENT BETWEEN THE
CITY OF MORGAN HILL AND SANTA CLARA VALLEY WATER
DISTRICT REGARDING MAINTENANCE AND OPERATION
OF THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT
AND WEST LITTLE LLAGAS CREEK**

THIS AGREEMENT is made and entered into this ____ day of ____, 2019 (Effective Date) by and between the City of Morgan Hill, a municipal corporation of the State of California primarily located at 17575 Peak Avenue, Morgan Hill, CA 95037, hereinafter referred to as "CITY", and the Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California located at 5750 Almaden Expressway, San Jose, California 95118, hereinafter referred to as "VALLEY WATER", and together referred to as "PARTIES" and individually as "PARTY".

RECITALS

- A. WHEREAS, VALLEY WATER is enabled by the Santa Clara Valley Water District Act to provide flood protection in Santa Clara County, and has sought federal aid for flood protection measures for the Upper Llagas Creek Flood Protection Project (hereinafter "Project") for 13.9± miles from approximately Buena Vista Avenue in Gilroy, California upstream to Llagas Road in Morgan Hill, California; and
- B. WHEREAS, the PARTIES executed a Cost-Sharing Agreement (#A3313S) for preparing Project designs, environmental documents, and a U.S. Army Corps of Engineers (USACE) Design Documentation Report for the Project on September 22, 2009 with the CITY's cost share a maximum of three million dollars (\$3,000,000). On April 7, 2014, VALLEY WATER received a final payment from the CITY maximizing their contribution at three million dollars in accordance with Agreement #A3313S; and
- C. WHEREAS, on June 10, 2014, VALLEY WATER's Board of Directors certified a Final Environmental Impact Report (Final EIR) and approved its Project as the lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. Seq.); and
- D. WHEREAS, VALLEY WATER is the fee owner of certain real property along West Little Llagas Creek within the CITY acquired for the Project; and
- E. WHEREAS, the PARTIES executed a Joint Use Agreement (#A4201M - **Attachment A**) to enable the CITY to provide certain recreational opportunities to the public within VALLEY WATER's fee owned property that do not unreasonably interfere with VALLEY WATER's mission of flood protection, water resource management, and stream stewardship along West Little Llagas Creek between Monterey Road and Ciolino Avenue in association with the completed Project; and

- F. WHEREAS, VALLEY WATER is required to operate and maintain the Project to maintain the 100-year level of flood protection, meet or exceed mitigation plantings success criteria, and protect the ecological and biological Project benefits; and
- G. WHEREAS, the County of Santa Clara, Department of Roads and Airports intends to adopt a resolution of the Board of Supervisors relinquishing the remaining portion of Hale Avenue between approximately Main Avenue to north of Wright Avenue to the CITY. This remaining portion of Hale Avenue includes the existing West Little Llagas Creek currently serving to convey storm water flows through portions of the CITY; and
- H. WHEREAS, VALLEY WATER has plans to construct the Project that will replace the existing portion of West Little Llagas Creek along Hale Avenue within underground drainage structures within the Hale Avenue right of way to provide a 100-year level flood protection; and
- I. WHEREAS, CITY is the fee owner of certain real property along West Little Llagas Creek within the Project limits, including at existing street crossing locations; and
- J. WHEREAS, CITY and VALLEY WATER are precluded by the State Constitution and other laws from actions which financially bind future governing bodies. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations of the legislative bodies of CITY and VALLEY WATER; and
- K. WHEREAS, the PARTIES find it to be in the public interest to provide for joint-use of the PARTIES properties within the Project limits and agree to define the maintenance and operations roles and responsibilities for each PARTY in association with the Project and West Little Llagas Creek.

AGREEMENT

I. TERM

The term of this AGREEMENT shall commence upon the Effective Date which shall be the date the AGREEMENT has been fully executed by both PARTIES, and shall continue for Fifty (50) years thereafter, unless earlier terminated pursuant to the terms of this AGREEMENT.

II. DEFINITIONS

For purposes of this AGREEMENT, the following terms shall be defined and used as set forth below, and any other capitalized terms not defined below shall be as defined elsewhere in this AGREEMENT. The references to particular types of Flood Protection Features, Recreation Features, and Joint Flood Protection and Recreation Features and the like.

1. Flood Protection Features – Those features being used solely for flood protection purposes identified as the following:
 - a. Underground reinforced box culverts (RCB's);
 - b. Existing rock slope protection, concrete lining and concrete wingwalls;
 - c. Inlet structure at Hale Avenue and Wright Avenue;
 - d. High flow horseshoe-shaped underground tunnel 12 ft. tall x 14 ft. wide;
 - e. Maintenance Access Ramps to West Little Llagas Creek;
 - f. Aggregate base maintenance roads;
 - g. Gates to maintenance access roads;
 - h. In-channel debris and vegetation control;
 - i. Flood Protection and Mitigation signage;
 - j. Mitigation Plantings; and
 - k. miscellaneous features with the purpose of providing hydraulic capacity for West Little Llagas Creek.

2. Recreation Features – Those features being used solely for recreation, open space, and trail purposes identified as the following:
 - a. Asphalt concrete trails;
 - b. Recreation signage;
 - c. Lighting features;
 - d. Drinking fountains;
 - e. Bathrooms;
 - f. Trash removal and trash receptacles;
 - g. Benches;
 - h. Bollards;
 - i. Landscape plantings;
 - j. Weed control along trails and within landscape plantings;
 - k. Landscape architectural features (i.e. boulders, sculptures);
 - l. Community monuments/exhibits, including Sister City projects; and
 - m. miscellaneous features with the purpose of providing recreation, open space, and trail uses, including the features installed by the CITY in accordance with the Joint Use Agreement (#A4201M) executed by the PARTIES, including any future amendments or renewals approved by the PARTIES.

3. Joint Flood Protection and Recreation Features – Those features being used jointly for flood protection and recreation/trail purposes as identified as the following:
 - a. Aggregate based maintenance roads/trails;
 - b. Fencing;
 - c. Underground low flow 36-inch reinforced concrete pipe (RCP) storm drain from West Main Avenue to Inlet structure near Wright Avenue;
 - d. Rodent control;
 - e. miscellaneous features with the purpose of providing both flood protection and recreation uses.

4. Channel Access Road/Ramps – Any road or ramp which has not been authorized for the public's use and which has been constructed or installed to provide service access to, or within West Little Llagas Creek for the sole use by VALLEY WATER.
5. Landscape Plantings and associated features – Plant material, such as trees, shrubs, turf, reinforced turf, architectural features and irrigation systems installed for recreation, open-space, and trail purposes, excluding all Mitigation Plantings.
6. Maintenance Roads/Trails – Paved pathways designed for both public pedestrian and bicycle use as well as for service access by VALLEY WATER and CITY.
7. Mitigation Plantings – Native plant material planted to mitigate the loss of such plants because of the Project.
8. Operation and Maintenance – Operation and Maintenance shall include all operations, maintenance, replacements, repairs, rehabilitation, acquiring required permits, satisfying permit conditions, record keeping, and reporting in accordance with the standards set forth herein.
9. Sediment – Undesirable sediment accumulation within West Little Llagas Creek which must be removed for flood protection purposes.
10. Vegetation – Natural and desirable native mitigation plant growth or undesirable plant growth, including fallen trees within West Little Llagas Creek which must be controlled for flood protection purposes.
11. Weed Control – Undesirable plant growth along the Maintenance Roads/Trails and not within West Little Llagas Creek which is controlled for recreation, open space, and trail purposes.
12. Trash and Litter – Waste products, refuse that have been carelessly discarded or disposed of improperly, without consent, at an undesirable location.
13. Graffiti – Writings, drawings, or other marks scribbled, scratched, or sprayed on a surface in a public place without consent.

III. OPERATIONS AND MAINTENANCE PROVISIONS RELATED TO FLOOD PROTECTION FEATURES

A. Operations

VALLEY WATER agrees to provide operations for the Flood Protection Features identified and defined within Article II (1.) of this AGREEMENT. For purposes of this AGREEMENT only, during a potential flood emergency, VALLEY WATER's designated Emergency Operations Center (EOC) staff will determine

when VALLEY WATER staff will be required to perform emergency operations of the Flood Protection Features.

B. Maintenance

VALLEY WATER agrees to provide maintenance for the Flood Protection Features identified and defined within Article II (1.) of this AGREEMENT, excluding the operation and maintenance for the structural aspects of the RCB's and road crossings which is the CITY's responsibility. VALLEY WATER's maintenance of flood protection features includes sediment removal and vegetation control consistent with VALLEY WATER Project's latest version of their Operations and Maintenance Guidelines. CITY, at any time, may request a copy of the latest version of the Project's Operations and Maintenance Guidelines from VALLEY WATER.

C. Operations and Maintenance of Existing West Little Llagas Creek at Hale Avenue

VALLEY WATER agrees to operate and maintain West Little Llagas Creek along Hale Avenue between approximately Wright Avenue and West Main Avenue when County of Santa Clara relinquishes this remaining portion of Hale Avenue to the CITY and prior to completion of the Project. The completed Project will replace this portion of West Little Llagas Creek within underground drainage structures, which are identified and defined as Flood Protection Features within Article II (1.) of this AGREEMENT. PARTIES acknowledge VALLEY WATER has CITY's permission in accordance with this AGREEMENT to conduct operations and maintenance, including sediment removal within existing West Little Llagas Creek, where no additional approval is required by the CITY. VALLEY WATER's maintenance schedule will be in accordance with the terms and conditions of Article VI (A.) of this AGREEMENT.

D. Operations and Maintenance of Mitigation Plantings

VALLEY WATER agrees to operate and maintain the Mitigation Plantings in accordance with the regulatory permits acquired for the Project.

IV. OPERATIONS AND MAINTENANCE PROVISIONS RELATED TO RECREATION FEATURES

A. Operations

CITY alone is responsible for supervising the public's authorized use of the Recreation Features. CITY agrees to provide operations for the Recreation Features identified and defined within Article II (2.) of this AGREEMENT, consistent with the CITY's standard park/trail operations, and in accordance with the Joint Use Agreement (#A4201M) previously executed by the PARTIES, including any future amendments or renewals approved by the PARTIES.

B. Maintenance

CITY agrees to provide maintenance for the Recreation Features identified and defined within Article II (2.) of this AGREEMENT, including trash and graffiti removal consistent with the CITY's standard park/trail operations, and in accordance with the Joint Use Agreement (#A4201M) previously executed by the PARTIES, including any future amendments or renewals approved by the PARTIES.

C. Operations and Maintenance of Recreation Features

CITY agrees to operate and maintain the Recreation Features consistent with the CITY's standard park/trail operation and maintenance standards, and this operation and maintenance shall not be inconsistent with VALLEY WATER's Operations and Maintenance Guidelines, as amended from time to time, and shall not conflict with VALLEY WATER's Mitigation Plantings in accordance with the regulatory permits acquired for the Project. To the extent this AGREEMENT conflicts with any of the terms and conditions of the Joint Use Agreement (#A4201M), including any future amendments or renewals approved by the PARTIES, the terms and conditions of the Joint Use Agreement shall prevail.

V. OPERATIONS AND MAINTENANCE PROVISIONS RELATED TO JOINT FLOOD PROTECTION AND RECREATION FEATURES

A. Operations and Maintenance

1. VALLEY WATER agrees to provide operations and maintenance for those Flood Protection features related to Joint Flood Protection and Recreation Features identified and defined within Article II (3.) of this AGREEMENT.

By way of example, VALLEY WATER is responsible for maintenance of the Maintenance Roads structural base materials and/or sub-base structural integrity and fencing damaged by VALLEY WATER personnel or its authorized agents.

2. CITY agrees to provide operations and maintenance for those Recreation features related to Joint Flood Protection and Recreation Features identified and defined within Article II (3.) of this AGREEMENT,

By way of example, CITY is responsible for maintenance of concrete asphalt surfacing of maintenance road/trails, 36-in RCP low flow storm drain West Main Avenue to Wright Avenue, fencing damaged by public use, etc. as defined in and in accordance with the terms and conditions of

the Joint Use Agreement (#A4201M), including any future amendments or renewals approved by the PARTIES.

B. Failure of Operations and Maintenance by CITY or VALLEY WATER

In the event either the CITY or VALLEY WATER fails to perform its obligations under this Article in a timely fashion, the other party may, after providing notification to the party required to perform the obligation of the deficiency, provide the complete operations and maintenance of a Joint Flood Protection and Recreation Features. The party in default shall reimburse the party that provided operations and maintenance on the Joint Flood Protection and Recreation Features within sixty (60) days of proper billing. Proper billing will include an itemized breakdown of the proportional costs and a complete description of those items and/or exact locations of those areas that received the operations and maintenance work. The CITY and VALLEY WATER agree to resolve any dispute regarding the proportional costs, not specifically addressed in this AGREEMENT, for operating and maintaining the Joint Flood Protection and Recreation Features through the resolution process set forth in Article X of this AGREEMENT.

VI. SCHEDULING OF MAINTENANCE

A. VALLEY WATER's Maintenance Schedule

1. PARTIES acknowledge and agree that VALLEY WATER is responsible for performing routine maintenance for flood protection and water resource management purposes in a manner consistent with its maintenance of comparable facilities or creeks.
2. PARTIES acknowledge and agree VALLEY WATER's use of equipment for maintenance work, including herbicide applications to control vegetation as contemplated under this AGREEMENT may, on occasion, disrupt the use of the Recreation Features by CITY, the public, or both. Accordingly, VALLEY WATER agrees to notify the CITY's designated superintendent at least ten (10) working days prior to commencement of such work, to minimize public impacts.
3. PARTIES acknowledge VALLEY WATER has CITY's permission in accordance with this AGREEMENT to conduct operations and maintenance, including rock slope protection installation/repairs, sediment removal, and vegetation management for flow conveyance for the following street locations and street crossings associated with the Project, where no additional approval is required by the CITY:
 - La Crosse Drive (South), Bridge #37C-329: CITY owned, four (4) Cell Reinforced Concrete Box Culvert (RCB);

- La Crosse Drive (North), Bridge #37C-328: CITY owned, four (4) Cell RCB;
- West Edmundson Avenue, Bridge #37C-168: CITY owned
- Edes Street, Bridge #37C-409: CITY owned four (4) RCB's: Three (3) RCB's 10 ft. wide x 7 ft. tall, One (1) 10 ft. wide x 9 ft. tall;
- Cosmo Avenue, Bridge #37C-408: CITY owned four (4) RCB's: Three (3) RCB's 10 ft. wide x 7 ft. tall, One (1) 10 ft. wide x 9 ft. tall;
- Spring Avenue: CITY owned three RCB's: Center RCB 10 ft. wide x 10 ft. tall, two side RCB's 10 ft. wide x 9 ft. tall;
- Ciolino Avenue: Confluence with existing VALLEY WATER owned 15 ft. wide x 8 ft. tall underground RCB, Underground 10ft. wide x 9ft. tall and 10ft. wide x 8ft. tall - high flow RCBs parallel along Ciolino Avenue, including confluence with CITY owned existing 72-in. Dewitt Creek storm drain. Note: The existing 72-inch Dewitt Creek storm drain is and remains the CITY's operations and maintenance responsibility;
- Del Monte Avenue (Ciolino Avenue to North of West Dunne Avenue): VALLEY WATER owned underground 10ft. wide x 9ft. tall and 10ft. wide x 8ft. tall - high flow RCBs parallel with Del Monte Avenue;
- West Dunne Avenue: VALLEY WATER owned underground 10ft. wide x 9ft. tall and 10ft. wide x 8ft. tall - high flow RCBs crossing;
- Nob Hill Terrace: VALLEY WATER owned high flow horseshoe-shaped underground tunnel 12 ft. tall x 14 ft. wide parallel within Nob Hill Terrace;
- Hale Avenue (Nob Hill Terrace to Warren Avenue): VALLEY WATER owned high flow horseshoe-shaped underground tunnel 12 ft. tall x 14 ft. wide parallel within Hale Avenue;
- Warren Avenue (at Hale): VALLEY WATER owned high flow horseshoe-shaped underground tunnel 12 ft. tall x 14 ft. wide crossing;
- Hale Avenue (Warren Avenue to Wright Avenue): CITY owned underground 36-in RCP low flow storm drain, VALLEY WATER owned 10ft. wide x 9ft. tall and 10ft. wide x 8ft. tall - high flow RCBs parallel to and within Hale Avenue;
- West Main Avenue: CITY owned underground 36-in RCP low flow storm drain, VALLEY WATER owned 10ft. wide x 9ft. tall and 10ft. wide x 8ft. tall - high flow RCBs crossing;
- Wright Avenue: CITY owned underground 36-in RCP low flow storm drain, VALLEY WATER owned 10ft. wide x 9ft. tall and 10ft. wide x 8ft. tall - high flow RCBs crossing;
- Hillwood Lane: CITY owned arched culvert;
- Llagas Creek Drive: CITY owned arched culvert, 5ft.-11in.± wide x 22ft.-10in.± tall;
- Llagas Road: CITY owned RCB-Double Cell

If said VALLEY WATER maintenance work will involve the closure of any CITY streets/traffic lanes, or will involve frequent trucking (defined as more than one truck per hour) to and from the maintenance site, VALLEY WATER shall apply for the appropriate City permit and submit a traffic control plan to CITY. CITY staff will have five working days from receipt of the permit application and traffic control plan to review and suggest any modifications to VALLEY WATER. VALLEY WATER is not otherwise required to submit a traffic control plan to complete maintenance work associated with Flood Protection Features or Joint Flood Protection and Recreation Features as identified and defined in Article II (1.) and (3.).

4. PARTIES acknowledge a portion of existing West Little Llagas Creek from Ciolino Avenue upstream to West Main Avenue is outside of the Project's scope of work and operations, and maintenance responsibilities for such property shall comply and be limited to the terms and conditions of the PARTIES' existing right of way documents for this portion of West Little Llagas Creek:

- Ciolino Avenue to Dunne Avenue: VALLEY WATER Easement Deeds for existing 15 ft. wide x 8 ft. tall RCB beneath shopping center:
 - #1655462 Easement, recorded 6/30/1959;
 - #6767759 Easement, recorded 7/1/1980;
 - #11900477 Easement, recorded 5/12/1993;
 - #12750293 Easement, recorded 12/15/1994;
 - #12750297 Easement, recorded 12/15/1994;
- Dunne Avenue: CITY owned crossing where VALLEY WATER has no existing rights;
- 5th Street: CITY owned crossing where VALLEY WATER has no existing rights;
- 4th Street: CITY owned crossing where VALLEY WATER has no existing rights;
- Between 4th Street and 3rd Street: VALLEY WATER Easement Deed #6388526, recorded 5/30/1979 for a 203± sf triangle shaped parcel;
- 3rd Street: CITY owned crossing where VALLEY WATER has no existing rights;
- Del Monte Avenue: CITY owned crossing where VALLEY WATER has no existing rights;
- Warren Avenue: CITY owned crossing where VALLEY WATER has no existing rights; and
- Warren Avenue to West Main Avenue: VALLEY WATER Deeds:
 - #1994330 Easement, recorded 5/8/1961;
 - #1995042 Easement, recorded 5/9/1961;
 - #7468700 Fee Grant Deed (7,250± sf), recorded 9/20/1982;
 - #9198181 Easement, recorded 3/18/1987.

5. VALLEY WATER maintenance activities are to comply with all applicable City, County, and State regulations regarding traffic control. VALLEY WATER further agrees, whenever practical, to schedule the use of said maintenance work to avoid or minimize disruption of the Recreation Features as identified and defined in Article II (2.), including special event activities held within the Project area.

B. CITY Maintenance Schedule

1. PARTIES acknowledge and agree CITY is responsible for performing routine maintenance for recreation, open space, and trails in a manner consistent with the CITY's standard park/trail operations, and in accordance with the Joint Use Agreement (#A4201M) executed by the PARTIES, including any future amendments or renewals approved by the PARTIES. Accordingly, CITY agrees to notify VALLEY WATER's designated superintendent at least ten (10) working days prior to commencement of any significant work, to coordinate with VALLEY WATER maintenance responsibilities to minimize public impacts. Significant work shall consist of work that is not regular and routine in nature. Regular and routine in nature shall include litter/trash removal, graffiti abatement, weed abatement, and other similar activities.
2. PARTIES acknowledge and agree CITY is and remains responsible for the operation and maintenance responsibilities for the storm drainage system, outfalls, outfall structures/headwalls, flap gates, and appurtenances that may discharge into the Project's Flood Protection Features.
3. PARTIES further acknowledge and agree that CITY is responsible for the CITY owned structures, including structural inspections and repairs and for performing maintenance (i.e. street resurfacing) on street locations and street crossings associated with the Project as identified and defined in Article VI (A)(3).

C. CITY Event Schedule

CITY agrees to notify the VALLEY WATER's designated superintendent at least thirty (30) calendar days prior to commencement of such events within the Project limits, so VALLEY WATER may coordinate their maintenance activities accordingly to minimize public impacts.

D. CITY and VALLEY WATER Designated Superintendents

CITY and VALLEY WATER agree, for proposed activities/work within the Project limits, to provide the other with the name and business telephone number of their designated superintendents for purposes of receiving the schedules and notice required under this Article VI, if different than their designated

superintendents identified in Article XI of this AGREEMENT. CITY and VALLEY WATER agree to notify the other in a timely manner in the event of any changes in the information regarding their designated superintendents.

VII. DAMAGE OR DESTRUCTION

A. Damage to CITY's Improvements within VALLEY WATER's Project right of way

1. In accordance with the terms and conditions of the Joint Use Agreement (#A4201M), VALLEY WATER is not responsible for any damage occurring to CITY improvements or structures located within VALLEY WATER's Project right of way that results from VALLEY WATER's maintenance, construction or reconstruction activities, or from its water management and/or flood protection facilities located on or near this Project right of way, including (without limitation) any flood flows, or inundation of West Little Llagas Creek onto Recreation Features or joint Flood Protection and Recreation Features. Further, CITY is responsible for any damage occurring to either VALLEY WATER's or CITY's improvements or structures located within VALLEY WATER's Project right of way that result from the public's use. All such costs for repairing such damage to VALLEY WATER's or CITY's improvements will be borne by CITY.
2. In the event CITY fails to perform its obligations under this Article in a timely fashion, VALLEY WATER shall, by written notice, provide CITY with an additional fifteen (15) days to cure. If, after such cure period, CITY has not taken the action(s) specified in this Article, VALLEY WATER, at VALLEY WATER's sole option, shall have the right to proceed with such repairs or replacement and bill CITY for VALLEY WATER's costs of same. By "costs," the PARTIES agree that such costs shall include the costs which are necessary to complete the work and a proportionate share of VALLEY WATER's design, engineering, and administrative expenses.

B. Damage to CITY's Improvements within CITY's right of way

1. PARTIES agree VALLEY WATER is responsible for operations and maintenance of the Flood Protection Features as identified and defined in Article II (1.). VALLEY WATER is responsible for any damage occurring to CITY improvements or structures located within CITY's right of way that results from VALLEY WATER's maintenance, construction or reconstruction activities.

By way of example, if VALLEY WATER damages existing CITY street improvements while VALLEY WATER performs sediment removal of

the reinforced concrete box culverts at existing CITY street crossings, all such costs for repairing such damage to CITY's improvements will be borne by VALLEY WATER.

2. In the event VALLEY WATER fails to perform its obligations under this Article in a timely fashion, CITY shall, by written notice, provide VALLEY WATER with an additional fifteen (15) days to cure. If, after such cure period, VALLEY WATER has not taken the action(s) specified in this Article, CITY, at CITY's sole option, shall have the right to proceed with such repairs or replacement and bill VALLEY WATER for CITY's costs of same. By "costs," the PARTIES agree that such costs shall include the costs which are necessary to complete the work and a proportionate share of CITY's design, engineering, and administrative expenses.

C. Allocation of Costs

In the event that damage or destruction occurs to Flood Protection Features, Recreations Features, Joint Flood Protection and Recreation Features, or Mitigation Plantings from a cause not specifically addressed in this Article or from a combination of causes involving the acts and omissions of VALLEY WATER and CITY, the PARTIES agree to resolve the allocation of costs for repairing or replacing the affected facilities through the resolution process set forth in Article X of this AGREEMENT.

D. Rodent Control

1. PARTIES agree that Rodent Control is required for Joint Flood Protection and Recreation Features that benefits each PARTY. CITY may provide rodent control services on behalf of the community and as needed for the protection of the Recreation Features at its sole cost. CITY agrees to notify VALLEY WATER's designated superintendent at least ten (10) working days prior to commencement of such work.
2. PARTIES acknowledge and agree that VALLEY WATER may perform rodent control as required to protect Flood Protection Features and Mitigation Plantings at their sole cost. VALLEY WATER agrees to notify CITY's designated superintendent at least ten (10) working days prior to commencement of such work.

VIII. SUCCESSORS AND ASSIGNS

This AGREEMENT, and all terms, covenants, and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto.

IX. MUTUAL INDEMNIFICATION PROVISIONS

- A. Neither VALLEY WATER, nor any officer or employee or agent thereof, shall be held responsible for any damage or liability occurring by reason of anything done or omitted by CITY or public under or in connection with any work under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify, and hold VALLEY WATER harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by CITY under this AGREEMENT.
- B. Neither CITY, nor any officer or employee or agent thereof, shall be held responsible for any damage or liability occurring by reason of anything done or omitted by VALLEY WATER under or in connection with any work, authority, or jurisdiction delegated to VALLEY WATER under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, VALLEY WATER shall fully defend, indemnify, and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by VALLEY WATER under this AGREEMENT.

X. RESOLUTION OF DISPUTES

This AGREEMENT requires the PARTIES work together in good faith to achieve the intent of this AGREEMENT. In the event that a dispute arises as to the proper interpretation of the respective rights and responsibilities of the PARTIES under this AGREEMENT, or as to any other aspect of this AGREEMENT, the PARTIES agree that they each will assign the appropriate individuals to meet and make good faith efforts to negotiate in order to arrive at a resolution of the dispute.

If after employing this informal resolution process the parties are at impasse, either PARTY may request an independent, mutually agreed upon mediator to facilitate further negotiation with the costs shared equally by each party.

Nothing herein shall prevent either PARTY from exercising any rights it may have to enforce the terms of this AGREEMENT at law or in equity.

XI. NOTICE AND SUPERINTENDENT DESIGNATION

Unless otherwise provided in this AGREEMENT, any notice, tender, or delivery (collectively, "communications") to be given hereunder by either PARTY shall be in writing and shall be delivered by personal delivery, or by registered or certified mail, postage prepaid, return receipt requested. Communications delivered personally or sent by registered or certified mail, in accordance with this Article shall be deemed communicated when delivered upon receipt or refusal to accept delivery at the addresses specified in this Article. Each PARTY must appoint a superintendent to be directly in

charge of an organization which will be fully responsible for the continuous inspection, operation, and maintenance of the Project Features. Each PARTY has appointed as their superintendent the individual listed below. Each PARTY may change its superintendent, address, or telephone number by written notice given in accordance with this Article:

To VALLEY WATER: Valley Water
5750 Almaden Expressway
San Jose, CA 95118-3686
Attn: Chief Executive Officer
Telephone Number: (408) 630-2084

To CITY: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: City Manager
Telephone Number: (408) 776-7382

XII. MISCELLANEOUS PROVISIONS

- A. Singular and Plural: Words in the singular number shall be to include the plural, unless the context otherwise requires.
- B. Time of Essence: Time is of the essence for the performance of all obligations under this AGREEMENT.
- C. Choice of Law: This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party hereunder, the PARTIES agree that trial of such action shall be exclusively vested in a State court in the County of Santa Clara or, where appropriate, in the United States District Court for the Northern District of California, San Jose, California.
- D. Captions: The captions inserted in this AGREEMENT are for convenience only, and in no way define, limit, or otherwise describe the scope or intent of this AGREEMENT, or any provision hereof, or in any way affect the interpretation of this AGREEMENT.
- E. Entire Agreement: This AGREEMENT (including the Joint Use Agreement (#A4201M and any future amendments or renewals approved by the PARTIES.) and VALLEY WATER's latest Project Operations and Maintenance Guidelines, which are incorporated herein by reference) constitutes the entire understanding and AGREEMENT of the PARTIES with respect to the subject matter of this AGREEMENT, and contains all the covenants and agreements of the PARTIES with respect thereto. CITY and VALLEY WATER each acknowledge that no representations, inducements, promises, or agreements, oral or written, have been

made by CITY or VALLEY WATER, or anyone acting on behalf of CITY or VALLEY WATER, which are not contained herein, and any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.

- F. Waivers: The waiver by a PARTY to this AGREEMENT of any term, covenant, agreement, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition herein contained, nor shall any custom or practice which may develop between the parties in the administration of this AGREEMENT be construed to waive or lessen the right of a PARTY to insist upon the performance by the other PARTY in strict accordance with all of the provisions of this AGREEMENT.
- G. Severability: If any clause or provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws effective during the term of this AGREEMENT, then and in that event, it is the intention of the PARTIES hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the PARTIES to this AGREEMENT that, in lieu of each clause or provision of this AGREEMENT that is illegal, invalid, or unenforceable, there be added as a part of this AGREEMENT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

WITNESS THE EXECUTION HEREOF,

CITY OF MORGAN HILL

A Municipal corporation of the County of Santa Clara

By: _____
Christina Turner
City Manager

ATTEST:

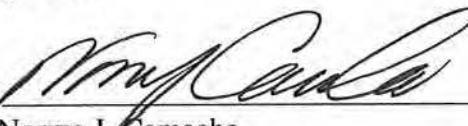
Michelle Wilson
Deputy City Clerk

APPROVED AS TO FORM:

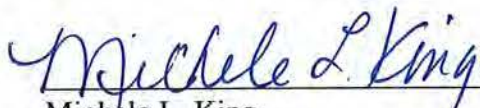
Donald Larkin
City Attorney

VALLEY WATER

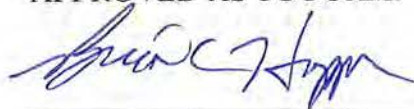
A Special District, created by the California Legislature

By: 
Norma J. Camacho
Chief Executive Officer

ATTEST:


Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:


Brian Hopper
Senior Assistant District Counsel

Attachment: Maintenance and Operations Agreement (2356 : Approve Agreements with Valley Water)

Attachment A

BCVWD ENACTED COPY
Contract Administration Unit
AGMT: 44201M FILE: N/A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

JOINT USE AGREEMENT

Between

City of Morgan Hill and Santa Clara Valley Water District

For

West Little Llagas Creek between Monterey Road and Ciolino Avenue
in association with the Upper Llagas Creek Flood Protection Project

SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as "District;" and CITY OF MORGAN HILL, a municipal corporation of the County of Santa Clara, hereinafter referred to as "City", AGREE as follows:

RECITALS:

- A. WHEREAS, District is the owner of certain real property (hereinafter "the Premises"), shown on "Exhibit A" attached hereto, so marked and by this reference made a part hereof. The Premises are located along West Little Llagas Creek from Monterey Road northwesterly to Ciolino Avenue within the City of Morgan Hill; and
- B. WHEREAS, on June 10, 2014, District's Board of Directors certified a Final Environmental Impact Report (Final EIR) and approved its Upper Llagas Creek Flood Protection Project (District Project) as lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.); and
- C. WHEREAS, District is currently proceeding with the permitting phase of its Upper Llagas Creek Flood Project (District Project), within its right-of-way. After permits are issued, District will subsequently advertise for bids and award contracts for construction of the District Project anticipated to take an estimated five (5) years to complete construction; and
- D. WHEREAS, the District is required to maintain the District Project in accordance with the Resource Agency approved Mitigation and Monitoring Plan (MMP) for a 10-year period following completion of construction needed to meet required success criteria, including a 3-year mitigation planting establishment period; and
- E. WHEREAS, District shall grant a conservation easement to the City within a portion of the Premises in accordance with pending execution of the purchase and sale agreement by and between the District and County of Santa Clara for an approximately 53-acre property commonly known as Lake Silveira, located with the City of Morgan Hill (APN's 779-03-114, 779-06-030, 779-49-014, and 779-06-032) (Conservation Easement); and

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

- F. WHEREAS, District shall also grant a perpetual wetlands mitigation easement to a grantee designated by the United States Army Corps of Engineers over and up to sixteen acres (Mitigation Easement) entirely within the Conservation Easement; and
- G. WHEREAS, the Conservation Easement is subordinate to the Mitigation Easement; and
- H. WHEREAS, City has an interest in using Premises after the construction of District Project to enable City to provide certain recreational opportunities to the public that do not unreasonably interfere with the District's mission of flood protection, water resource management, and stream stewardship; and
- I. WHEREAS, the parties have previously executed the following Joint Use Agreements (JUA) along West Little Llagas Creek that will be superseded upon the execution of this Agreement:
 - a. A2905M (Portion): Edmundson Avenue to LaCrosse Drive executed 12/20/2004 for a term of 25 years;
 - b. A3046RE: Edes Court and Edmundson Avenue executed 7/11/2006 for a term of 25 years;
 - c. A3221M: LaCrosse Drive to Watsonville Road executed 9/9/2008 for a term of 25 years;
 - d. A3414M: Edes Court to Spring Avenue executed 10/26/2010 for a term of 25 years; and
- J. WHEREAS, the parties find it to be in the public interest to provide for joint use of the Premises by means of an Agreement under the following terms and conditions;

Now, therefore, the parties agree as follows:

- 1) **Scope of the License Grant to City.** Subject to the terms and conditions of this Agreement, and contingent upon District's grant of a conservation easement to City as set forth above, District hereby grants to City a non-exclusive license to access and do any or all of the following on the Premises:
 - a. To construct, operate, maintain, repair, replace, and remove City Improvements for recreational purposes on the Premises including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, pedestrian bridges, fencing, fixture (trash receptacles, benches etc.) and signage. The construction of such City Improvements shall require prior review and approval by District as signified by issuance of a Water Resources Protection Ordinance Encroachment Permit ("District Permit"), and shall be compliant with all applicable legal and permitting requirements. It is fully understood and agreed that District in its reasonable discretion may approve or disapprove a request for any permit to construct any City Improvement on the Premises.

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

- b. To provide non-motorized bicycling, walking, jogging and hiking activities in accordance with all applicable legal and permitting requirements to the extent such activities do not interfere with the District's mission of flood protection, water resource management, and stream stewardship.
 - c. To host special recreational events (e.g., races) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as City first receives a District Permit to host that event.
- 2) **Subordination to Conservation Easement and Mitigation Easement.** To the extent this Joint Use Agreement conflicts with any provisions of the Mitigation Easement, the terms of the Mitigation Easement shall prevail. To the extent this Joint Use Agreement conflicts with any provision of the Conservation Easement, the terms of the Conservation Easement shall prevail. To the extent this Joint Use Agreement conflicts with any provisions of the MMP, the terms of the MMP shall prevail.
- 3) **Prohibited Uses of Trail.** City shall post notices at all trail entrances that notify users of the trail that the following activities are prohibited:
- Entry of motor vehicles (except for maintenance, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
 - Unleashed dogs

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City shall have the sole authority to adopt any trail rules and regulations pursuant to City of Morgan Hill Municipal Code for any City Improvements on the Premises that will not interfere with District's mission of flood protection, water resource management, and stream stewardship.

- 4) **Trash and Litter Removal.** City will provide for trash removal on the Premises that is reasonably likely to have been generated from the public's use of the Trail or access to the Premises. City will be responsible for providing sufficient number of trash receptacles, timely maintaining, servicing, emptying trash receptacles, including removing litter/trash and rubbish removal not properly disposed in the receptacles as reasonably necessary. The District is required under the terms of the Mitigation Easement and MMP to ensure trash does not compromise the health and ecological viability of the created wetlands, so District reserves the right, at City's expense, to conduct trash removal within the Conservation Easement if the City fails to properly and routinely remove trash and debris generated from the public's use to the level required under the terms of the Mitigation Easement and MMP. District will notify City in terms of Article 20 of this Agreement prior to conducting this corrective action.

District will manage any Adopt-A-Creek program within the Premises.

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

- 5) **Vegetation Management.** If existing vegetation impacts the trail use, then City is responsible for vegetation removal and maintenance, as City deems necessary while in accordance with the terms and conditions of the Conservation Easement. City shall not conduct any vegetation removal and maintenance that is not compatible or consistent with the terms and conditions of Mitigation Easement and MMP for the District Project, per Article 2 of this Agreement.
- 6) **Graffiti Removal.** City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from walls, signs, etc. installed in conjunction with and/or accessory to the establishment of a public pathway consistent with its implementation of the same program at comparable City facilities. City will have the primary responsibility for removal of graffiti, on the Premises, reasonably attributed to trail use. No permit from District, nor any advance notice, will be required for City to provide the routine removal of graffiti from any City or District facility within the length of the West Little Llagas Creek included within this agreement. Any and all materials used by City in the removal of graffiti within the limits of this agreement shall be approved for use in the State of California, environmentally safe products, which will not impact the West Little Llagas Creek environment in any way.
- 7) **Security.** The premises will be reasonably patrolled by City personnel and/or volunteers supervised by City, at the level of Public Safety that is afforded to all areas of the City. District has no obligations whatsoever to provide or pay for any such patrol services. City shall cooperate and coordinate with District in District's efforts to remove any illegal encampments on the premises, and City shall provide police security during such removal activities at no charge to District.
- 8) **Public Complaints.** City is responsible for responding to all public complaints and inquiries regarding City's improvements on the Premises, including the public trail, and to all inquiries regarding the public's use of the Premises.
- 9) **Removal or Relocation of City Improvements.** If District requires that any City improvement on Premises be removed or relocated for any District purpose, City will do so at its own expense within 90 days of receiving notice from District. If removal or relocation of City improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act, City will be responsible for all costs required to fulfill any required mitigation responsibilities. District will inform City during preconstruction planning in the event a District project is performed on the Premises, in order to reasonably minimize District's project impact on City's improvements located on the Premises. In the event a District project is constructed, any replacement of City's trail and amenities will be the responsibility of City, subject to District approval.
- 10) **Water Level Fluctuations.** It is expressly understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same. City is responsible for the control of or limiting the public's use of Premises because of such water levels, flood flows, or for any other reason (i.e. harmful algal blooms).

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

City is responsible for determining the conditions under which to exercise said control or to limit the use of the Premises to ensure the health and safety of the public using the Premises.

- 11) **Signage.** The District is required under the terms and conditions of the Mitigation Easement to install wetland habitat "sensitive area signage". For all other signage, the parties will cooperate to create and install signage that benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer designated by District and the Community Services Director of City or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage which serves the needs of both parties. All signs placed on the Premises by City (except existing signs that identify the facility (e.g. Trail) by name) must include District's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all City signs or City publications placed on the Premises that describe water resources must be developed in conjunction with District's Watershed customer relations staff. Each party is responsible for the maintenance and upkeep of its signage installed on the Premises.
- 12) **Bird Nesting Season.** Construction and maintenance work during nesting season (generally between February 1st and August 31st) will be avoided whenever possible. If construction or maintenance work must be done during the nesting season, a pre-construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist is expected to recommend the City to implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible party, (City or District, and/or their agents) performing said work. Any and all work related to this clause will be completed by the responsible party in accordance with applicable federal, state, and local environmental health and safety regulations including but not limited to the federal Migratory Bird Treaty Act of 1918, Clean Water Act, Endangered Species Act, the California Fish and Wildlife Code and the Porter-Cologne Act and any amendments thereto.
- 13) **Maintenance and Repair.** District is responsible for performing routine maintenance on the Premises for flood protection and water resource management purposes in a manner consistent with its maintenance of comparable facilities or creeks. City is responsible for the maintenance and repair of recreational improvements on the Premises. City will bear the cost and expense of any security, police, preparation of traffic and pedestrian detour plans, including installation of required appurtenances, or other expenditure necessary to temporarily prohibit or control public access to the Premises that District would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision. In an emergency situation or work tied to regulatory compliance (i.e. fish passage or wetlands functionality concerns), District will respond without notice to City. In non-emergency situations, City and District staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:
 - a. Maintenance issues related to improvements;

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

- b. Method and timing of issues related to affected wildlife;
- c. Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative at least ten (10) work days prior to commencement of such work, in order to minimize public impacts.

14) Damage to City's Improvements on Premises. District is not responsible for any damage occurring to City's improvements or structures located on the Premises that results from District's maintenance, construction or reconstruction activities, or from its water management and/or flood protection facilities located on or near the Premises, including (without limitation) any flood flows, or inundation of West Little Llagas Creek onto the Premises. Further, City is responsible for any damage occurring to either District's or City's improvements or structures located on the Premises that result from the public's use of the Premises. All such costs for repairing such damage to District's or City's improvements will be borne by City.

15) Term of Agreement and Renewal Option. This Agreement will become effective upon execution by both parties. However, the City acknowledges that the District Project will be constructed in phases over an estimated five (5) year period where the construction of the District Project will be given priority over proposed City improvements. City agrees to install City improvements on Premises in accordance with Article 19 of this Agreement. The term of this Agreement (including the rights and obligations contained therein) is twenty-five (25) years commencing on the Agreement Effective Date. This City, upon providing District with no less than ninety (90) days written notice, but no more than 180 days notice prior to the expiration of the initial 25-year term, may renew this Agreement for an additional 25-year period.

16) Termination of Agreement. A party may terminate this Agreement without cause after providing the other party with at least 180 days prior written notice of its intent to terminate this Agreement. Upon the termination or expiration of this Agreement, City must remove all City Improvements from the Premises, and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. If the District requires the trail to be removed from the Premises due to a flood protection project or other District project, this Agreement will terminate upon District providing the City with written notice of at least 180 days. Notice of intent to renew or to terminate may be given by City's Director of Public Works. Notice of intent to terminate may be given by District's Chief Executive Officer.

17) City's Responsibility for Public Use. Subject to the conditions and restrictions contained in this Agreement, City has the full control and authority, for public and recreation purposes over the use of the Premises, and City may restrict, or control, regulate and/or supervise the public use thereof. City may, at its discretion, consistent with the right of District hereinafter described, and without diminution of the flood protection or water resources management function or hazard thereto of the Premises as now existing or as may hereafter be altered,

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

take any measures of every kind as may in the opinion of City be necessary for the health and safety of the users of the Premises for any purpose under this Agreement. City has the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Premises by City.

- 18) District's Superior Rights.** It is expressly understood that District is engaged in flood protection, the protection of water resources, and stream stewardship and that the terms and conditions of this Agreement will not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for flood protection, water resource management, and stream stewardship purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to allow the raising or lowering of the height of the water present upon the Premises.
- 19) City's Subordinate Rights.** City will have the right to build improvements on the Premises necessary, or convenient to the enjoyment of this Agreement, provided the location of the any such improvement is, in each case during the term of this Agreement, first approved by District and signified by issuance of a District permit. It is fully understood and agreed that District has the sole, unfettered discretion to approve or disapprove of such improvements.
- 20) Indemnification by City.** Notwithstanding any other provision of this Agreement, City agrees to indemnify, defend and hold harmless District, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the: (i) public use of the Premises, (ii) public's use of real property adjacent to the Premises, or (iii) negligence or willful misconduct of City's officers, agents, employees, or independent contractors. This Agreement to defend, indemnify, and hold harmless District will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of Premises or any other cause of any kind or nature.
- 21) Notices.** Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

City:

City of Morgan Hill
Attention: Community Services Director
17575 Peak Avenue
Morgan Hill, CA 95037

District:

Santa Clara Valley Water District
Attention: Clerk of the Board
5750 Almaden Expressway
San Jose, CA 95118

Attachment A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

w/copy to District's Community Projects
Review Unit

22) Successors and Assigns. This Agreement, and all terms, covenants, and conditions hereof, will apply to and bind the successors and assigns of the respective parties hereto. City will neither assign nor sublet this Agreement without the prior written consent of District.

23) Choice of Law. This Agreement is governed by California law.

24) Amendments. This Agreement may not be modified or amended except in writing signed by both parties.

25) Compliance with Laws. Each party must, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statutes, orders, ordinances, rules, and regulations.

26) Not Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, fee or other interest in a party's real property to the other party.

WITNESS THE EXECUTION HEREOF,

"City"

CITY OF MORGAN HILL
A Municipal corporation of the County of Santa Clara

By: _____
Christina Turner
City Manager

ATTEST:

Michelle Wilson
Deputy City Clerk

APPROVED AS TO FORM:

Donald Larkin
City Attorney

"District"

SANTA CLARA VALLEY WATER DISTRICT,
a Special District, created by the California Legislature

By: _____
Norma J. Camacho
Chief Executive Officer

ATTEST:

Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:

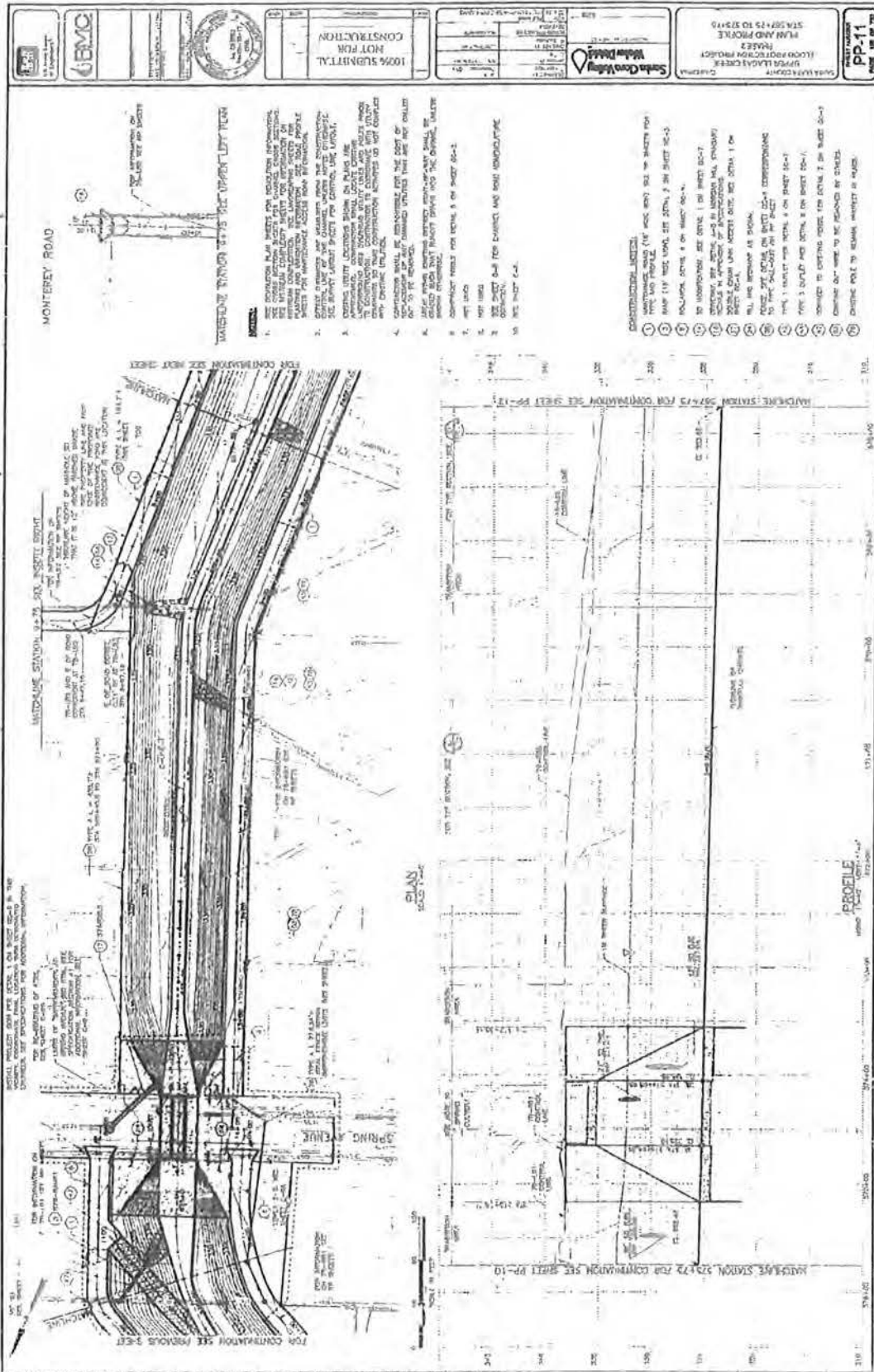
Brian Hopper
Senior Assistant District Counsel

Exhibit A



Attachment A

Exhibit A



Page 3 of 24

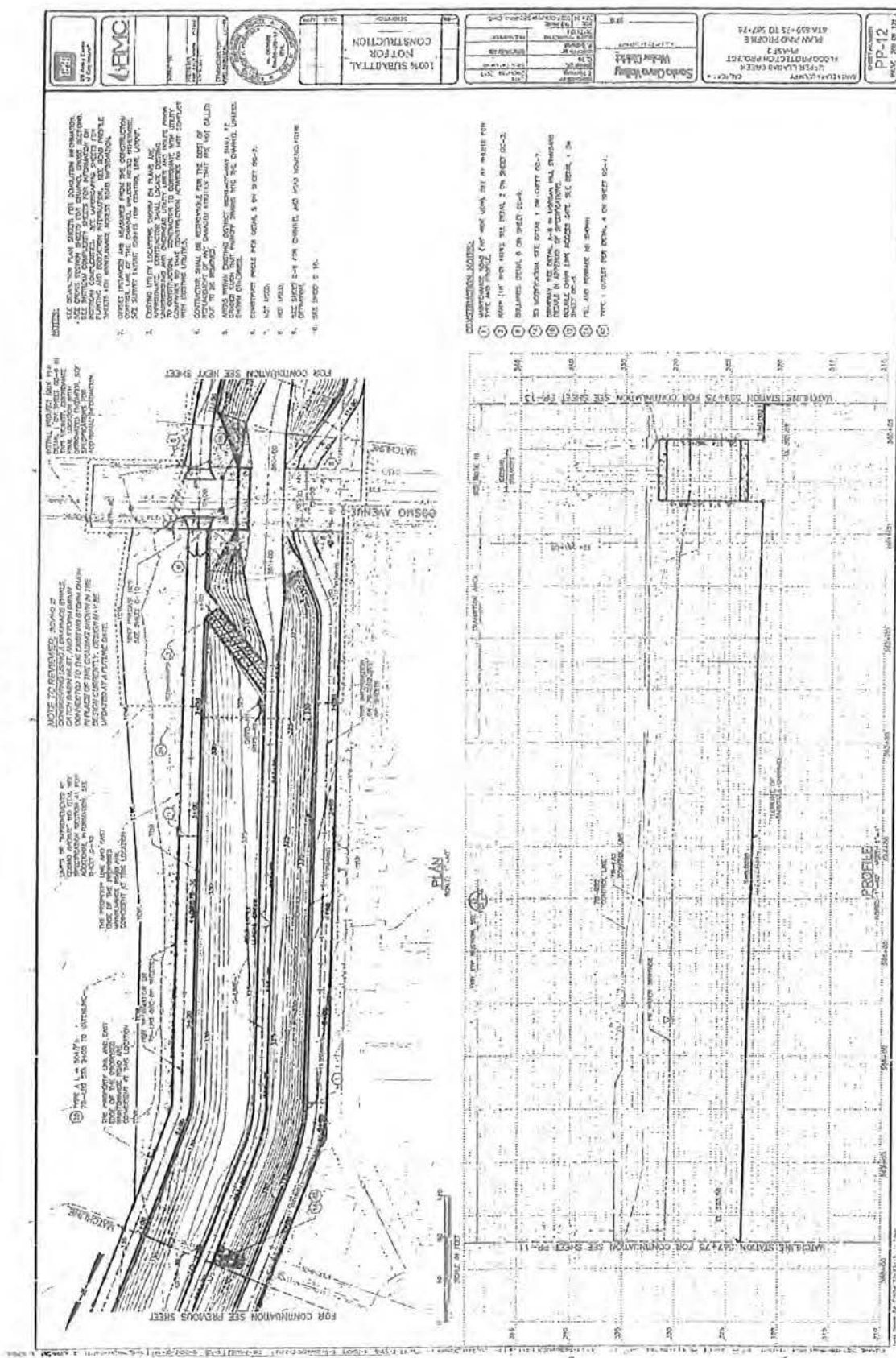
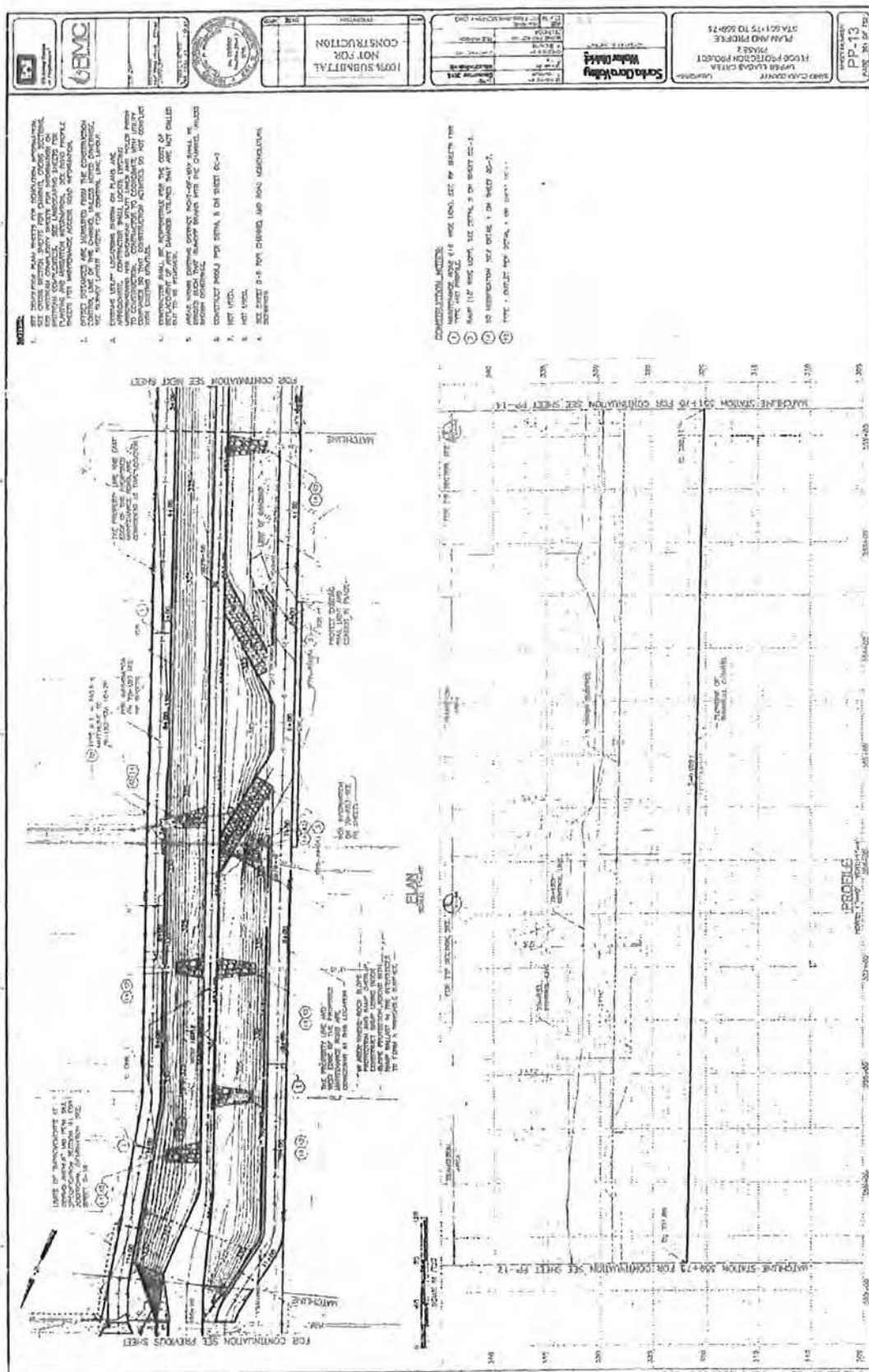


Exhibit A



Attachment A

Exhibit A

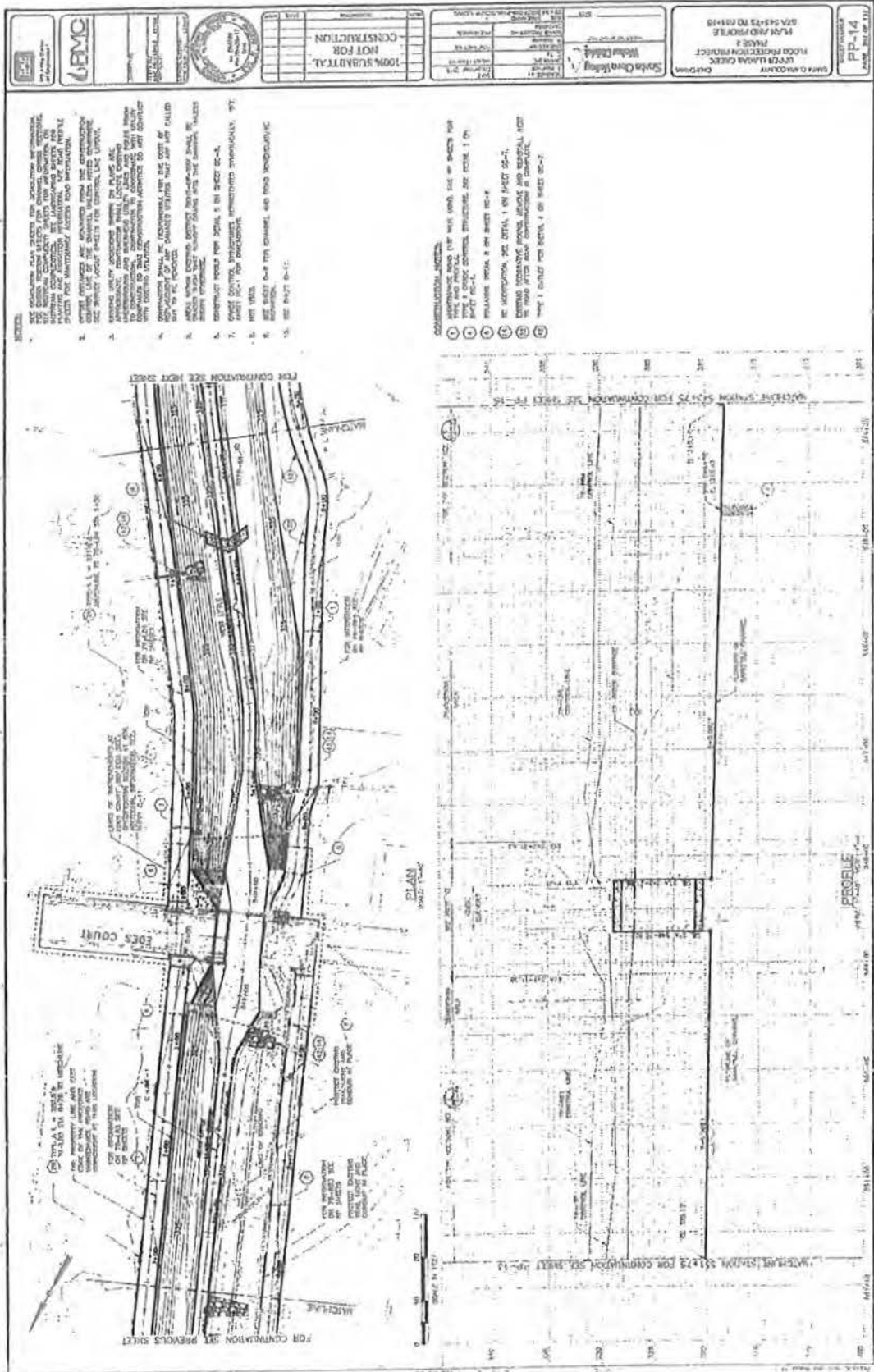


Exhibit A

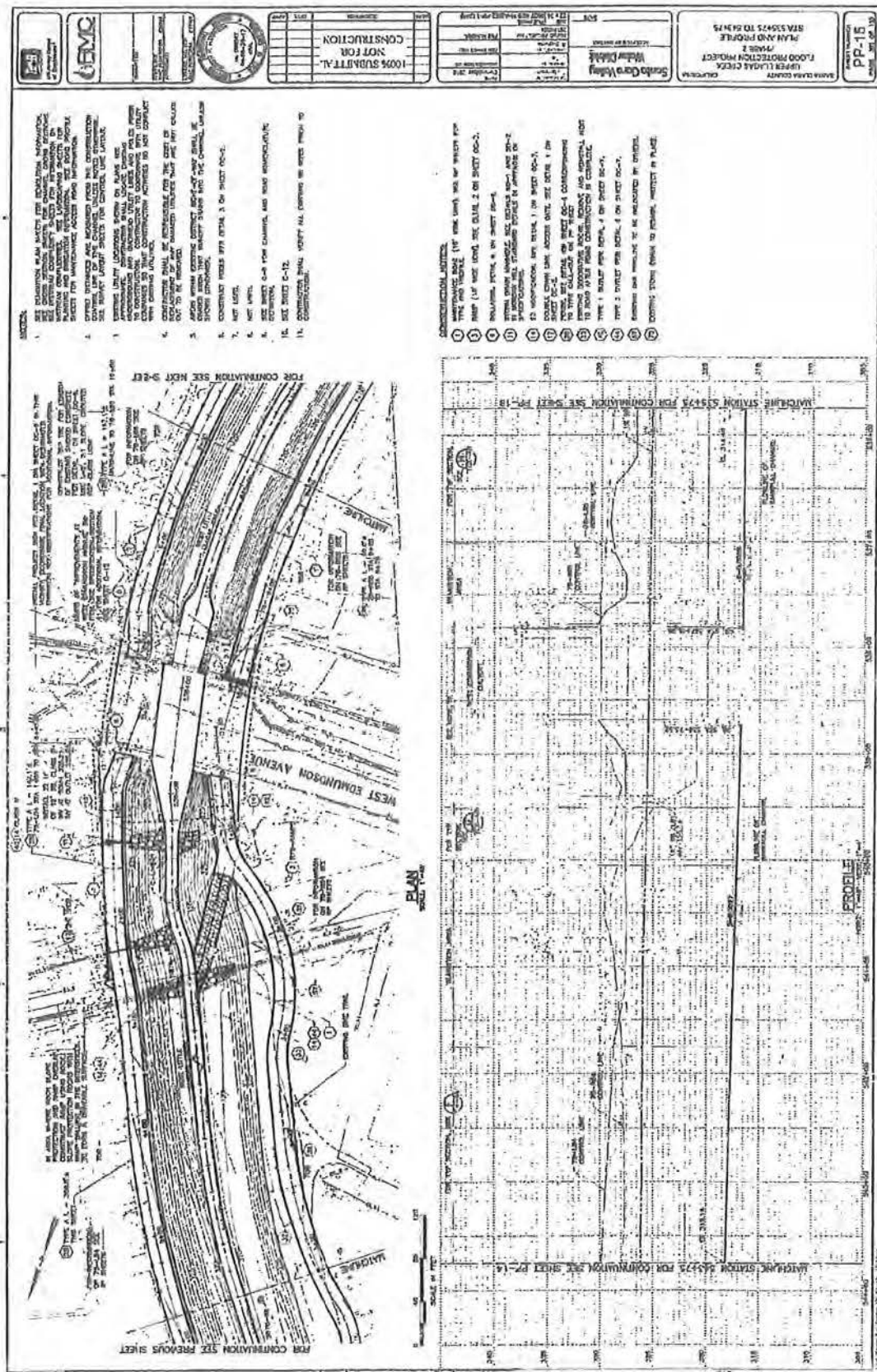


Exhibit A



Exhibit A

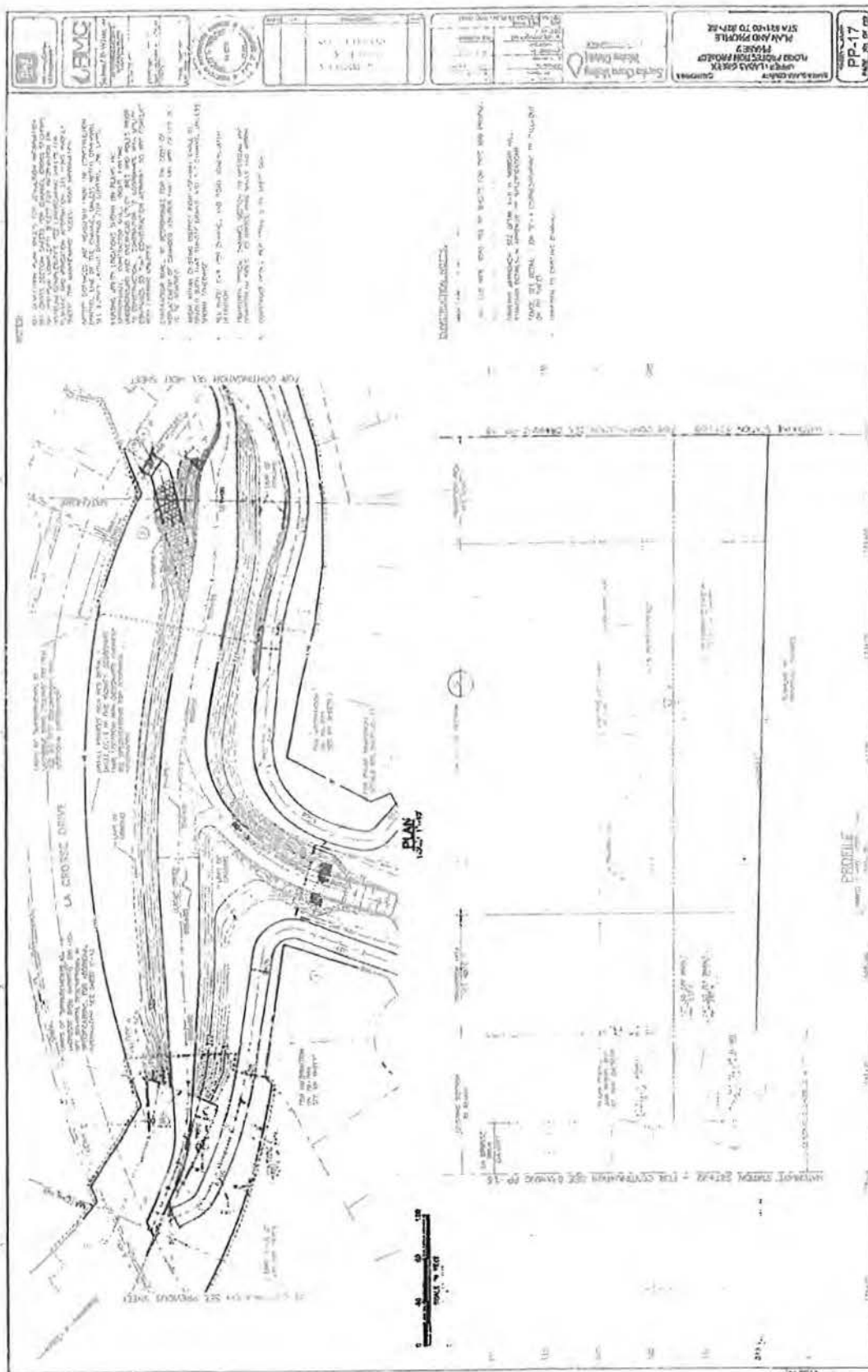
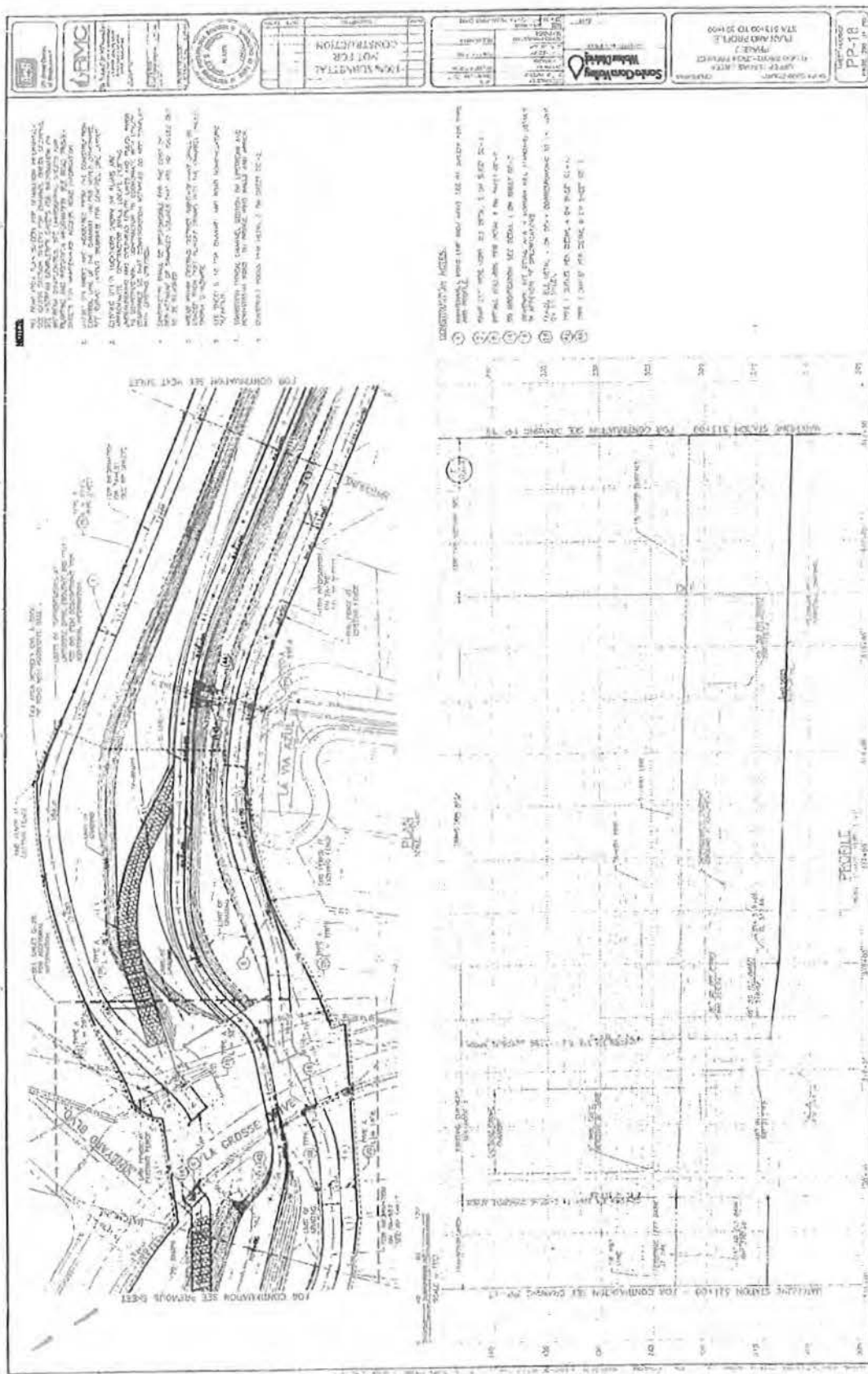
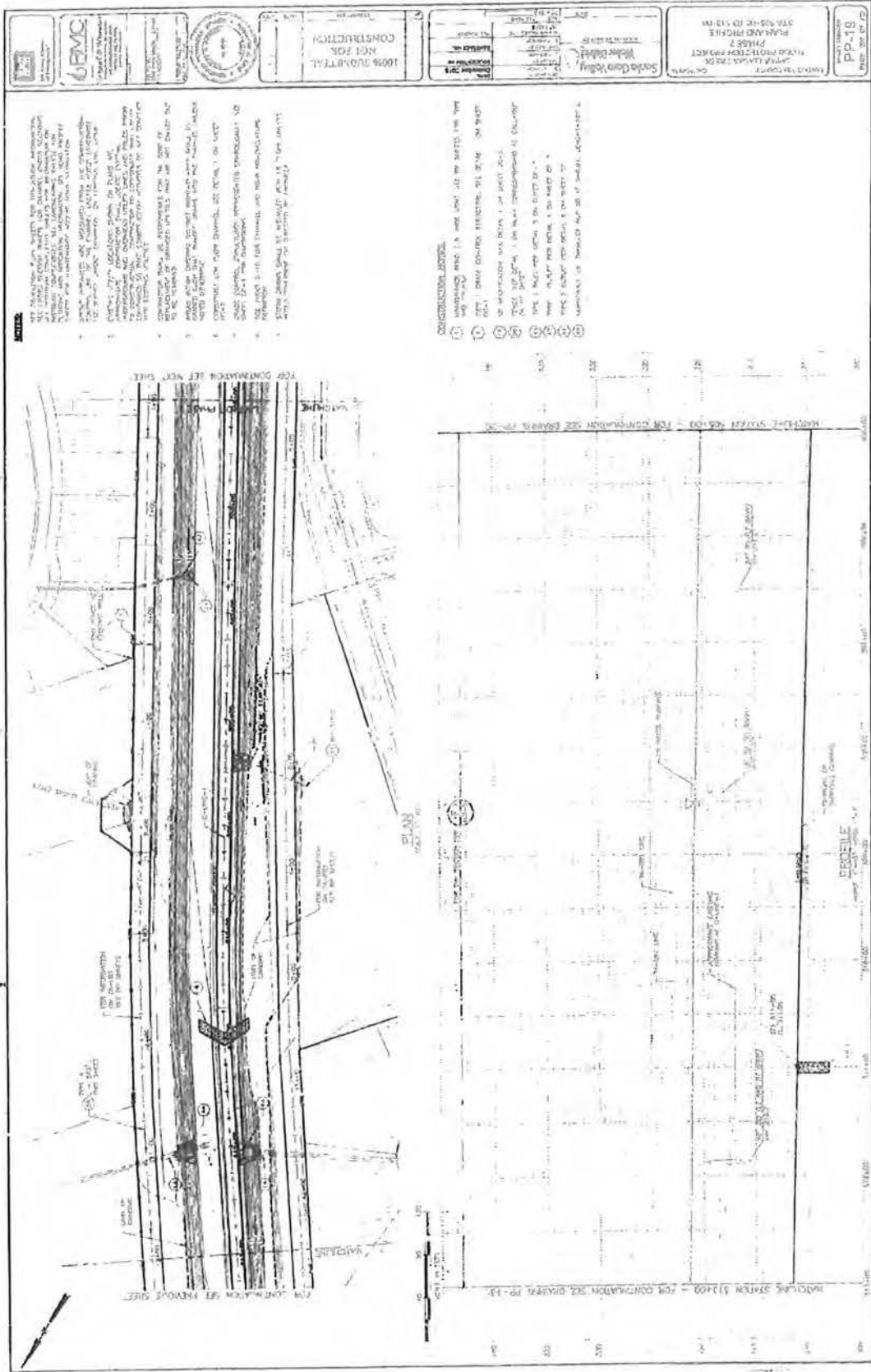


Exhibit A



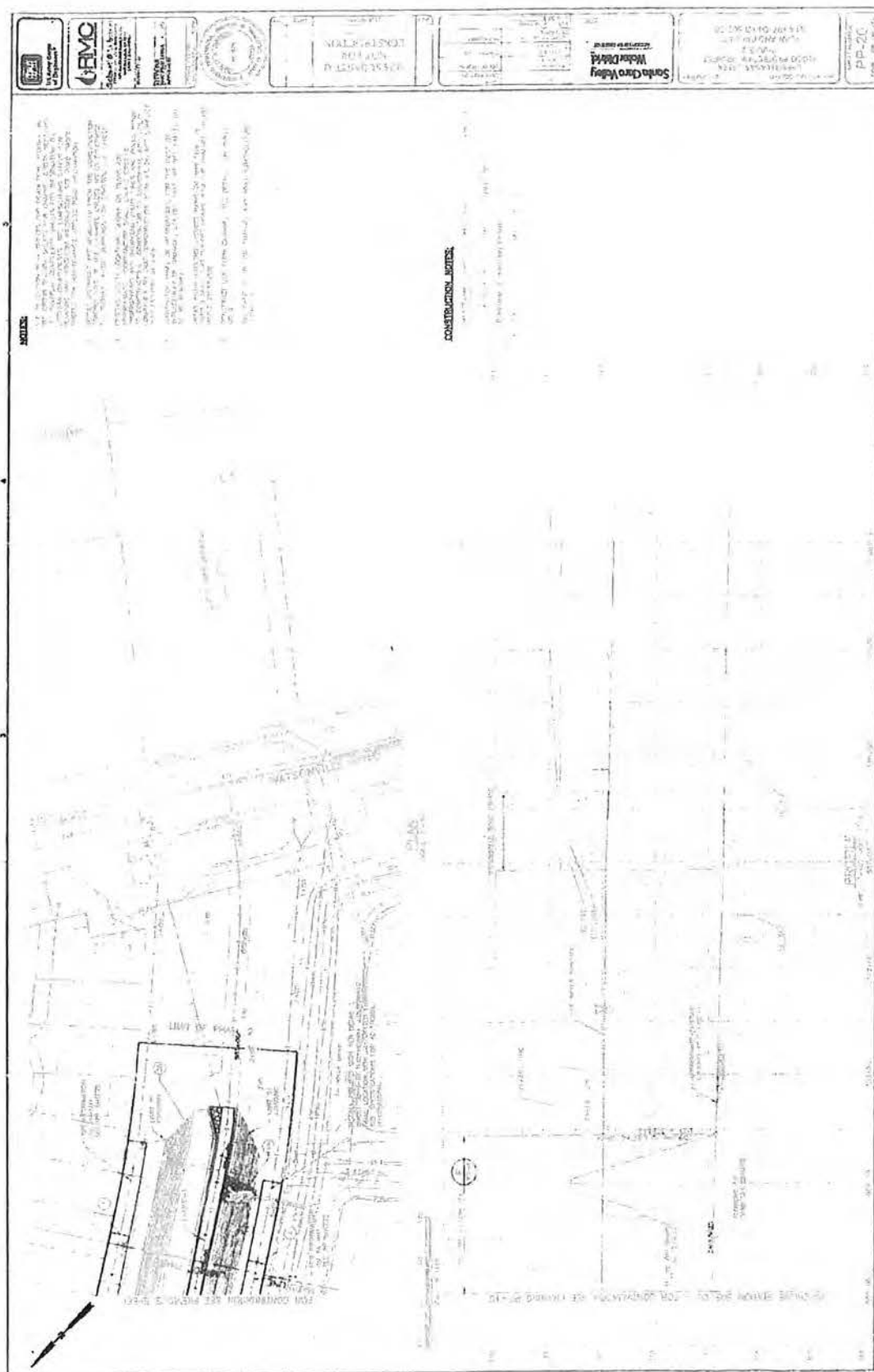
Attachment A

Exhibit A



Attachment A

Exhibit A



Attachment A

Exhibit A

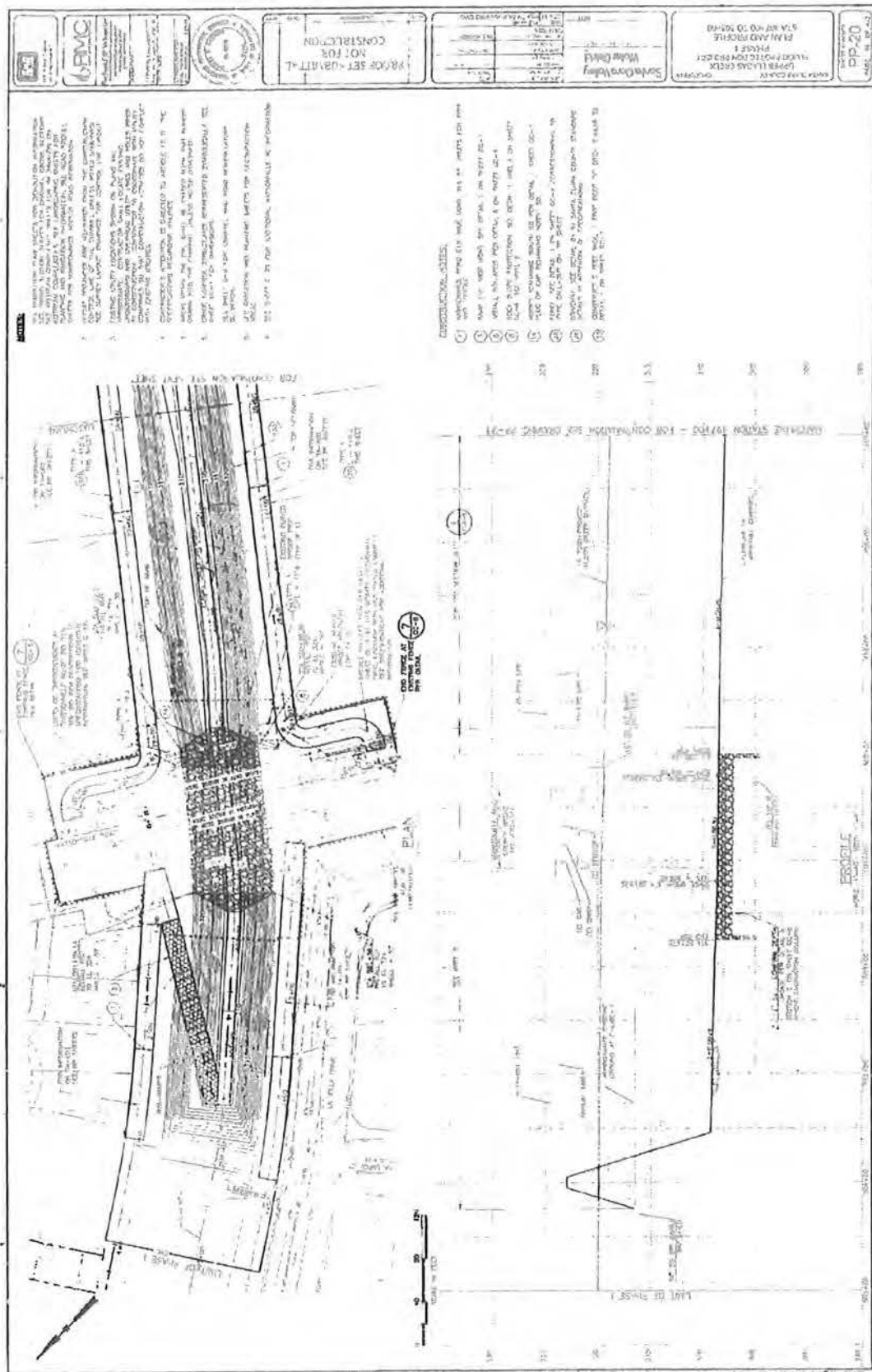
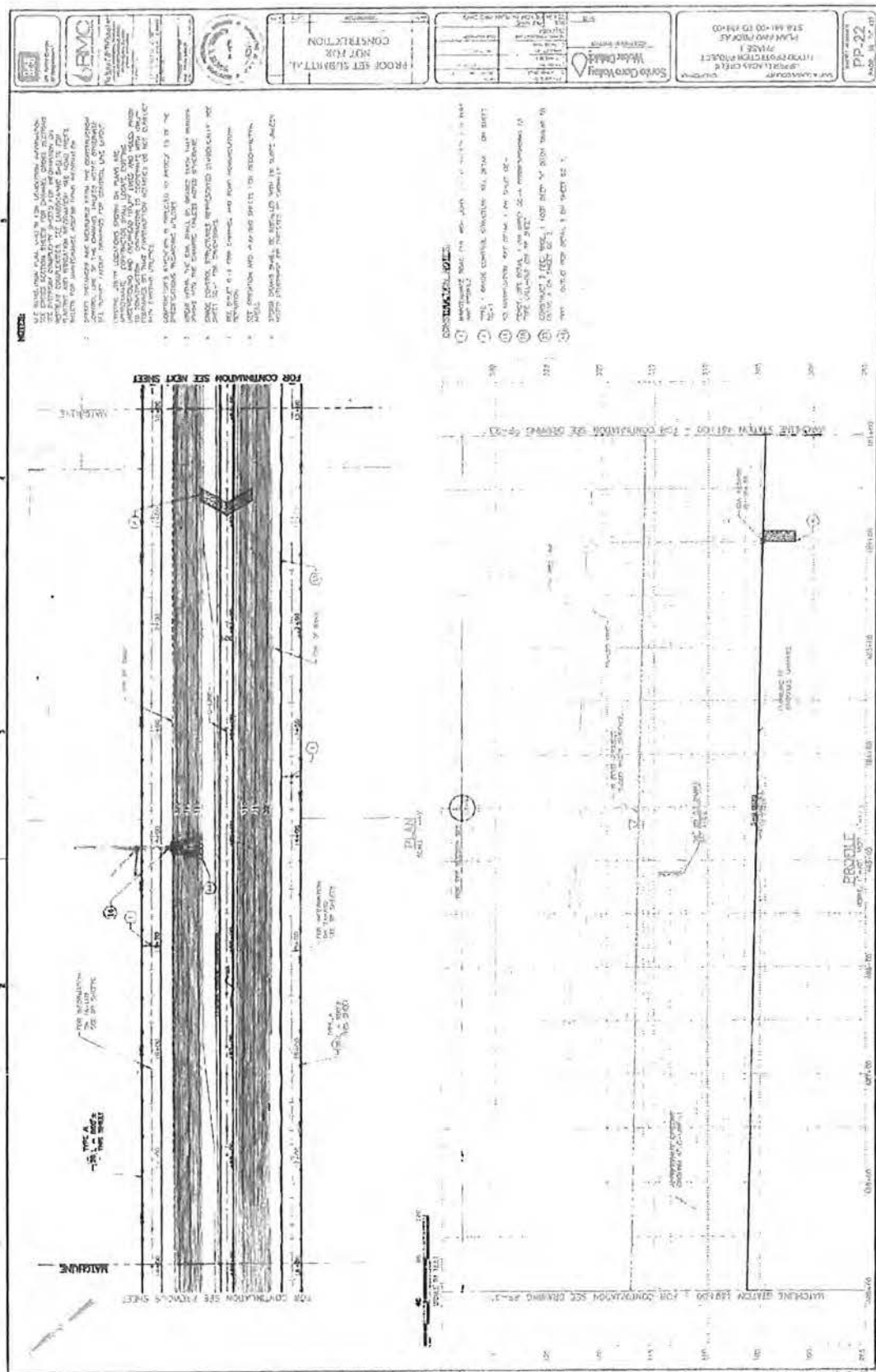


Exhibit A



Exhibit A



Attachment A

Exhibit A

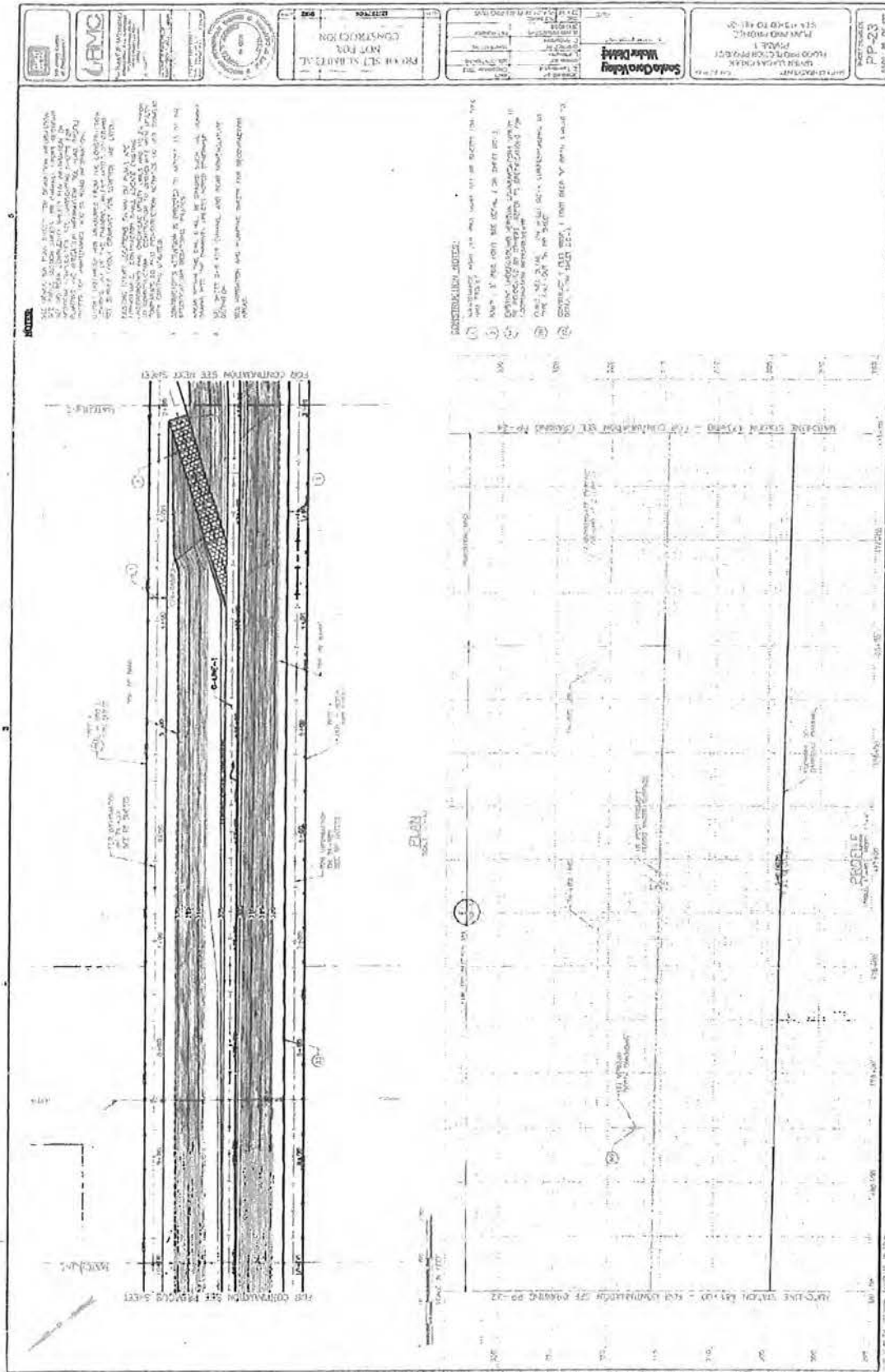
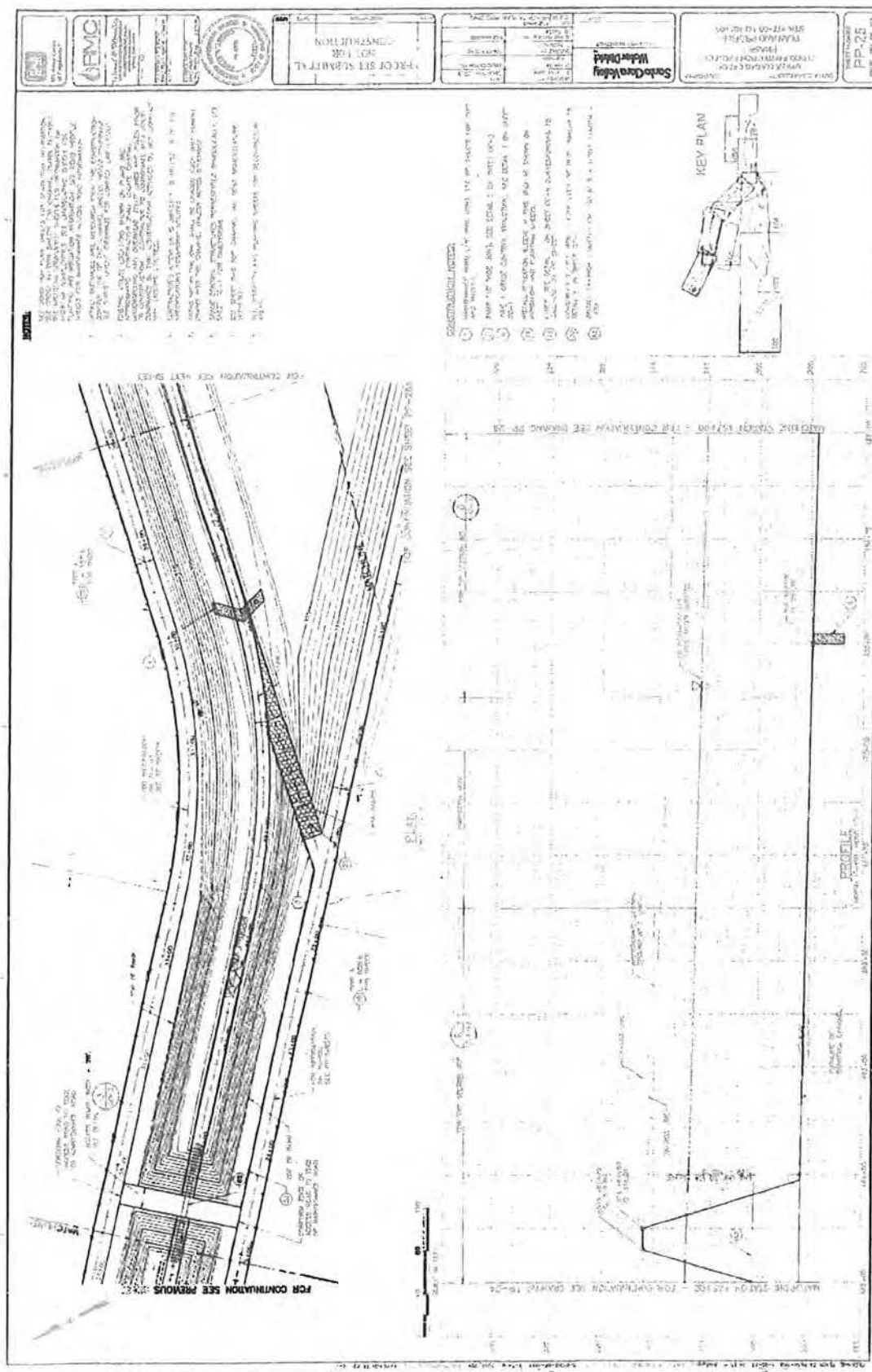


Exhibit A



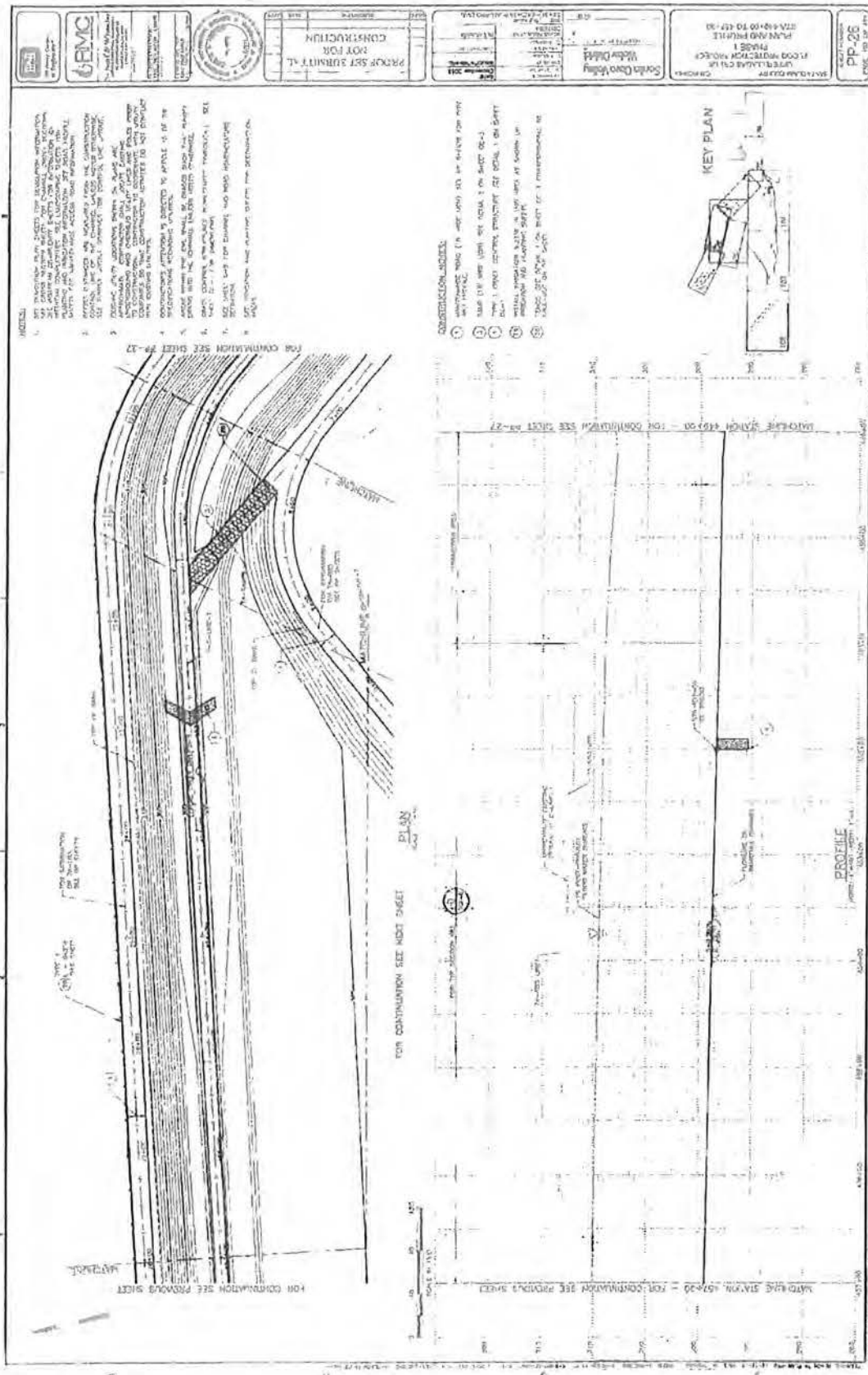
Attachment A

Exhibit A



Attachment A

Exhibit A



Attachment A



Exhibit A

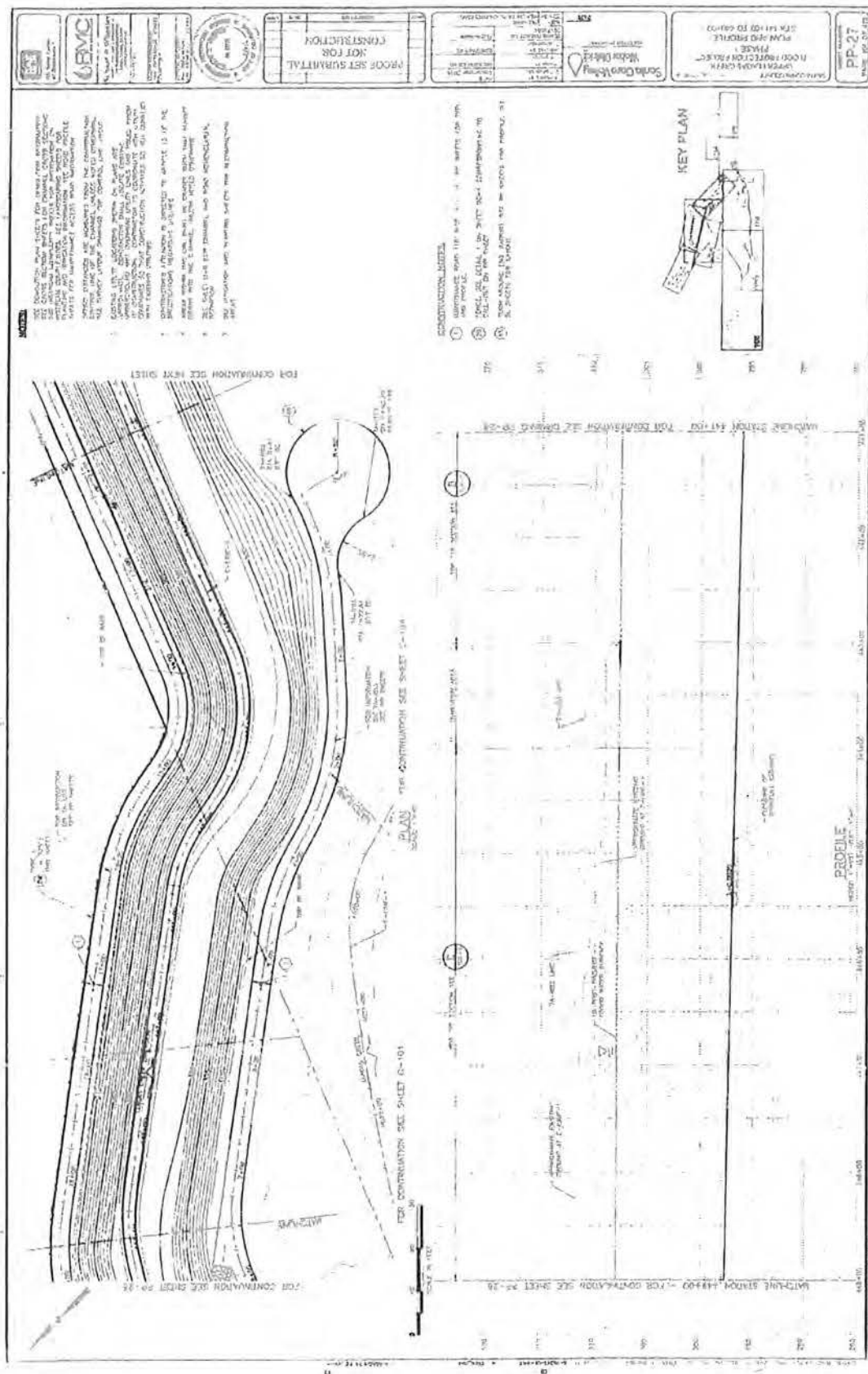
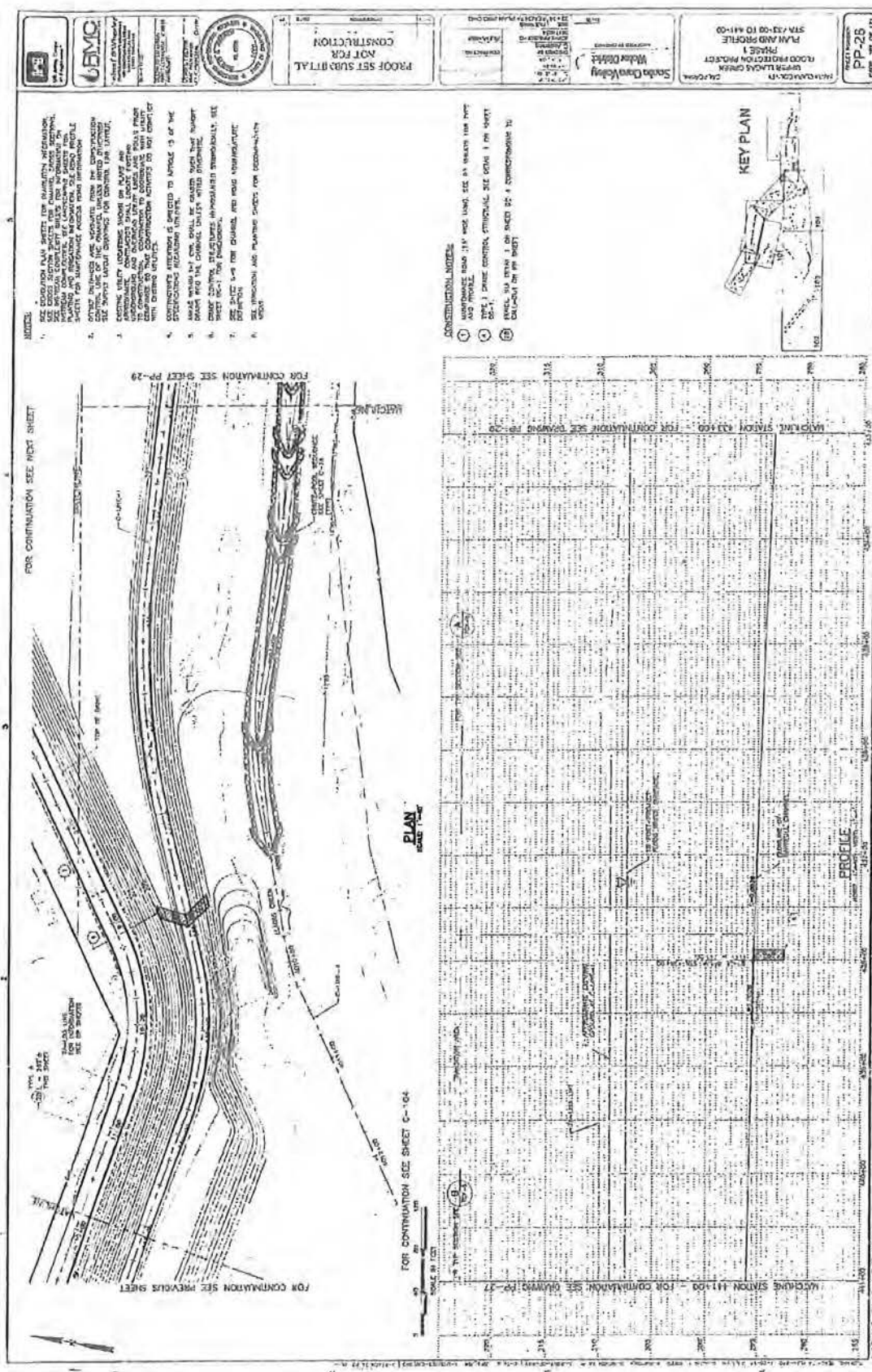


Exhibit A



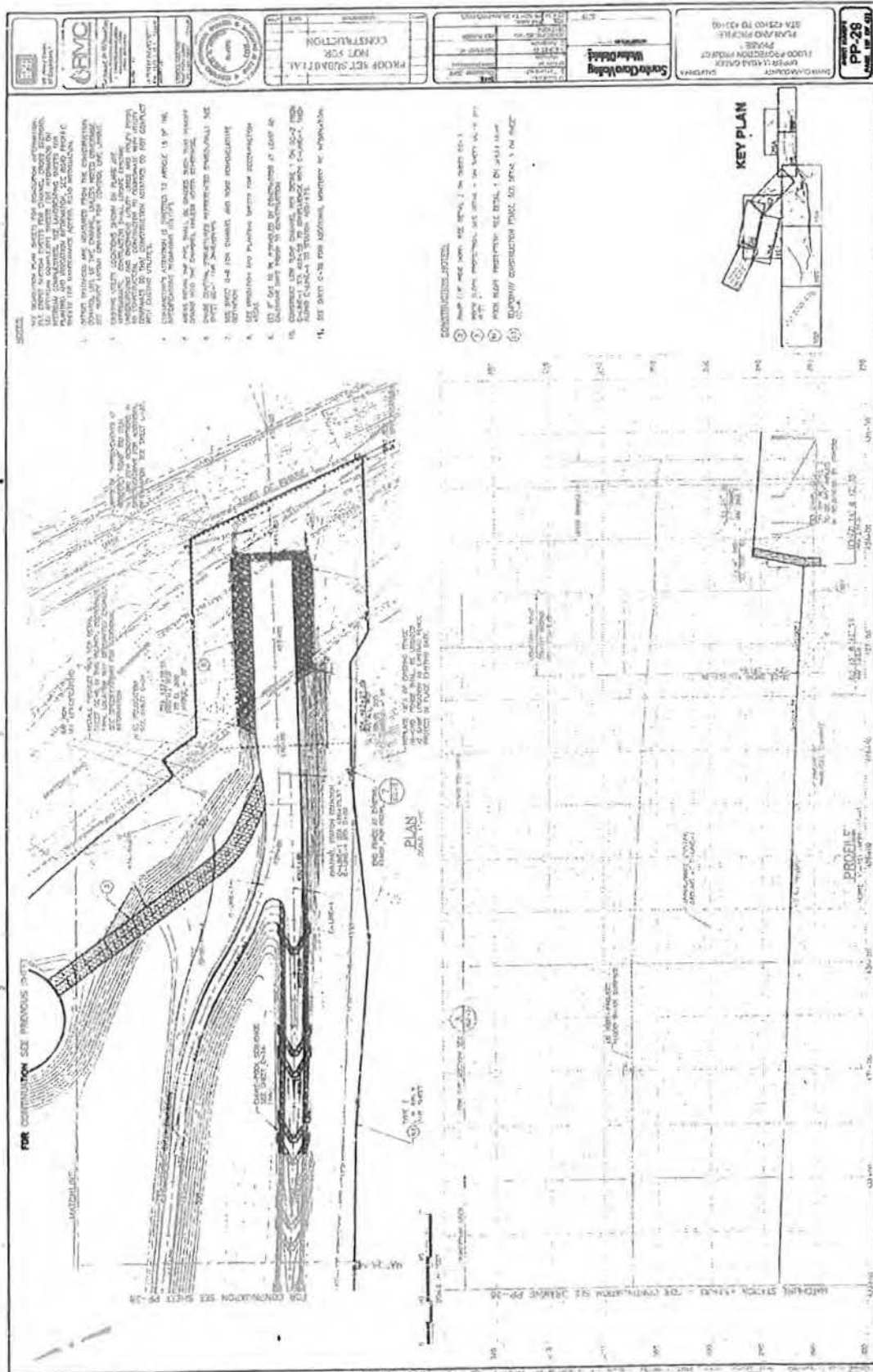
Attachment A



Attachment A

Page 23 of 24

Exhibit A



Attachment A

Exhibit A



**RELINQUISHMENT OF HALE AVENUE AND CONVEYANCE AGREEMENT
BETWEEN THE COUNTY OF SANTA CLARA, CITY OF MORGAN HILL AND
SANTA CLARA VALLEY WATER DISTRICT**

This RELINQUISHMENT OF HALE AVENUE AND CONVEYANCE AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA, CITY OF MORGAN HILL AND SANTA CLARA VALLEY WATER DISTRICT ("Agreement") is made effective this _____ day of _____, 2019 by and among the County of Santa Clara, a political subdivision of the State of California, with its principal offices located at 70 West Hedding Street, East Wing, San Jose, California, 95110 hereinafter referred to as "COUNTY", the City of Morgan Hill, a municipal corporation of the State of California primarily located at 17575 Peak Avenue, Morgan Hill, CA 95037, hereinafter referred to as "CITY", and the Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California located at 5750 Almaden Expressway, San Jose, California 95118, hereinafter referred to as "VALLEY WATER", and together referred to as "PARTIES" and individually as "PARTY"

RECITALS

- A. WHEREAS, COUNTY through adoption of a Board of Supervisors Resolution BOS-2014-113 on September 23, 2014 ("2014 Resolution") relinquished a portion of Hale Avenue between West Dunne Avenue and Llagas Avenue to the CITY, retaining for the COUNTY the portion of the Hale Avenue right of way that is currently used to convey storm water flows within existing West Branch Little Llagas Creek ("Hale Avenue/West Branch Little Llagas Creek Portion" or "Property"). A true and correct copy of the 2014 Resolution (with its associated Exhibits A and B and C) is attached hereto as **EXHIBIT 1**; and
- B. WHEREAS, the COUNTY now intends to recommend adoption of a resolution of the Board of Supervisors relinquishing the Hale Avenue/West Branch Little Llagas Creek Portion to the CITY ("2019 Relinquishment") as set forth in the attached **EXHIBIT 2**. The 2019 Relinquishment will include the areas previously described in the 2014 Resolution in Exhibits "A" and "B" as portions of Hale Avenue to be retained between West Main Avenue to north of Wright Avenue. These areas include the existing Hale Avenue/West Branch Little Llagas Creek Portion currently serving to convey storm water flows through portions of the CITY as contemplated in the 2019 Relinquishment (EXHIBITS 1 and 2); and
- C. WHEREAS, VALLEY WATER has plans to construct a federally sponsored Llagas Creek Flood Protection Project ("Project") within the Hale Avenue/West Branch Little Llagas Creek Portion that will replace an unimproved open ditch with underground drainage structures to provide a one percent level of flood protection; and

- D. WHEREAS, VALLEY WATER and CITY shall enter into a maintenance agreement ("Maintenance Agreement") for the PROJECT, including but not limited to the Hale Avenue/West Branch Little Llagas Creek Portion and execution of the Maintenance Agreement shall constitute a condition precedent for consideration by the Board of Supervisors of the 2019 Relinquishment; and
- E. WHEREAS, the PARTIES acknowledge the Maintenance Agreement shall expire in accordance with the terms and conditions described in the Maintenance Agreement; and
- F. WHEREAS, VALLEY WATER has an existing easement and the maintenance responsibilities for a separate (unrelated to the Project) street storm drainage facility between Alta Vista Way and Highland Drive, San Jose CA, as shown in Record of Survey 616/34 along the northwest side of the lots shown in the Assessor's map as 612-01-026 (Valley Water File No. 4029-09) and 612-01-015 (Valley Water File No. 4029-10) as depicted in **EXHIBIT 3** and **EXHIBIT 4** attached hereto ("Valley Water's Easements"); and
- G. WHEREAS, VALLEY WATER desires to quitclaim all its rights pertaining to the Valley Water's Easements to the COUNTY and COUNTY is willing to accept those rights, and
- H. WHEREAS, PARTIES acknowledge all property rights to be relinquished, conveyed, agreed to and permitted in this Agreement shall be collectively hereinafter referred to as the ("Properties"); and individually as the ("Property"), and
- I. WHEREAS, VALLEY WATER may determine that any real property, or interest therein, held by the VALLEY WATER that is no longer necessary to be retained for the uses and purposes thereof, may thereafter be sold, leased, or otherwise disposed of pursuant to Section 31 of the California Water Code, Appendix Chapter 60 ("District Act").

NOW THEREFORE, the PARTIES agree as follows:

AGREEMENT

Subject to each of the PARTIES governing bodies' approval, the PARTIES now agree to relinquish and convey their existing rights to the Properties in accordance with the terms and conditions set forth in this Agreement. This shall constitute full and final consideration for the relinquishment, conveyance, maintenance agreement discussed above. The representations and warranties given by the PARTIES in this Agreement, and all obligations under this Agreement shall survive the delivery and recording of the 2019 Relinquishment, if approved by Board of Supervisors, and delivery and recording of the quitclaim deed for the Valley Water's Easements.

1. Responsibilities of PARTIES regarding the Properties.

- a) Upon Board of Supervisors' approval of this Agreement and the 2019 Relinquishment, PARTIES agree that the 2019 Relinquishment shall transfer the Hale Avenue/West Branch Little Llagas Creek Portion as depicted in Exhibit "A" and "B" of the 2014 Resolution and CITY hereby accepts such conveyance.
- b) Prior to or at the time of execution of this Agreement, CITY and VALLEY WATER will execute a Maintenance Agreement covering operations and maintenance of the PROJECT.
- c) Upon execution of this Agreement and the recording and acceptance of the quitclaim deeds from VALLEY WATER to COUNTY as shown in the attached **EXHIBIT 3** and **EXHIBIT 4**, PARTIES agree the Valley Water's Easements shall be conveyed to the COUNTY, and COUNTY hereby accepts such conveyance.
- d) Within 60 calendar days from the recording and acceptance of the quitclaim deeds from VALLEY WATER to COUNTY of the Valley Water's Easements, VALLEY WATER shall pay to COUNTY a onetime lump sum payment of \$13,500 to reimburse the COUNTY for the VALLEY WATER's share of one-half the estimated construction repair costs for the Alta Vista Way-Highland Drive existing storm drain repair project, and this amount shall constitute full and final consideration for VALLEY WATER's share of construction costs for the repair project regardless of the final actual amount of the construction repair costs. The lump sum payment amount is based on COUNTY's maintenance staff estimate of \$27,000 to replace the remaining portions of the existing underground corrugated metal storm drain, within both Valley Water's easement and existing COUNTY right of way that were not replaced/repared by VALLEY WATER in 2011.

2. No Monetary Liens or No New Liens.

PARTIES agree to:

- a) convey their respective Properties free of all mortgages, deeds of trust, mechanics' liens, and all other monetary liens, and
- b) not cause or permit any new liens, covenants, conditions, restrictions, easements or any other matter to encumber title to their respective properties by record or otherwise except for matters which do not materially interfere with the use and occupancy of the rights-of way and easements or affect the value of the rights-of way or easements after full execution of this Agreement.

3. Escrow and Recording of Deeds, Documents and Real Property Taxes.

No later than sixty (60) days from the Effective Date of this Agreement, PARTIES shall deliver to Old Republic Title Company, located at 8060 Santa Teresa Blvd., Suite 100, Gilroy, CA 95020, Escrow Officer Randy Romriell (Escrow Holder), the executed documents and any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The PARTIES shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this Agreement. The Escrow Holder shall close the escrow and record the quitclaim deed on such date (Closing Date) as is directed by the PARTIES in their respective escrow instructions. Closing escrow is conditioned upon Old Republic Title Company issuing or being committed to issue a CLTA Owners' Title Insurance policy for the Valley Water's Easements, insuring that it be free and clear of all monetary liens.

COUNTY shall record the 2019 Relinquishment in the Official Records of Santa Clara County and deliver a conformed copy to Escrow Holder prior to the Closing Date

VALLEY WATER shall pay all costs of escrow and recording fees incurred in this transaction including documentary stamp tax, if required by law, and title insurance policy expenses.

4. Personal Property.

Prior to close of escrow, PARTIES shall, at their sole expense, remove or cause to be removed from the respective Properties any and all personal property, trash, rubbish, and any other materials. The PARTIES hereby waive any damages relating to the loss or destruction of any such personal property or other materials remaining on the Properties at the time of transfer.

5. Representations and Warranties.

Each Party, on behalf of itself and the Properties it currently owns, makes the following representations and warranties:

(a) Authority. Each PARTY represents and warrants, as of the date of execution of this Agreement (i) that it has full legal right, power and authority to execute and fully perform its obligations under this Agreement and (ii) that the persons executing this Agreement and other documents required hereunder are authorized to do so.

(b) Indemnification. Each PARTY hereby agrees to indemnify, defend and hold harmless the other (including the COUNTY and its elected officials, officers, agents and employees, VALLEY WATER's elected officials, officers, agents, and employees, and the CITY's elected officials, officers, agents, and employees) from and against any and all obligations, liabilities, claims, demands, damages, costs and expenses (including without limitation reasonable attorneys' fees and costs) relating to the Properties each PARTY is relinquishing or conveying, arising out of or in connection with any act, omission, matter or condition or event that takes place or exists on or before the relinquishment or conveyance of the Properties; or resulting from any breach by a PARTY of its

representations, warranties or covenants contained in this Agreement and/or its obligations under this Agreement.

(c) Real Estate Commissions. Each PARTY represents and warrants to the other PARTY that no brokers or finders have been employed or are entitled to a commission or compensation in connection with this transaction as a result of the action or Agreement of the indemnifying PARTY. Each PARTY agrees to indemnify, hold harmless, protect and defend the other PARTY (including its elected officials, officers, agents and employees) from and against any obligation or liability to pay any such commission or compensation payable to any other brokers arising from the acts or execution of the Agreement of the indemnifying PARTIES.

(d) Survival of Warranties and Obligations. The representations and warranties given by the PARTIES in this Agreement, and all obligations under this Agreement shall survive the delivery of the Properties to the PARTIES.

6. Conditions to Effectiveness.

This Agreement shall not be binding or effective against the PARTIES until each governing body has adopted a resolution or taken other legally required actions, approving this Agreement and authorizing its execution.

7. Possession.

Possession of the Properties shall be delivered within 10 calendar days after recordation of the 2019 Relinquishment and quitclaim deeds for Valley Water's Easements.

8. Release.

COUNTY, CITY, and VALLEY WATER hereby waive, release, acquit, and forever discharge each other to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys' fees, consultants' fees and costs and expert fees (collectively "Claims") whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Properties or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of Hazardous Materials on, in, under or around the Property regardless of when such Hazardous Materials were first introduced in, on or about the Property, (ii) any patent or latent defects or deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. COUNTY, CITY, and VALLEY WATER hereby waive and agree not to commence any action, legal

proceeding, cause of action or suits in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Sections 9601 et seq. and California Health and Safety Code sections 25300 et seq. (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against each other in connection with the Property, except matters arising from the fraud, intentional misrepresentation, or concealment by the PARTY to be released.

COUNTY, CITY, AND VALLEY WATER EXPRESSLY WAIVES THEIR RIGHTS GRANTED UNDER CALIFORNIA CIVIL CODE §1542 AND ANY OTHER PROVISION OF LAW THAT PROVIDES A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY IT WOULD HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Without limiting the foregoing, if COUNTY, CITY, or VALLEY WATER have prior actual knowledge of: (a) a default in any of the covenants, agreements or obligations to be performed by any other PARTY under this Agreement and/or (b) any breach or inaccuracy in any representation of any PARTY made or implied in this Agreement, and they nonetheless elect to proceed with the Property transfers described herein, then they shall be conclusively deemed to have waived any such default and/or breach or inaccuracy and shall have no claim against any other PARTY or hereunder with respect thereto.

COUNTY, CITY, and VALLEY WATER have each initialed this Section 8 to further indicate their awareness and acceptance of each and every provision of this Section. The provisions of this Section shall survive the close of escrow.

County's Initials: _____ City's Initials: _____ Valley Water's Initials: NC

9. General Provisions.

- (a) Counterparts. This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each PARTY has signed such a counterpart.
- (b) Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the PARTIES with respect to the relinquishment and conveyance of the Properties.
- (c) Further Assurances. The PARTIES agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the PARTIES.

- (d) Governing Law/Venue. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California. Any action brought to enforce this Agreement shall be initiated in the County of Santa Clara, California.
- (e) Modification Waiver. No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by the PARTIES.
- (f) Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (g) Successors. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the PARTIES hereto and their respective heirs, legal representatives, successors, and assigns.
- (h) Effective Date. The Effective Date of this Agreement shall be the date upon which the last approval has been granted by the PARTIES respective governing body and this Agreement has been executed by the authorized representative of each of the PARTIES.

10. Notices.

All correspondence relating to the Agreement, including all notices required shall be delivered by first class mail addressed to the appropriate PARTY at the following addresses:

COUNTY:	Harry Freitas, Director County of Santa Clara Roads and Airports 101 Skyport Drive San Jose, CA 95110-1302
CITY:	Christina Turner, City Manager City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037
VALLEY WATER:	Norma J. Camacho, Chief Executive Officer Valley Water 5750 Almaden Expressway San Jose, CA 95118
	With copy to: Real Estate Services Unit Manager Valley Water 5750 Almaden Expressway San Jose, CA 95118

11. Exhibits

- Exhibit 1: Board of Supervisors September 23, 2014 Resolution BOS-2014-113 (2014 Resolution)
- Exhibit 2: Portions of Hale Avenue between West Main Avenue to north of Wright Avenue retained by County from 2014 Resolution (2019 Relinquishment)
- Exhibit 3: Valley Water Easement, Assessor's map 612-01-015 (File No. 4029-09)
- Exhibit 4: Valley Water Easement, Assessor's map as 612-01-015 (File No. 4029-10)

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

IN WITNESS WHEREOF, the PARTIES have executed the Agreement the day and year set forth above.

COUNTY OF SANTA CLARA, a political
subdivision of the State of California

S. JOSEPH SIMITIAN, President
Board of Supervisors

Date: _____
Signed and certified that a copy of this
document has been delivered by electronic
or other means to the President, Board of Supervisors.
Attest:

TIFFANY LENNEAR
Assistant Clerk of the Board of Supervisors

Approved as to form and legality:

CHRISTOPHER R. CHELEDEN
Lead Deputy County Counsel

///SIGNATURES FOLLOW ON NEXT PAGE///

CITY:

CITY OF MORGAN HILL, a Municipal Corporation of the State of California

By: _____
Christina Turner
City Manager

Date: _____

ATTEST:

By: _____
Michelle Wilson
Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

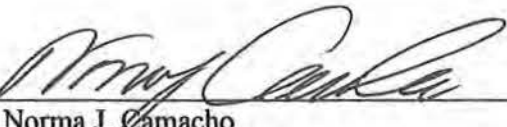
By: _____
Donald Larkin
City Attorney

////SIGNATURES FOLLOW ON NEXT PAGE////

ORIGINAL

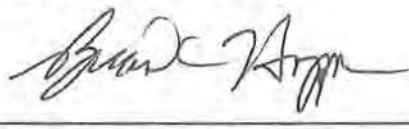
VALLEY WATER:

VALLEY WATER, a Special District of the State of California

By: 
Norma J. Camacho
Chief Executive Officer

Date: May 28, 2019

APPROVED AS TO FORM:

By: 
Brian Hopper
Senior Assistant Counsel

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

RECORDING REQUESTED BY

NAME: Santa Clara County Roads + Airports Dept.

WHEN RECORDED MAIL TO:

NAME: Santa Clara County Roads + Airports Dept.ADDRESS: 101 Skyport DrCITY / STATE / ZIP: San Jose CA 95110

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE)

DOCUMENT: 22737720

Pages: 8



Fees... * No Fees

Taxes...

Copies...

AMT PAID

 REGINA ALGOMENDRAS
 SANTA CLARA COUNTY RECORDER
 Recorded at the request of
 County Agency

RDE # 026

10/09/2014

12:12 PM

(SPACE ABOVE FOR RECORDER'S USE)

Resolution of the Board of Supervisors of the County of
Santa Clara Relinquishing Hale Avenue to the City of Morgan Hill
 (DOCUMENT TITLE)

RESOLUTION BOS-2014-113**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA RELINQUISHING HALE AVENUE TO THE CITY OF MORGAN HILL**

WHEREAS, Article 5 (commencing with section 1720) of Chapter 9 of Division 2 of the Streets and Highways Code provides a city street within a county may be declared a county highway to be laid out, acquired, constructed and maintained with the consent of the city; and

WHEREAS, on September 24, 1962, acting pursuant to section 1721 of the Streets and Highways Code, the Board of Supervisors declared Hale Avenue between West Dunne Avenue and Llagas Avenue within the City of Morgan Hill to be a county highway for improvement under the 1961 County Highway Bond Program; and

WHEREAS, on October 10, 1962, acting pursuant to section 1722 of the Streets and Highways Code, the Morgan Hill City Council consented to the establishment of Hale Avenue as a county highway; and

WHEREAS, pursuant to section 1731 of the Streets and Highways Code, the Board of Supervisors may relinquish to a city any county highway or portion thereof located within the city; and

WHEREAS, having completed improvements to Hale Avenue, County desires to relinquish, and the City of Morgan Hill desires accept and maintain, the portion of Hale Avenue constituting a county highway (between West Dunne Avenue and Llagas Avenue) located with the City of Morgan Hill, with the exception of the drainage ditches also known as West Branch Little Llagas Creek, which will at a future date receive flood protection improvements as part of ongoing work by the Santa Clara Valley Water District, and County is agreeable to retaining the ditches until needed as part of the District's project.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors that in accordance with section 1731 of the Streets and Highways Code, the County hereby relinquishes to the City of Morgan Hill the county highway known as Hale Avenue (between Main Street and Llagas Avenue), more specifically described in Exhibits A, B, and C attached hereto and incorporated by reference.

FURTHER, BE IT RESOLVED, that the Clerk of the Board of Supervisors is directed to file a certified copy of this Resolution with the Office of the County Clerk-Recorder and upon recordation, all right, title and interest of County in and to Hale Avenue shall vest in the City of Morgan Hill and such highway shall constitute a city street.

//

//

//

FURTHER, BE IT RESOLVED, that the Clerk of the Board of Supervisors is directed to file a certified copy of this Resolution with the Morgan Hill City Council.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on September 23, 2014, by the following vote:

AYES: Supervisors **CHAVEZ, CORTESE, SIMITIAN, WASSERMAN, YEAGER**

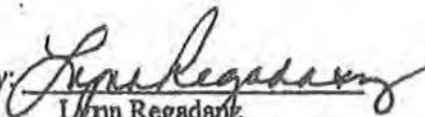
NOES: Supervisors **NONE**

ABSENT: Supervisors **NONE**

By: 
Mike Wasserman, President
Board of Supervisors

Signed and certified that a copy of the document was delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

By: 
Lynn Regadano
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

By: 
E. Ray Ruiz
Deputy County Counsel

EXHIBIT "A"
LEGAL DESCRIPTION
Portion of Hale Avenue to be retained between
Main Avenue and Wright Avenue
August 28, 2014



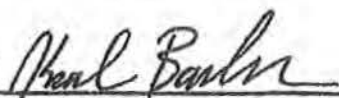
County relinquishes to City of Morgan Hill all of Hale Avenue between Main Avenue and Wright Avenue, excepting that certain real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Beginning at the most southerly corner of the Lands of Morgan Hill Unified School District as shown on that certain Record of Survey filed for record in Book 382 of Maps, Page 54, Santa Clara County Records, Santa Clara County, California; thence leaving said southerly corner North 34°52'00" West, 1419.00 feet along the northerly right of way line of Hale Avenue and its extension thereof as shown on said map and also shown on that certain map entitled Morgan Hill Ranch Number 3, filed for record in Book G of Maps, Page 20 and 21, Santa Clara County Records, Santa Clara County, California, to a point on said right of way line and also to the most westerly corner of Lot 16 as shown on that certain map entitled Breckenhauer Addition Tract Number 273, filed for record in Book 8 of Maps, Page 41, Santa Clara County Records, Santa Clara County, California; thence North 55°08'00" East, 12.00 feet along the northwesterly line of said lot to a point on said right of way line and also to the southerly corner of Lot 1 as shown on that certain map of Tract Number 3883 filed for record in Book 191 of Maps, Page 26, Santa Clara County Records, Santa Clara County, California; thence North 34°52'00" West, 367.30 feet along said right of way line to the lands of UHC 00381 Morgan Hill, L.P. as described in Document #19700670, Official Records of Santa Clara County, Santa Clara County, California; thence South 55°08'00" West, 12.00 feet along said lands and said right of way line; thence North 34°52'00" West, 197.00 feet along said lands and said right of way line; thence leaving said right of way line South 55° 08'00" West, 21.00 feet; thence South 34°52'00" East 1983.30 feet along a line that is parallel to and 12.00' northeasterly of the center line of Hale Avenue; thence North 55° 08'00" East, 21.00 feet to the **POINT OF BEGINNING**.

Containing 1.06 acres of land, more or less.

**SEE EXHIBIT "A-1" ATTACHED HERETO AND MADE A PART
 HEREOF.**

This description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.


 Karl Barker, P.L.S. #8342

8/28/14
 Date

Page 1 of 2

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)



EXHIBIT "B"
Portion of Hale Avenue to be retained between
Wright Avenue and Llagas Road
August 28, 2014

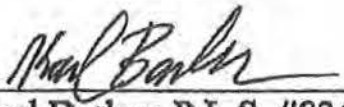
County relinquishes to City of Morgan Hill all of Hale Avenue between Wright Avenue and Llagas Road, excepting that certain real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Beginning at the intersection of the centerline of Hale Avenue with the centerline of Wright Avenue as said centerlines are shown on that certain map entitled Morgan Hill Ranch Number 3, filed for record in Book G of Maps, Page 20 and 21, Santa Clara County Records, Santa Clara County, California; thence along said centerline of Hale Avenue North 34°52'00" West, 50.00 feet; thence leaving said centerline South 55°08'00" West, 17.00 feet to the TRUE POINT OF BEGINNING of this description; thence North 34°52'00" West, 675.00 feet along a line that is parallel to and 17.00 feet southwesterly of said centerline of Hale Avenue; thence South 55°08'00" West, 28.00 feet to the southwesterly right of way line of said Hale Avenue and also to the lands of Santa Clara Valley Water District as described in Document #7184441, Official Records of Santa Clara County, Santa Clara County, California; thence South 34°52'00" East, 65.00 feet along said lands and also along said right of way line to the lands of Manana Investors LLC as described in Document #18933892, Official Records of Santa Clara County, Santa Clara County, California; thence North 55°08'00" East, 12.00 feet along last said lands and said right of way line; thence South 34°52'00" East, 610.00 feet along said lands and said right of way line; thence North 55°08'00" East, 16.00 feet to the TRUE POINT OF BEGINNING.

Containing 0.27 acres of land, more or less.

**SEE EXHIBIT "B-1" ATTACHED HERETO AND MADE A PART
 HEREOF.**

This description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.


 Karl Barker, P.L.S. #8342

8/28/14
 Date

Page 1 of 2





Page 2 of 2

The foregoing instrument is a correct copy of t
ATTEST: Lynn Regadany
Clerk of the Board

By: Nickie Harris
Deputy Clerk 10/26/11

EXHIBIT 2

Quitclaim Grant Deed
County to City
(2019 Relinquishment)

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTION 6103

AFTER RECORDING RETURN TO:
CITY OF MORGAN HILL
PUBLIC WORKS DEPARTMENT
17555 PEAK AVENUE
MORGAN HILL, CALIFORNIA 95037

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: Hale Avenue (portion)

Grantee is exempt under section 11922 Revenue
and Taxation Code of the state of California.
Declarant or Agent Determining Tax:

Name, Title

DOCUMENT NO.: _____

QUITCLAIM DEED

The County of Santa Clara, a political subdivision of the State of California, hereinafter "Grantor," does hereby release and quitclaim to the City of Morgan Hill, a municipal corporation of the State of California, hereinafter "Grantee," all that real property per State Highway Code Section 1731 in City of Morgan Hill, County of Santa Clara, State of California, described in Attachment A attached hereto.

Dated this day of , 20

GRANTOR: County of Santa Clara,
a political subdivision of the State of California

By: _____

Its: _____

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

DOCUMENT NO.:

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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 } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

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.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- | | |
|---|---|
| ☐ Individual | ☐ Trustee (s) |
| ☐ Corporate Officer(s): _____ | ☐ Guardian/Conservator |
| ☐ Partner(s) ☐ Limited ☐ General | ☐ Other: _____ |
| ☐ Attorney-In-Fact _____ | |

Signer is Representing (Name of Person(s) or Entity(ies))

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

CERTIFICATE OF CONSENT AND ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Quitclaim Grant Deed to the City of Morgan Hill, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Morgan Hill City Council, pursuant to the authority conferred by Morgan Hill City Council action on June 26, 2019, and the Grantee consents to recordation thereof by its said duly authorized agent.

Dated: _____

City of Morgan Hill

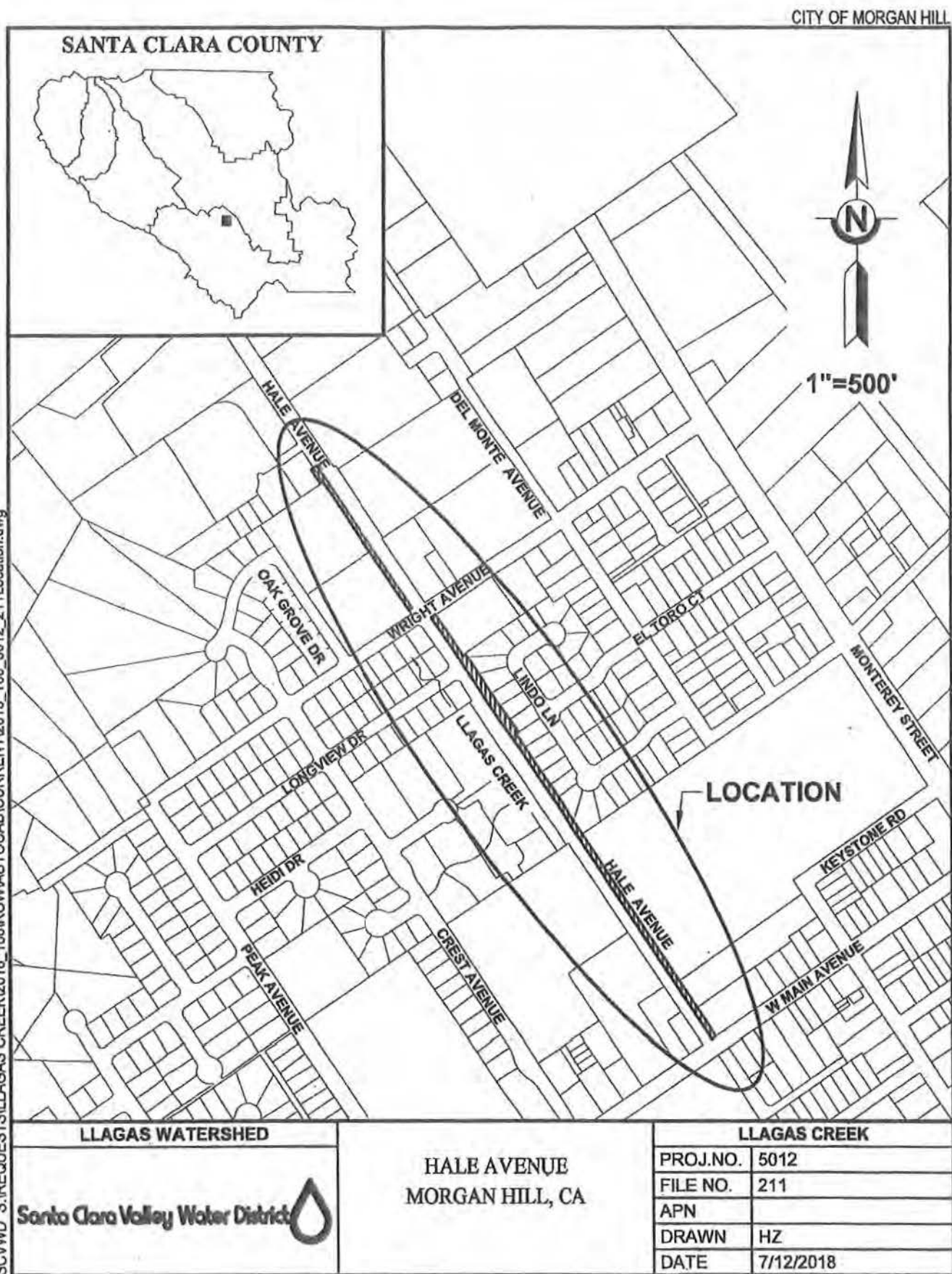
By: _____

Christina Turner, City Manager

Attachment A
(to EXHIBIT 2)
Legal Plat and Description

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_160\ROW\AUTOCAD\CURRENT\2018_160_5012_211\Location.dwg



Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

**SANTA CLARA VALLEY WATER DISTRICT
SAN JOSE, CA 95118**

PROJECT: LLAGAS CREEK

RESU FILE NO.: 5012-211

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF HALE AVENUE DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THE LANDS OF MORGAN HILL UNIFIED SCHOOL DISTRICT AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 382 OF MAPS AT PAGE 54 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE LEAVING SAID SOUTHERLY CORNER, NORTH 34°52'00" WEST, 1,419.00 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF HALE AVENUE AND ITS EXTENSION THEREOF AS SHOWN ON SAID RECORD OF SURVEY, TO THE MOST WESTERLY CORNER OF LOT 16 AS SHOWN ON THAT CERTAIN MAP ENTITLED BRECKENHAUER ADDITION TRACT NUMBER 273, FILED FOR RECORD IN BOOK 8 OF MAPS AT PAGE 41 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT, NORTH 55°08'00" EAST, 12.00 FEET TO THE SOUTHERLY CORNER OF LOT 1 AS SHOWN ON THAT CERTAIN MAP OF TRACT NUMBER 3883 FILED FOR RECORD IN BOOK 191 OF MAPS AT PAGE 26 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE ALONG THE EASTERLY LINE OF HALE AVENUE AS SHOWN ON SAID TRACT 3883, NORTH 34°52'00" WEST, 367.30 FEET TO THE SOUTHEASTERLY LINE OF THE LANDS OF UHC00381 MORGAN HILL, L.P. AS DESCRIBED IN DOCUMENT NUMBER 19700670 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE ALONG SAID LINE, SOUTH 55°08'00" WEST, 12.00 FEET;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LANDS, NORTH 34°52'00" WEST, 197.00 FEET TO THE SOUTHEASTERLY LINE OF WRIGHT AVENUE;

THENCE SOUTH 55°08'00" WEST, 21.00 FEET;

THENCE ALONG A LINE THAT IS PARALLEL TO AND DISTANT 12.00 FEET NORTHEASTERLY OF THE CENTER LINE OF HALE AVENUE, SOUTH 34°52'00" EAST, 1,983.30 FEET;

THENCE NORTH 55°08'00" EAST, 21.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.06 ACRES OF LAND, MORE OR LESS.

PARCEL 2:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF HALE AVENUE WITH THE CENTERLINE OF WRIGHT AVENUE AS SAID CENTERLINES ARE SHOWN ON THAT CERTAIN MAP FILED FOR RECORD IN BOOK 855 OF MAPS AT PAGE 38 AND 39 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE ALONG SAID CENTERLINE OF HALE AVENUE, NORTH 34°51'48" WEST, 50.00 FEET;

THENCE LEAVING SAID CENTERLINE, SOUTH 55°08'00" WEST, 17.00 FEET TO THE POINT OF BEGINNING.

THENCE ALONG A LINE THAT IS PARALLEL TO AND 17.00 FEET SOUTHWESTERLY OF SAID CENTERLINE OF HALE AVENUE, NORTH 34°51'48" WEST, 675.00 FEET;

THENCE SOUTH 55°08'00" WEST, 28.00 FEET TO THE LANDS OF SANTA CLARA VALLEY WATER DISTRICT AS DESCRIBED IN DOCUMENT NUMBER 7184441, IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY;

THENCE ALONG SAID LINE, SOUTH 34°51'48" EAST, 65.00 FEET;

THENCE NORTH 55°08'00" EAST, 12.00 FEET;

THENCE ALONG A LINE THAT IS PARALLEL TO AND 22.00 FEET NORTHEASTERLY OF THE LANDS OF SANTA CLARA VALLEY WATER DISTRICT AS DESCRIBED IN DOCUMENT NUMBER 23767910, IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY, SOUTH 34°51'48" EAST, 610.00 FEET;

THENCE NORTH 55°08'00" EAST, 16.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.27 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

PARCEL 1:

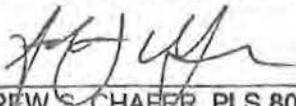
BEARINGS ARE BASED ON AND IDENTICAL TO THAT RECORD OF SURVEY FILED IN BOOK 382 OF MAPS AT PAGE 54, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

PARCEL 2:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN TRACT MAP FILED IN BOOK 855 OF MAPS AT PAGE 38 AND 39, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

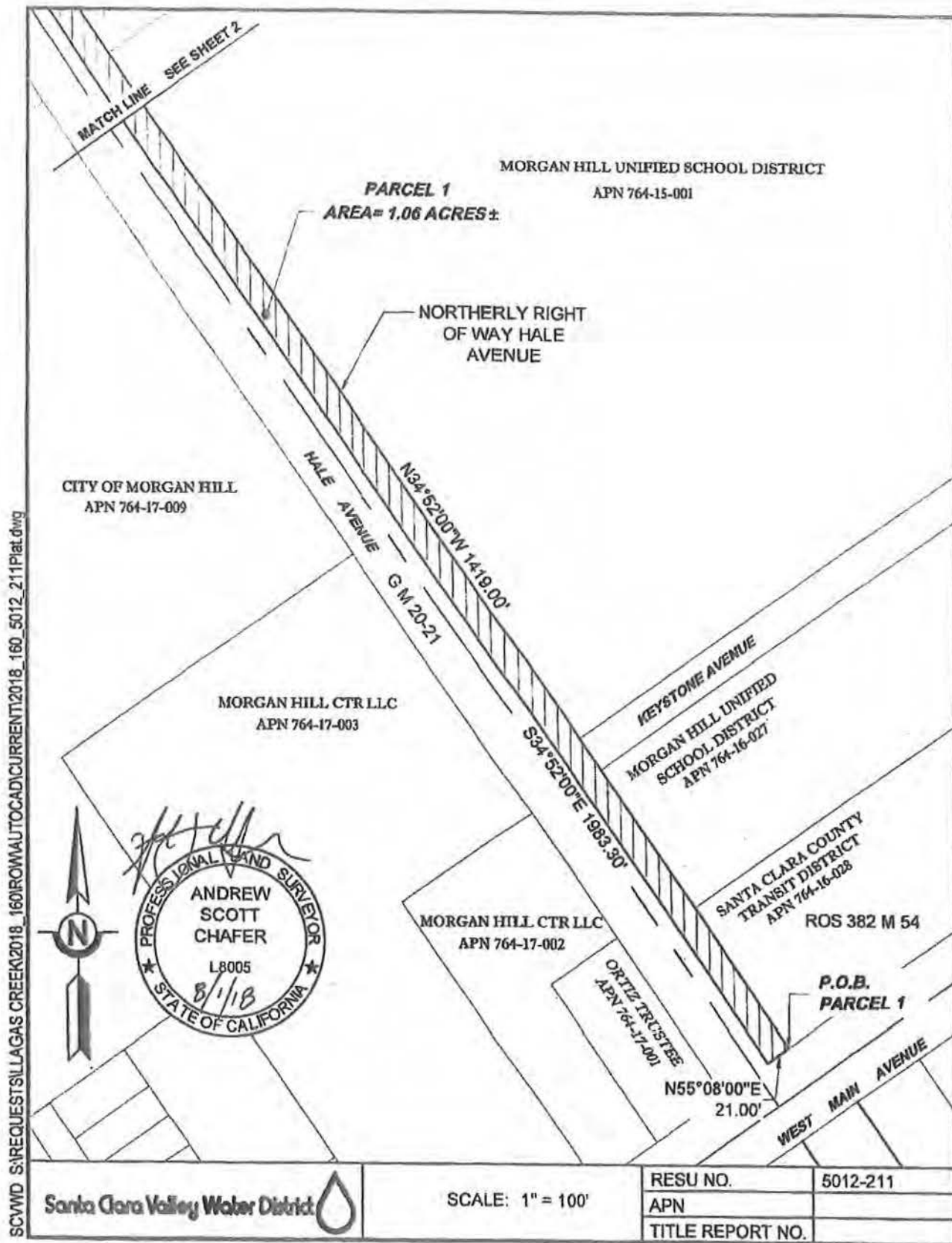


 ANDREW S. CHAFER, PLS 8005

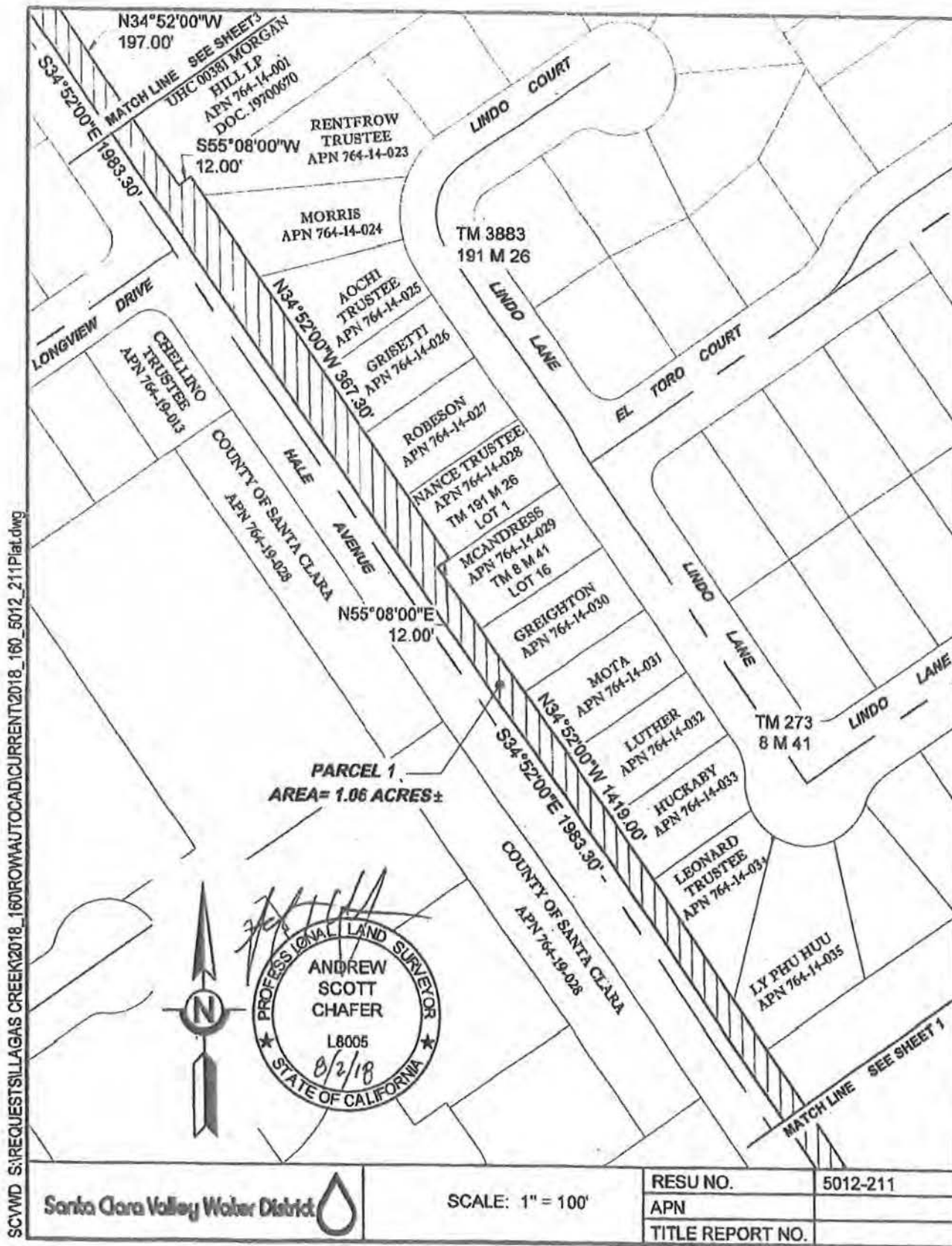
8/1/18

 Date



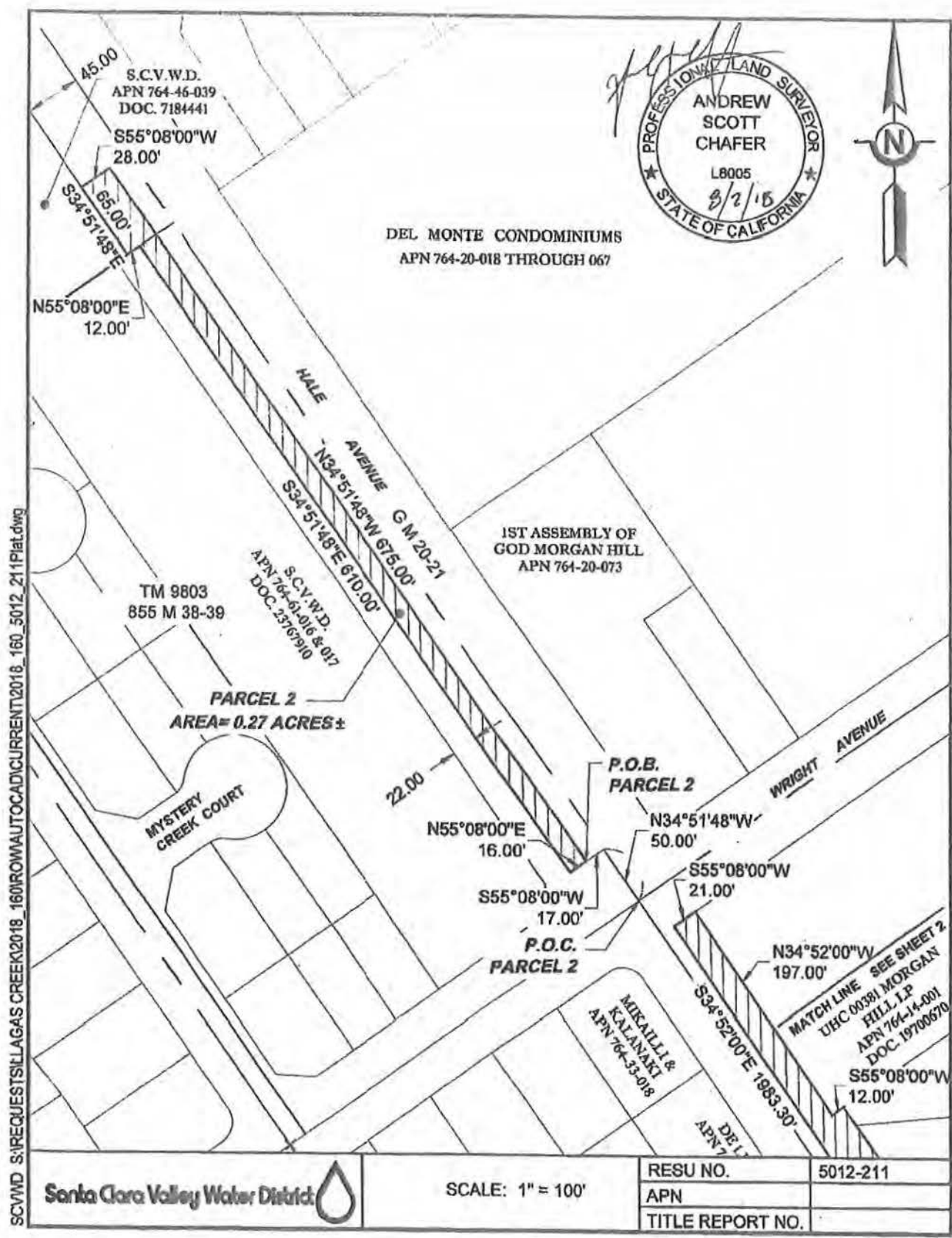


Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)



SCVWD S:\REQUESTS\ILLAGAS CREEK\2018_160\ROW\AUTOCAD\CURRENT\2018_160_5012_211\Plat.dwg

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)



Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

EXHIBIT 3

Quitclaim Deed Valley Water to County

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTION 6103

AFTER RECORDING RETURN TO:

COUNTY OF SANTA CLARA
ROADS AND AIRPORTS DEPARTMENT
REAL ESTATE SERVICES
70 WEST HEDDING STREET
SAN JOSE, CALIFORNIA 95110

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 612-01-026 (portion)

District File Nos. 4029-09.1

QUITCLAIM DEED

SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature (Valley Water), hereinafter "Grantor," does hereby release and forever quitclaim to the County of Santa Clara, a division of the State of California, hereinafter, "GRANTEE", all its right, title and interest in that real property situated in the City of San Jose, County of Santa Clara, State of California, and shown and described in "Attachment A", attached hereto and made a part hereof.

Dated this 28th day of May, 2019

VALLEY WATER

By:


Norma J. Camacho,
Chief Executive Officer

Attest: Michele L. King, CMC

By: 
Clerk/Board of Directors

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

DOCUMENT NO.: 4029-09.1

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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 } SS

On this 4th day of June, in the year 2019, before me Michele L. King,

Notary Public, personally appeared Norma Camacho
Name(s) of Signer(s)

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.

Michele L. King
Notary Public in and for said County and State



CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Partner(s) ☐ Limited ☐ General

☐ Other: _____

☐ Attorney-In-Fact: _____

Signer is Representing (Name of Person(s) or Entity(ies))

**Certificate of Acceptance by Grantee
(Government Code Section 27281).**

In accordance with Government Code Sec. 27281, this is to certify that the interest in real property conveyed by Santa Clara Valley Water District, in the foregoing Grant Deed to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted pursuant to authority delegated by resolution of the Board of Supervisors of the County of Santa Clara on [Insert date of Director signature], and the County consents to the recordation thereof by its duly authorized officer.

By: _____
Harry Freitas, Director
Roads and Airports Department

APPROVED AS TO FORM AND LEGALITY:

_____, County Counsel

[NOTE: DIRECTOR'S SIGNATURE MUST BE NOTARIZED AS SEPARATE ATTACHMENT]

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

Attachment A
(to EXHIBIT 3)
Legal Plat and Description

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

Attachment A

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: B. Snyder
Date: 12/21/11

Date Revised:
Revised By:

Checked by: _____ Date: _____

PROJECT: ALTA VISTA WAY & HIGHLAND DRIVE
PROPERTY: SCVWD TO COUNTY OF SANTA CLARA

File No.: 4029-9.01

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

All those rights, title and interest granted to the Santa Clara County Flood Control and Water Conservation District, now known as Santa Clara Valley Water District, in the deed recorded as Document Number 1908702, in the office of the Recorder, County of Santa Clara, State of California, which lie within the following described parcel of land:

A strip of land 5 feet wide adjacent to and contiguous with the Northwesterly lot line of that certain parcel of land conveyed by Isabel B. DeKlotz and Fred W. DeKlotz to Bartie Savage, recorded in Book 4607, page 57 of Official Records, Santa Clara County.

Containing 0.013 acre of land, more or less.

BASIS OF BEARING:

Bearings are based on and identical to that certain map entitled, "AMENDED MAP OF EAST HIGHLANDS" filed in Book "W" of Maps at page 54 and 55, Santa Clara County Records.

SURVEYOR'S STATEMENT:

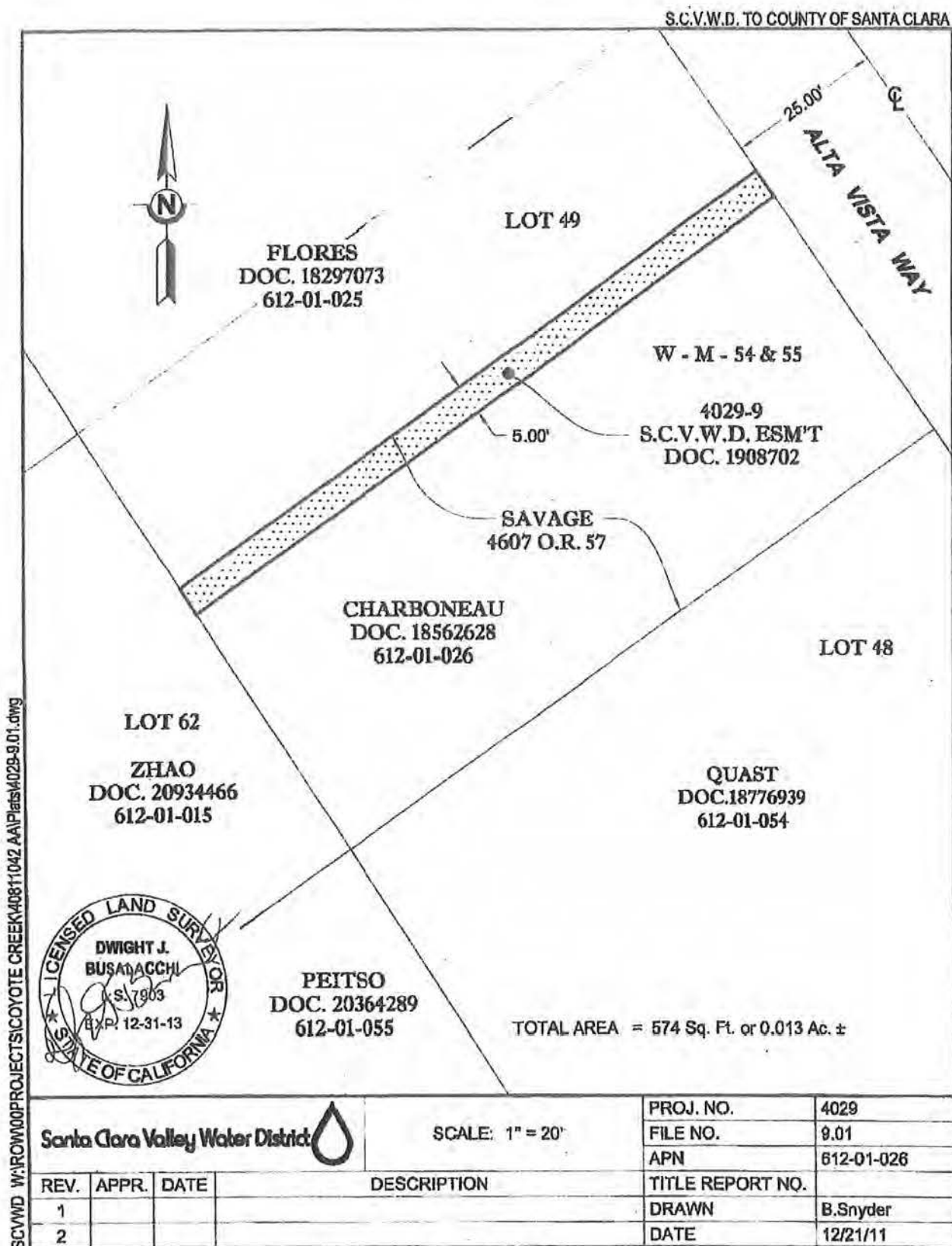
The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


Dwight J. Busalacchi, PLS7903

12/28/11
Date



Attachment A



Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

EXHIBIT 4

Quitclaim Deed Valley Water to County

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTION 6103

AFTER RECORDING RETURN TO:

COUNTY OF SANTA CLARA
ROADS AND AIRPORTS DEPARTMENT
REAL ESTATE SERVICES
70 WEST HEDDING STREET
SAN JOSE, CALIFORNIA 95110

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 612-01-015 (portion)

District File Nos. 4029-10.1

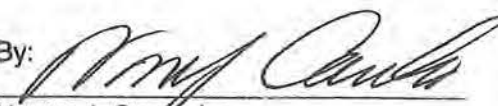
QUITCLAIM DEED

SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature (Valley Water), hereinafter "Grantor," does hereby release and forever quitclaim to the County of Santa Clara, a division of the State of California, hereinafter, "GRANTEE", all its right, title and interest in that real property situated in the City of San Jose, County of Santa Clara, State of California, and shown and described in "Attachment A", attached hereto and made a part hereof.

Dated this 28th day of May, 2019

VALLEY WATER

By:


Norma J. Camacho,
Chief Executive Officer

Attest: Michele L. King, CMC

By: 
Clerk/Board of Directors

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

DOCUMENT NO.: 4029-10.1

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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 } SS

On this 4th day of June, in the year 2019, before me Michele L. King,

Notary Public, personally appeared Norma Camacho
Name(s) of Signer(s)

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.

Michele L. King
Notary Public in and for said County and State



CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Partner(s) ☐ Limited ☐ General

☐ Other: _____

☐ Attorney-In-Fact: _____

Signer is Representing (Name of Person(s) or Entity(ies))

**Certificate of Acceptance by Grantee
(Government Code Section 27281).**

In accordance with Government Code Sec. 27281, this is to certify that the interest in real property conveyed by Santa Clara Valley Water District, in the foregoing Grant Deed to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted pursuant to authority delegated by resolution of the Board of Supervisors of the County of Santa Clara on [Insert date of Director signature], and the County consents to the recordation thereof by its duly authorized officer.

By: _____
Harry Freitas, Director
Roads and Airports Department

APPROVED AS TO FORM AND LEGALITY:

_____, County Counsel

[NOTE: DIRECTOR'S SIGNATURE MUST BE NOTARIZED AS SEPARATE ATTACHMENT]

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

Attachment A
(to EXHIBIT 4)
Legal Plat and Description

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

Attachment A

SANTA CLARA VALLEY WATER DISTRICT San Jose, California

By: B. Snyder

Date: 12/21/11

Date Revised:

Revised By:

Checked by: _____ Date: _____

PROJECT: ALTA VISTA WAY & HIGHLAND DRIVE
PROPERTY: SCVWD TO COUNTY OF SANTA CLARA

File No.: 4029-10.01

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

All those rights, title and interest granted to the Santa Clara County Flood Control and Water Conservation District, now known as Santa Clara Valley Water District, in the deed recorded as Document Number 1905344, in the office of the Recorder, County of Santa Clara, State of California, which lie within the following described parcel of land:

A portion of Lot 62 as said Lot is shown on the Amended Map of East Highlands, which map was filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on May 3, 1928, in Vol. "W" of Maps, Pages 54 and 55, and more particularly described as follows:

BEGINNING at the most westerly corner of said Lot 62: thence along the northwesterly line of said Lot 62; N54°21'E, 81.36 feet; thence S67°17'14"E, 35.19 feet to the northeasterly line of said Lot 62: thence along said northeasterly line, S32°42'E, 5.01 feet; thence S54°21'W, 2.53 feet; thence N67°17'14"W 35.19 feet; thence S54°21'W, 78.95 feet to the southwesterly line of said Lot 62; thence along said southwesterly line, from a tangent which bears N31°01'50"W, along the arc of a curve to the left, with a radius of 585.24 feet, through a central angle of 0°29'38", for a distance of 5.04 feet to the POINT OF BEGINNING.

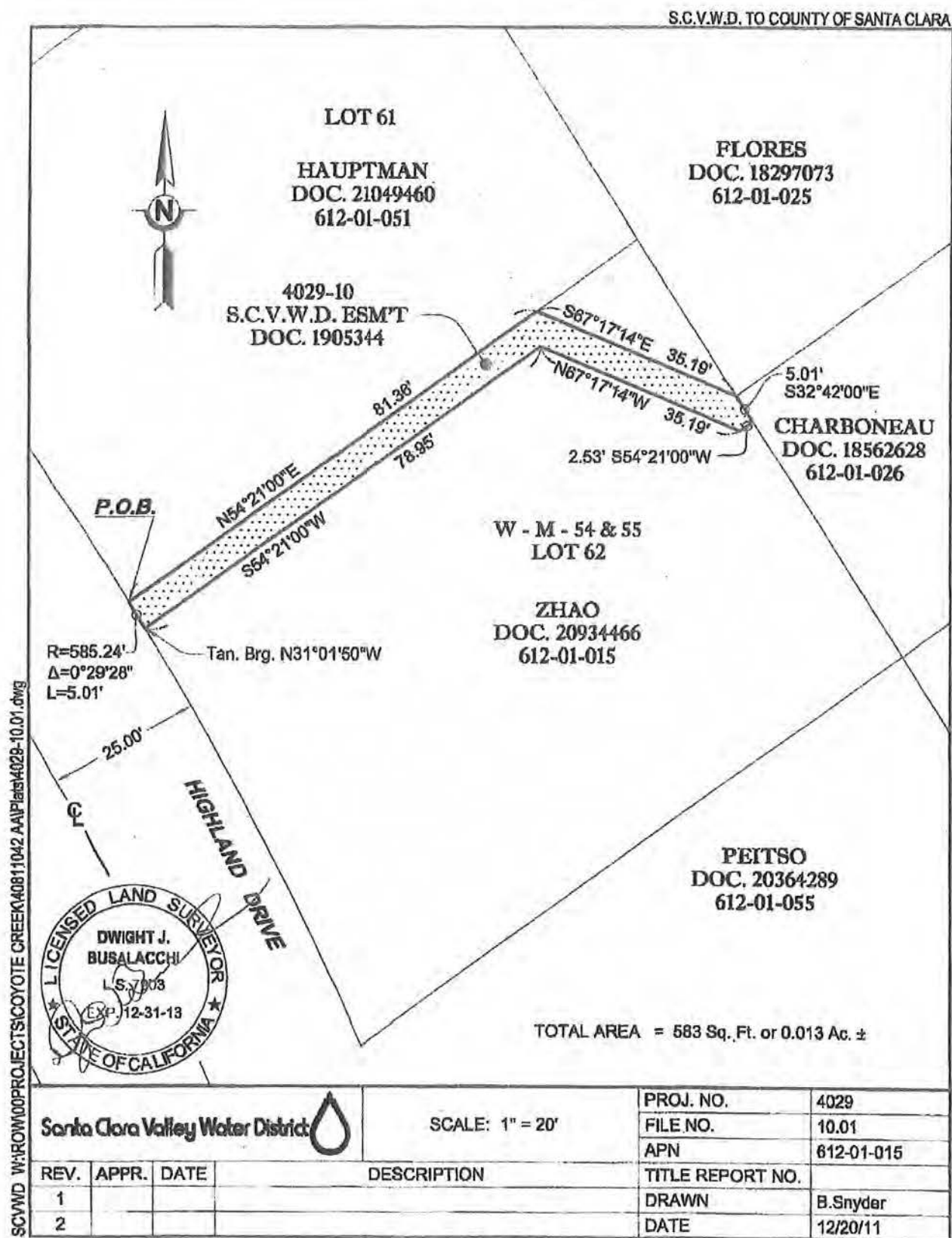
Containing 0.013 acres of land, more or less.

BASIS OF BEARING:

Bearings are based on and identical to that certain map entitled, "AMENDED MAP OF EAST HIGHLANDS" filed in Book "W" of Maps at pages 54 and 55, Santa Clara County Records.

Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)

Attachment A



Attachment: Exchange Agreement w City Consent (2356 : Approve Agreements with Valley Water)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Chris Ghione, Public Services Director
APPROVED BY: City Manager

APPROVE AGREEMENT WITH WOODARD AND CURRAN, INC. FOR DESIGN OF CITY IMPROVEMENTS ASSOCIATED WITH VALLEY WATER'S FLOOD CONTROL PROJECT

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a consultant agreement with Woodard and Curran, Inc. for a not to exceed amount of \$457,271 for the design of City improvements associated with Valley Water's upcoming flood protection project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Supporting Our Youth
Seniors
and Entire Community
Advancing Regional Initiatives

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

REPORT NARRATIVE:

For decades, the City has supported Valley Water in efforts to complete the Upper Llagas Creek Flood Protection Project. Completion of this project will provide flood control for the West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. Valley Water recently bid Phase 1 of the project, which includes construction south of Watsonville Road to Silveira Lake. Valley Water is working with City staff as it completes the design for Phase 2, which will include significant construction through the City. Valley Water hopes to complete design and obtain full funding for Phase 2 by this Fall.

Once complete, the project will be interconnected with the City's storm drain system. The City has long planned to support funding of the improvements integrated with the project, with funding included in the Storm Drain Impact Fund (303). At this point, Valley Water intends to fund the entirety of the primary elements of the project. However, the City has identified necessary additional project elements outside the scope of Valley Water's Project, particularly as it relates to improvements near Hale Avenue between Main and Wright Avenue. In this area, the Flood Control Project will create significant changes to associated roadway, utilities, and storm drain infrastructure. City staff believe it prudent to fund the necessary improvements to ensure construction only occurs one time in this location. City funded improvements will include improvements to

the roadway and sidewalks, storm drain system, and overhead utilities associated with the flood control project.

City staff are proposing an agreement with Woodard and Curran, the design firm hired by Valley Water to design the Flood Control Project. To construct a cohesive project, City staff believe it prudent to utilize the same design firm, which will support consistency in design, effective communication, cost savings, and coordinated project management through construction. City staff is therefore recommending hiring Woodard and Curran through a consultant agreement per section 3.04.240 of the Municipal Code. Woodard Curran will also utilize Mark Thomas and Company as their primary sub-consultant. Mark Thomas is the current design firm working on the Hale Avenue Extension Project for the City, for which the Flood Control Project will also integrate with. The proposed contract for Woodard Curran is for a not to exceed amount of \$457,271 and includes design and construction management related tasks.

When the design is completed, the City would plan to construct the improvements in partnership with Valley Water through a cost sharing agreement, which Valley Water would serve as the lead agency. This cost sharing agreement would return for Council review at a later date. It is the goal of Valley Water and the City to have designs completed this fall for the project to be ready to bid. The section of the project on Hale between Wright and Main would not commence for at least two years after awarding the project, as areas to the south would need to be constructed first.

COMMUNITY ENGAGEMENT: Inform

To this point, the negotiation of this agreement has been internal to the City in consultation with staff at Valley Water. This report serves to inform the community on the progress of the project and the proposed agreements. The City is currently working with Valley Water on a communication plan for Phase 2 of the project and intends to have that completed by this Fall. Work on the Hale Avenue section of the project is still multiple years away. Once the schedule for Phase 2 of the project is more clearly defined, the City and Valley Water are planning to begin extensive community outreach.

ALTERNATIVE ACTIONS:

The City Council could elect not to design improvements associated with the Flood Control Project, however, this is not recommended as the City will be left with a project that will not meet the storm drainage needs of the City and will result in infrastructure that does not adequately adjacencies and integration with the Project. The City Council could direct staff to issue a request for proposals to hire a design consultant. This option is not recommended as it may delay the project and is not likely to result in cost savings.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has taken numerous actions over the last several decades in support of the Upper Llagas Creek Flood Protection Project. The City Council received an update report on the Project from Valley Water on March 6, 2019.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Environmental Impact Report.

Valley Water, as the lead agency, certified an Environmental Impact Report in May 2014 for the Upper Llagas Creek Flood Control Project (State Clearinghouse No. 2012102032). A link to the Final EIR can be found [here](#). As a responsible agency, the City Council is required to consider the findings from the EIR before approval of this item.

LINKS/ATTACHMENTS:

1. WC Agreement Unsigned

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, ____, 20__.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 1, 2024 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 _____ as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$457,271.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred Fifty Seven Thousand Two Hundred Seventy One dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 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 within thirty (30) days of the date of invoice. Services for work

performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. 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. 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 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.

- 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/Nonowned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of one million dollars (\$1,000,000.00) 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.

- 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 one million dollars (\$1,000,000.00) for any one accident or occurrence. 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. Such coverage shall be in the amount of one million dollars (\$1,000,000.00) per claim and in the aggregate.

- 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.

- 7.2. **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.**

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 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.**

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

Attachment: WC Agreement Unsigned (2366 : Agreement with Woodard and Curran)

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 that are marked by CITY as "Confidential", or similar legend, 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:

Woodard & Curran
2175 North California Blvd., Suite 315
Walnut Creek, CA 94596

Address of CITY is as follows:

Chris Ghione
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; provided, however, any use or reuse for any other purpose or project other than as set forth herein shall be at the CITY's sole risk and liability. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall

immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**
 - 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
 - 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

- 21.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
22. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
26. **Binding Agreement.** Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in

interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

[Signatures on Next Page]

Attachment: WC Agreement Unsigned (2366 : Agreement with Woodard and Curran)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Woodard & CurranTask

City Attorney

By:

Donald A. Larkin

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: _____

By:

Print Name and Title of Signer.

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

Date: _____

Attachment: WC Agreement Unsigned (2366 : Agreement with Woodard and Curran)

**EXHIBIT A
SCOPE OF SERVICES**

CITY OF MORGAN HILL

HALE AVENUE IMPROVEMENTS RELATED TO UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT

BACKGROUND

As part of the Santa Clara Valley Water District's Upper Llagas Creek Flood Protection Project, a large portion of the street will be disturbed along Hale Avenue between Main Ave and Hillwood Lane, including a box culvert installation between Main Ave and Wright Ave. Since this part of Hale Avenue will be torn up, instead of restoring Hale Avenue back to the existing width, the City has decided to use this opportunity to construct Hale Avenue to a wider, safer road. Constructing the improvements at this time will reduce overall disruption to city residents. Improvements will also include new landscaping (between sidewalk and back of curb and new plantings within medians) and sidewalk at various locations, undergrounding of overhead utilities, and new LED street lights. Improvements will also include a trash capture device to help the City comply with the State's trash capture regulations.

This scope of work describes the engineering effort required to design these improvements. Woodard & Curran (W&C) will be responsible for managing the development of plans, specifications and estimates, and coordination with the City of Morgan Hill. We will use Mark Thomas as the road designer and they will be supplemented with the following specialty subconsultants: Y&C Consultants for street light design, the Pennino Management Group for utility undergrounding, and Exaro for potholing.

SCOPE OF WORK

Task 1. Data Collection

Our team will collect available data, including supplemental topographic survey Information, required to prepare the improvement plans.

1.1 Topographic Surveys & Base Mapping

Mark Thomas will perform a supplemental topographic field survey to collect detailed topographic data as a supplement to existing aerial topographic survey. The supplemental survey will include cross sections at 100' intervals and details at intersections of existing curb, gutter, sidewalk, driveways, utilities, signs and street furniture. Limits of the survey data will generally extend to the back of walk and/or right-of-way line, except as noted below.

Supplemental topo performed by Pennino Management Group as part of the utility undergrounding work will include confirming utility pole locations shown on the aerial topographic survey and documenting overhead wires, risers, services and equipment on each pole. Photographs will be taken of poles and service connections at existing buildings. Poles to be documented include those outside the

Hale Avenue right-of-way which will become the riser pole after the undergrounding.

Task 2. Plans, Specifications, and Cost Estimates

Plans, specifications, and cost estimates will be prepared and submitted for review at the following milestones: 50%, 90%, draft 100%, and final.

2.1 Prepare 50% Plans, Specifications, and Cost Estimate

The Woodard & Curran team will prepare engineering 50% Plan and Construction Cost estimate for the project in accordance with the City standards. 50% improvement plans will be based upon the Preliminary Typical Section provided by the City. The intent of 50% submittal is to define the key project geometric features (without detail) for review by the City, and to allow for major project element review prior to investment of significant design effort in design details. 50% plan preparation will be a subset of the ultimate plan package, including only Title, Typical Sections, Plan and Profile, Pavement Delineation and Signing, Planting Plan (with proposed plant list), and Stage Construction. Additional detail for the sheets shown in the next task will be added at 90%.

The Woodard & Curran team will prepare an itemized engineer's estimate of probable construction costs for each design submittal. The format will be similar to the Caltrans BEES format. The unit costs will be determined by reviewing similar recent project summaries, Caltrans Contract Cost Data book, the California Highway Construction Cost Index information and reviewing the Caltrans ESC site for unit costs and any recent bid information provided by the City of Morgan Hill. Project estimates will show individual pay items, quantities, and unit prices as well as a project cost summary, including appropriate supplemental work items and contingencies. Quantities will be developed in accordance with pay items as defined in the specifications.

A street lighting layout will be prepared during this phase. The street light design will use VISUAL software to prepare photometric analysis, which will be used to prepare 50% lighting plan and cost estimate. This design will comply with the City of Morgan Hill standards and details.

Trash capture device sizing and layout will be performed during this phase.

2.2 Prepare 90% Plans, Specifications, and Cost Estimate

The Woodard & Curran team will prepare engineering 90% PS&E for the project in accordance with the City standards. The intent of intermediate submittals is to define the project for review by the City, and to allow for major comments prior to investment of significant design effort in design details. Because there are some minor plan details and refinements at the final submittal not previously reviewed by staff, one more "final" submittal is assumed as a response to these final plan comments.

Based on the City's comments on 50% P&E, electrical PS&E for lighting and irrigation controller electric service will be prepared. It is assumed that all streetlights are LED type and lighting poles are standard galvanized type. During this phase, we will coordinate with PG&E in identifying electrical service points.

Pennino Management Group will prepare Joint Trench Intent Plans and coordinate review with PG&E. PG&E will prepare final Composite Joint Trench Plans and various supporting documentation. Pennino will work with PG&E to coordinate design of undergrounding facilities for other utility companies with overhead wires to be undergrounded.

Following receipt of comments on the 50% plans and estimate, The Woodard & Curran team will advance the plans and estimate to 90% level of completion and prepare Special Provisions in City format based on the latest Caltrans Standard Specifications. The following plan sheets are assumed to comprise the plan package:

Deliverable	Estimated Number of Sheets
Title Sheet	1
Typical Sections	1
Notes	1
Survey Control Diagram	1
Site Topography and Demolition Plans- Scale 1"=40'	4
Plan and Profile-Scale 1"=40'	4
Utility Plans- Scale 1"=40'	4
Storm Drain Details including Trash Capture Devices	6
Construction Details	4
Pavement Delineation and Signing- Scale 1"=40'	4
Street Light Plans- Scale 1"=40'	4
Electrical Details	1
Landscape and Irrigation Plans and Details	10
Erosion Control Plans Scale 1"=40'	4
Stage Construction and Traffic Handling Plans Scale 1"=40'	22
Joint Trench Intent Plans	4
Total Estimated Roadway Related Plan Sheets	75

Joint Trench Intent Plans - Pennino Management Group, as a subconsultant to Mark Thomas, will review the undergrounding of existing overhead utilities within Hale Avenue Right-of-Way between West Main and 250' north of Hillwood. Pennino Management Group will review the existing facilities and confirm the potential for undergrounding the facilities under PG&E Rule 20B Utility Undergrounding District.

Pennino Management Group will prepare base information and coordinate the design by PG&E under Rule 20B. Following design by PG&E, Pennino will coordinate with PG&E and the City during bidding and construction.

Stage Construction and Traffic Handling will include requirements for providing access to properties and bus stops throughout construction. Construction will be shown to be staged in order to provide pedestrian circulation and access to all properties throughout construction.

Mark Thomas will coordinate all plan sheets with Upper Llagas Creek project plan sheets.

Plans will be in AutoCad, Special Provisions will be in Word and Estimate will be in Excel and PDF format.

2.3 Prepare Final Plans, Specifications, and Cost Estimate

Following receipt of comments from the City on 90% PS&E, The Woodard & Curran team will advance the level of completion of the PS&E to Draft 100% and Final PS&E levels of completion. Submittals will be provided for each level of completion of PS&E. Because it is our experience that minor plan details and refinements will be required following City review of the 100% PS&E, one more “final” submittal is assumed in this scope of work as a response to final plan comments.

We have included an allowance for potholing of existing utilities at up to 4 locations. Additional potholing will be considered additional services and will be paid for on a time and materials basis

Deliverables

- 50% Plans, Specifications, and Cost Estimate
- 90% Plans, Specifications, and Cost Estimate
- Draft 100% Plans, Specifications, and Cost Estimate
- Final Plans, Specifications, and Cost Estimate

Task 3. Engineering Services During Construction

The Woodard & Curran team will provide design support during construction services during Bid Advertisement and Construction, as requested by the City. Construction support and bid support will be provided, as requested, on a time and materials basis. Services may include: developing drawings, specifications, and cost estimates that coincide with the Upper Llagas Creek project for Santa Clara Valley Water District. Woodard & Curran will be directing Mark Thomas & Co. limited to the work that is affected by and required to be coordinated with the Upper Llagas Creek flood protection project.

Potential Deliverables

- Response to bidder inquiries.
- Review contractor submittals including shop drawings, requests for information, and contract change orders
- Preparation of As-Built Record Drawings

Assumptions

- As stated above, the level of effort is capped by the hours in the fee estimate. If additional hours are requested by the City, the City will issue an amendment increasing the contract amount.

Task 4. Project Management, QA/QC, and Meetings

Woodard & Curran will conduct regular project management activities, including tracking costs and preparing invoices and preparing project progress reports to City staff. Woodard & Curran will follow a quality control process in conformance with our in-house Quality Control Program.

Woodard & Curran and Mark Thomas will attend up to 5 meetings in Morgan Hill over the course of the project:

- One Field Review Meeting prior to commencement of work.
- One Kickoff Meeting.
- One Field Review with PG&E.
- One meeting with the City at 50% to review City comments.
- One meeting with the City at 90% to review City comments.

In addition to the above, Woodard & Curran and Mark Thomas will attend up to 5 meetings via conference call over the course of the project.

Deliverables

- Monthly invoice and progress report

BUDGET

The total budget for this task order is not to exceed \$457,271. The detailed budget is shown in Table 1.

Table 1 - Fee Estimate											
HALE AVENUE IMPROVEMENTS RELATED TO UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT											
Tasks	Glenn Hermanson	QA/QC	Nathan Hansen	Chu To	Desiree Hughart	Total Hours	Total Labor Costs (1)	Mark Thomas & Co.	Sub Consultant Total Cost (2)	ODCs (3)	Total Fee
	Senior Technical Practice Leader	Senior Project Manager	Engineer 2	CAD	Project Assistant			Road Design, Undergrounding			
	\$310.00	\$282.00	\$187.00	\$165.00	\$110.00						
Task 1: Surveying and Data Collection											
Task 1. Surveying and Data Collection			16	8		24	\$4,312	\$41,714	\$45,885	\$0	\$50,197
Subtotal Task 1:	0	0	16	8	0	24	\$4,312	\$41,714	\$45,885	\$0	\$50,197
Task 2: Plans, Specifications, and Cost Estimates											
2.1 Prepare 50% Plans, Specifications, and Cost Estimates	20		40	16		76	\$16,320	\$50,557	\$55,613	\$0	\$71,933
2.2 Prepare 90% Plans, Specifications, and Cost Estimates	12		24	16		52	\$10,848	\$110,550	\$121,605	\$0	\$132,453
2.3 Prepare Final Plans, Specifications, and Cost Estimates	8		24	10		42	\$8,618	\$36,644	\$40,308	\$0	\$48,926
Subtotal Task 2:	40	0	88	42	0	170	\$35,786	\$197,751	\$217,526	\$0	\$253,312
Task 3: Engineering Services During Bid and Construction											
3.1 Construction Support	8		8			16	\$3,976	\$34,611	\$38,072		\$42,048
Subtotal Task 3:	8	0	8	0	0	16	\$3,976	\$34,611	\$38,072	\$0	\$42,048
Task 4: Project Management, QA/QC, and Meetings											
4.1 Project Management	12		12		24	48	\$8,604	\$1,653	\$1,818	\$0	\$10,422
4.2 Meetings	20					20	\$6,200	\$9,471	\$10,418	\$440	\$17,058
4.3 QA/QC		22				22	\$6,204	\$1,653	\$1,818	\$0	\$8,022
Subtotal Task 4:	32	22	12	0	24	90	\$21,008	\$12,777	\$14,054	\$440	\$35,502
Total without Contingency	80	22	124	50	24	300	\$65,082	\$286,853	\$315,537	\$440	\$381,059
20% Contingency											\$76,212
TOTAL											\$457,271
1. The individual hourly rates include salary, overhead and profit.											
2. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.											
3. The W&C Team reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.											

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Attachment: WC Agreement Unsigned (2366 : Agreement with Woodard and Curran)



Fee Estimate

City of Morgan Hill

Table 1 - Fee Estimate
HALE AVENUE IMPROVEMENTS RELATED TO UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT

Tasks	Labor							Outside Services		ODCs	Total
	Glenn Hermanson	QA/QC	Nathan Hansen	Chu To	Desiree Hughart	Total Hours	Total Labor Costs (1)	Mark Thomas & Co.	Sub Consultant Total Cost (2)	Total ODCs (3)	Total Fee
	Senior Technical Practice Leader	Senior Project Manager	Engineer 2	CAD	Project Assistant			Road Design, Undergrounding			
	\$310.00	\$282.00	\$187.00	\$165.00	\$110.00						
Task 1: Surveying and Data Collection											
Task 1. Surveying and Data Collection			16	8		24	\$4,312	\$41,714	\$45,885	\$0	\$50,197
Subtotal Task 1:	0	0	16	8	0	24	\$4,312	\$41,714	\$45,885	\$0	\$50,197
Task 2: Plans, Specifications, and Cost Estimates											
2.1 Prepare 50% Plans, Specifications, and Cost Estimates	20		40	16		76	\$16,320	\$50,557	\$55,613	\$0	\$71,933
2.2 Prepare 90% Plans, Specifications, and Cost Estimates	12		24	16		52	\$10,848	\$110,550	\$121,605	\$0	\$132,453
2.3 Prepare Final Plans, Specifications, and Cost Estimates	8		24	10		42	\$8,618	\$36,644	\$40,308	\$0	\$48,926
Subtotal Task 2:	40	0	88	42	0	170	\$35,786	\$197,751	\$217,526	\$0	\$253,312
Task 3: Engineering Services During Bid and Construction											
3.1 Construction Support	8		8			16	\$3,976	\$34,611	\$38,072		\$42,048
Subtotal Task 3:	8	0	8	0	0	16	\$3,976	\$34,611	\$38,072	\$0	\$42,048
Task 4: Project Management, QA/QC, and Meetings											
4.1 Project Management	12		12		24	48	\$8,604	\$1,653	\$1,818	\$0	\$10,422
4.2 Meetings	20					20	\$6,200	\$9,471	\$10,418	\$440	\$17,058
4.3 QA/QC		22				22	\$6,204	\$1,653	\$1,818	\$0	\$8,022
Subtotal Task 4:	32	22	12	0	24	90	\$21,008	\$12,777	\$14,054	\$440	\$35,502
Total without Contingency	80	22	124	50	24	300	\$65,082	\$286,853	\$315,537	\$440	\$381,059
20% Contingency											\$76,212
TOTAL											\$457,271

1. The individual hourly rates include salary, overhead and profit.
2. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.
3. The W&C Team reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Attachment: WC Agreement Unsigned (2366 : Agreement with Woodard and Curran)

SCHEDULE

The key milestones and dates are shown in the table below. The Woodard & Curran team will move forward and execute the project, but for this project the critical path is through PG&E's undergrounding design process. Therefore, the schedule presented below may be delayed if PG&E extends their design window.

Milestone	Date
NTP	7/1/2019
Submit 50% Plans	8/1/2019
Field Meeting with PG&E	8/2/2019
Submit 90% PS&E	9/15/2019
Submit 100% PS&E	10/15/2019



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

APPROVE AMENDMENT TO AGREEMENT WITH THE COUNTY OFFICE OF SUPPORTIVE HOUSING FOR THE RAPID REHOUSING AND HOMELESS PREVENTION PROGRAM

RECOMMENDATION(S)

1. Authorize the City Manager to execute and administer the first amendment to the agreement with the County Office of Supportive Housing for the Rapid Rehousing and Homeless Prevention Program; and
2. Adopt resolution amending the Fiscal Year (FY) 2019-20 adopted budget to appropriate \$50,000 from the Housing Mitigation Fund (236) for the related expenditures.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

Homelessness
Housing

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

In partnership with the County of Santa Clara Office of Supportive Housing (OSH), the Housing team requests City Council's continued support of the Rapid Rehousing and Homeless Prevention Program, authorizing the City Manager to execute a first amendment to the agreement with OSH and/or its designee for Homeless Services in the amount of \$50,000 for the 2019-20 fiscal year (Attachment 1).

Policy considerations include:

1. Does the partnership in these programs enhance services for Morgan Hill residents?
2. Do leveraged resources produce benefits to the City, as well as, the County and South County region?

REPORT NARRATIVE:

Homelessness continues to be a pressing issue for Santa Clara County (SCC) and the

State of California. While the official 2019 Homeless Census count for the City has not been released, the City has seen a significant increase in homelessness in recent years; Morgan Hill's homeless population has increased by 380%, up from 81 people in 2015 to 388 people in 2017. Unfortunately, the 2019 Point-in-Time Homeless Count shows that homelessness in Santa Clara County, (countywide) has increased by a staggering 31% since the last count in 2017. According to the County of Santa Clara, since 2017, 9,901 households entered the County's homeless system for the first time. Local City counts will be provided in July or August of 2019 at which time staff will return with a full Homeless report.

In June 2019, Morgan Hill Unified School District (MHUSD) reports that there are currently 559 recertified students that meet the McKinney Vento Federal Homeless definition. They identify homeless families as living on the street, car, RV, shelter, renting a room, doubled up living with someone else (non-permanent co-habitation), living in a structure that is not deemed livable (examples would be renting a garage, empty structure, barn, or a house without water, electricity, or plumbing). Of the 559, 122 are living in RV parks.

To continue to respond to the need and enhance our ability to leverage limited resources, staff is recommending that Council authorize the first amendment to an agreement with the Office of Supportive Housing for Rapid Rehousing Homeless Prevention Services. The most recent agreement with the County was for the term July 1, 2018 to June 30, 2019. This first amendment is for \$50,000, for one additional year of services from July 1, 2019 to June 30, 2020. Staff will continue to evaluate this partnership annually.

The Rapid Rehousing and Homeless Prevention Program is for Families with Children. The broad goals are to 1) end homelessness for families and children who are living in shelters, on the streets, in their cars, or other places not meant for human habitation, 2) Prevent homelessness among families with children who are at imminent risk of homelessness, and 3) Integrate supportive housing into school-based resources/systems that are the "natural settings" for kids and their families. This Program works with the school district homeless coordinators to identify families in need. For the homeless families, the solution is to enroll them in Rapid Rehousing programs and provide temporary, but not long-term, rental assistance, case management, financial services, legal services, and housing services so they can move into housing as soon as possible. While the families are looking for housing, provide them with temporary housing or transitional housing sites (aka, interim or bridge housing), work with schools' adult education and community college partners to provide the families with services to help them improve their earning potential; and to assist the families to eventually transition in place. When the program ends, families stay in their assisted apartment and take over the full lease. For families who are at imminent risk (e.g., have an eviction notice) or otherwise need one-time assistance (e.g., help with security deposit to move into an apartment after transient living), they are provided with similar but less intensive services and less financial assistance.

The County and the City jointly fund this Program, (\$50,000 City) to offset the County

funds, (\$3.3 million). The level of assistance per family varies based upon need. The goal is to encourage multiple cities to support these efforts; however, Morgan Hill funds, serve Morgan Hill residents. The services are provided by a non-profit (currently Salvation Army). County staff has the capacity to procure and administer the contracted program and selects the service provider if no longer contracting with Salvation Army. For Morgan Hill, the program has been operated out of Morgan Hill locations including the Morgan Hill Unified School District Office, and other schools.

From July 1, 2017 to March 31, 2019 the following data was collected:

- 55 Morgan Hill households were assessed for homelessness prevention services
- 22 Morgan Hill households (76 total individuals) enrolled and received financial assistance, case management, and other services
- The 22 households received a total of \$79,363 in financial assistance through March 31, 2019 (some may still be active and receiving financial assistance)
- About \$60,000 in services and network coordination spent on Morgan Hill residents
- During the 2018-19 school year (up to the end of the March 31, 2019 reporting period) the Salvation Army received 16 direct referrals from MHUSD and 2 from Voices
- The Salvation Army explored a partnership with MHUSD to train their staff to complete assessments as well, but they did not have the capacity to take that on this year

Starting July 1st, Morgan Hill residents will be able to access all Homeless Prevention Services (HPS) services through St. Joseph's Family Center in Gilroy or any other HPS site in the rest of the County. Community Solutions also joined the HPS in Spring 2019. Survivors of domestic violence and human trafficking who are at risk of homelessness can receive full HPS services at Community Solutions. Sacred Heart also continues to offer mobile assessments, either by appointment in Morgan Hill or over the phone.

Staff recommends authorizing the agreement so that there is no disruption in services. A full report on homelessness will follow in the coming months as soon as the local Homeless Census data is released.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the City's efforts on addressing Homelessness within the City and the region.

ALTERNATIVE ACTIONS:

The Council could alternatively choose not to provide funding for these homelessness programs at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 17, 2015, the City Council endorsed the Community Plan to End Homelessness.

On June 6, 2018, the City Council adopted the FY 2018-19 budget, which included appropriations of \$50,000 for Rapid Rehousing Homeless Prevention and Outreach for one year and approved the related agreement on December 19, 2018 (Attachment 2).

FISCAL AND RESOURCE IMPACT:

The contract amount of \$50,000 will require an additional appropriation for FY 2019-20, from the Housing Mitigation Fund (236). Related budget scorecard and resolution amending the budget are included as Attachment 3.

CEQA (California Environmental Quality Act):

Not a project, as this is an administrative activity (homeless program) of government that will not result in direct or indirect physical change in environment.

LINKS/ATTACHMENTS:

1. FY20 Morgan Hill Revenue Agreement Amendment 1
2. Morgan Hill Revenue Agreement exp 06-19
3. County Housing and Homeless Prevention Resolution 06182019

**FIRST AMENDMENT TO THE REVENUE AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA
AND THE CITY OF MORGAN HILL**

This is the First Amendment to the Agreement Between the County of Santa Clara ("County") and the City of Morgan Hill ("City") (individually, "Party," and collectively "Parties"), dated July 1, 2018 (the "Effective Date"). The County is acting by and through the Office of Supportive Housing ("OSH"). The Agreement, and this First Amendment, establish roles, rights and responsibilities related to preventing and ending homelessness in Morgan Hill.

The Parties agree that the Agreement shall be amended as follows:

1. Revise Section 1 to read:

- 1) TERM

This Agreement is effective July 1, 2018, and will continue thereafter until June 30, 2020 unless extended by mutual consent in writing or terminated as provided in Section 4.

2. Add the following language to Section 2(a)(1) to read:

The City shall reimburse the County for expenses associated with the Rapid Re-housing ("RRH") and Homelessness Prevention Programs in an amount not to exceed \$50,000 from July 1, 2019 through June 30, 2020.

All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the Agreement and this First Amendment, this First Amendment controls.

//

//

//

//

//

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be entered into as of the day and year of execution of this First Amendment.

COUNTY OF SANTA CLARA

Procurement Department
Date: _____

Ky Le
Director, Office of Supportive Housing
Date: _____

Fran Palacio
Financial & Administrative Services Manager
County Executive's Office
Date: _____

APPROVED AS TO FORM AND LEGALITY

Tony LoPresti
Deputy County Counsel
Date: _____

CITY OF MORGAN HILL

Christina Turner
City Manager
Date: _____

APPROVED AS TO FORM AND LEGALITY

Donald A. Larkin
City Attorney
Date: _____

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA
AND THE CITY OF MORGAN HILL**

This Agreement is entered into by and between the County of Santa Clara (the "County") and the City of Morgan Hill (the "City"), individually, a "Party" and, collectively, the "Parties," in order to provide funding for and establish roles, rights and responsibilities related to preventing and ending homelessness in Morgan Hill.

RECITALS

- A. WHEREAS, the Parties have endorsed the Community Plan to End Homelessness and have approved resolutions finding that the problem of homelessness in Santa Clara County is a crisis;
- B. WHEREAS, the City is in a collaborative partnership with the County whereby the Continuum of Care (CoC) Recommendations for Homeless Housing Contracts will be added into any City contracts when directly funding County homeless programs (see Attachment A);
- C. WHEREAS, the City, the County and other partners seek to reduce homelessness while sharing costs, prioritizing services to the community's most vulnerable homeless persons, using resources strategically, and maintaining effective operational relationships;
- D. WHEREAS, in its role as the lead agency for the Santa Clara County CoC, the County's Office of Supportive Housing (OSH) coordinates permanent housing programs, shelter and transitional housing, rapid rehousing programs, supportive services, a homeless management information system and supportive housing policies countywide;
- E. WHEREAS, the County manages the Permanent Supportive Housing program, which coordinates care of the county's most vulnerable and long-term homeless residents;
- F. WHEREAS, the City seeks to leverage the County's resources and expertise in managing supportive housing programs by allowing the County to manage programs for homeless persons with the intent of providing outreach and services to Morgan Hill and South County homeless, and at-risk of homelessness, residents, both in the City and surrounding unincorporated areas;

G. WHEREAS, the City seeks to leverage the County's resources and expertise to respond to the Biannual Homeless Census Count, and work towards reducing and ending homelessness in the City of Morgan Hill.

In consideration of the foregoing Recitals, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

1) TERM

This Agreement is effective July 1, 2018 and will continue thereafter until June 30, 2019 unless extended by mutual consent or terminated as provided below in Sections (4) and (15).

2) ROLES AND RESPONSIBILITIES

a) The Parties shall jointly develop, implement and monitor a Rapid Rehousing (RRH) Program and a Homelessness Prevention Program for homeless families with children.

(1) The City shall reimburse the County for expenses associated with the RRH and Homelessness Prevention Programs in an amount not to exceed \$50,000 through June 30, 2019.

(2) Funding for the RRH Program and Homelessness Prevention Program is contingent on annual appropriations that are approved by the City's Council and the County's Board of Supervisors.

b) The Parties shall each designate a Program Manager to implement the terms of this Agreement and ensure successful implementation of the Program. The City hereby designates the Assistant to the City Manager or his/her designee. The County hereby designates the OSH's Program Manager of Rapid Rehousing and Homelessness Prevention for the County.

c) The City's Program Manager shall:

i) Serve as the liaison to the City's departments, Council, and community groups;

ii) Participate in the development and process of selecting services providers for the Programs, if applicable;

- iii) Participate in management meetings for the Programs, which will be held as needed;
 - iv) Actively assist the development, management and refinement of the Programs to ensure that the Programs meets their goals;
 - v) Review and process all invoices from the County; and
 - vi) Actively assist in the development, management and refinement of the Programs to ensure that the Programs are working in partnership with the faith based community, service providers, City Departments, including the Police and Fire Department to respond to the needs of those who are homeless and interfacing with City Departments on an ongoing basis.
- d) The County's Program Manager shall:
- i) Serve as the liaison to County departments;
 - ii) In addition to managing the Permanent Supportive Housing Program, the County will integrate the Coordinated Entry System (CES) into school-based resources/systems working with school district homeless coordinators to identify families in need. The services will include assessing homeless families into the CES. For families at imminent risk of homelessness, services will include one-time financial assistance. Additionally, to the extent possible the County outreach workers will outreach and provide services to individuals and families living in vehicles including Recreational Vehicles (RV's), both in the City limits and nearby unincorporated areas.
 - iii) Lead in the development, management and refinement of the Program to ensure that the Program meets its goals; and,
 - iv) Submit quarterly reports to the City's Program Manager; and
 - v) Review and submit all invoices from the County.
- e) The Parties will work collaboratively to:
- i) Establish the Programs' referral criteria and procedures, which shall be consistent with the Santa Clara County Continuum of Care's Coordinated Assessment System

(aka Coordinated Entry System) and the City's goal to end homelessness in the City; and

- ii) Establish the Programs' success and outcome measures, which shall be consistent with the Santa Clara County Continuum of Care's Performance Measurement System; and,
 - iii) Identify ways and resources that would enable the Programs to more effectively use County-funded rental subsidies, provide interim housing, or provide other support services.
- f) The Parties will jointly monitor the Programs' expenses and outcomes. Based on the availability of the City's funds in future years and the Program's outcomes, the Parties will determine whether to continue, expand, contract or terminate the Programs at the end of the Term.

3) MUTUAL INDEMNIFICATION

Each Party agrees to indemnify, defend, and hold harmless the other Party from any claim, liability, or loss resulting from the willful, wrongful, or negligent act or omission of the indemnifying Party, its members, officers, directors, trustees, agents or employees for its or their performance or failure to perform provisions of this Agreement. Each Party shall notify the other Party, in writing, of any claim of injury or damage related to activities performed pursuant to this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of activities of this Agreement, provided that nothing shall require either Party to disclose any documents, records, or communications which are protected under the attorney-client privilege or the attorney work product doctrine. The provisions of this section shall survive the termination of this Agreement.

4) TERMINATION

Either Party may terminate this Agreement at any time for convenience and without cause, upon providing a ninety-day (90) notice to the other Party at the addresses set forth in Section (14) below. The notice shall state the effective date of the termination.

5) CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If the City's proprietary information is contained in documents or information submitted to County, and the City claims that such information falls within one

or more CPRA exemptions, the City 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 County will make best efforts to provide notice to the City prior to such disclosure. If the City 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 County is required to respond to the CPRA request. If the City fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

The City further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the City.

6) ASSIGNMENT

The expertise and experience of the County is a material consideration for this Agreement. The County shall not assign or transfer the performance of this Agreement to another entity without the prior written consent of the City. Any attempt by the County to assign its performance of its duties or obligations arising under this Agreement, and any attempt by the City to assign the performance of its duties or obligations arising under this Agreement shall be deemed void.

7) ASSURANCE

Each Party represents and warrants that it has the authority to enter into this Agreement.

8) RELATIONSHIP

Nothing contained in this Agreement shall be deemed or construed by the Parties or any third party to create the relationship of partners or joint ventures between the City and the County.

9) CONFIDENTIALITY

The Parties agree that by virtue of entering into this Agreement they each will have access to certain confidential information regarding the other Party's operations. Each of the Parties shall not disclose confidential information and/or materials without the prior written consent of the other Party, unless such disclosures are required by California law. Where appropriate, resident releases will be secured before confidential resident information is exchanged.

10) ENTIRE AGREEMENT

This instrument contains the entire agreement between the Parties, and no statements, promises or inducements made by either Party or the designated agent of either Party that are not contained in this Agreement shall be valid or binding.

11) MODIFICATION

This Agreement may not be enlarged, modified, or altered, except if it is evidenced in writing, signed by the Parties and endorsed to this Agreement.

12) INSURANCE

Each Party shall, at its own expense, keep in force during the Term, Workers' Compensation Insurance, insuring against and satisfying each Party's obligations and liabilities under the workers' compensation laws of the State of California, including employer's liability insurance in the limits required by the laws of the State of California.

13) SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in force without being impaired or invalidated in any way.

14) NOTICES

Notices to the Parties in connection with this Agreement shall be given personally or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties as follows:

SANTA CLARA COUNTY

Jessica Orozco
County of Santa Clara
3180 Newberry Dr. Ste 150
San Jose, CA, 95118

THE CITY OF MORGAN HILL

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

Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated on the date of delivery.

15) AMENDMENTS

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

16) CONFLICT OF INTEREST

The City shall 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.

17) 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 provided, in writing, and shall apply to the specific instance expressly stated.

18) GOVERNING LAW and 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.

19) 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.

20) 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.

21) 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 caused this Agreement to be entered into as of the day and year of execution of this Agreement.

COUNTY OF SANTA CLARA . . .



S. Joseph Simitian, President

Board of Supervisors

Date: JAN 29 2019

CITY OF MORGAN HILL



Christina Turner

City Manager

Date: 1-8-19

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors:

ATTEST



TIFFANY LENNEAR
ASSISTANT CLERK Board of Supervisors

Date: JAN 29 2019

APPROVED AS TO FORM AND LEGALITY



Tony LoPresti

Deputy County Counsel

Date: 1-11-19

APPROVED AS TO FORM AND LEGALITY



Donald A. Larkin

City Attorney

Date: 1-8-19

ATTACHMENT A
SANTA CLARA COUNTY CONTINUUM OF CARE (CoC) PARTICIPATION REQUIREMENTS

As a provider of housing and/or services for persons experiencing or at risk of homelessness, CONTRACTOR agrees to participate as an active member in the CoC and abide by the CoC's Quality Assurance Standards. In particular, CONTRACTOR shall:

(a) Send representative(s) to CoC Membership meetings, including semi-annual General Membership meetings and relevant CoC Workgroups.

(b) Subscribe to and participate in the CoC's email listservs applicable to CONTRACTOR.

(c) Participate in Santa Clara County's Homeless Management Information System (HMIS), including and not limited to promptly and accurately entering data into HMIS consistent with HUD and County standards for program type and funding source and including the following elements:

(i) Workflow,

(ii) Emergency Shelter Inventory.

(1.1) CONTRACTOR shall report changes in Emergency Shelter inventory capacity to the HMIS System Administrator and County of Santa Clara Office of Supportive Housing.

(d) Ensure all programs and services that receive funds by and through this CONTRACTOR participate in the Santa Clara County Coordinated Entry System (CES) if CES is available for the program or service type, including:

(i) All Emergency Shelter programs shall participate in development of the CES to include Emergency Shelter and fill vacancies through the CES, consistent with CES Policies and Procedures, after such time as the CES is available for Emergency Shelter;

(ii) Specific parameters for eligibility or preference may be aligned with program funding requirements where applicable; and

(iii) Compliance with written CES Policies and Procedures.

(e) Serve as an access point for CES, employing the CES standard assessment tool (currently the VI-SPDAT), promptly entering resulting scores into HMIS (or the equivalent confidential system for victim service providers), and otherwise conducting assessments according to CES Policies and Procedures.

(f) If applicable, achieve outcomes consistent with or exceeding the community benchmarks, updated annually, that shall be established by the CoC's Performance Management Work Group for the program type, including but not limited to:

(i) Percentage of exits to permanent housing destinations,

(ii) Percentage of adults increasing employment income from program entry to program exit,

(iii) Percentage of adults increasing non-employment income from program entry to program exit,

(iv) Percentage of adults increasing total cash income from program entry to program exit,

- (v) Percentage of housed individuals (including children) enrolled in health insurance, and
- (vi) Maximum percentage of individuals that return to homelessness after exiting the program to a permanent housing destination.

Outcomes shall be tracked via HMIS with measurement methodology available from the County of Santa Clara Office of Supportive Housing.

(g) Ensure all programs that receive funds by and through this AGREEMENT expressly provide in written policies that applicants for assistance are not screened out based on the following criteria:

- (i) Having too little or no income;
- (ii) Active, or history of, substance use or a substance use disorder;
- (iii) Having a criminal record (with exceptions for state-mandated restrictions); and
- (iv) History of domestic violence (e.g., lack of a protective order, period of separation from abuser, or law enforcement involvement).

(h) Ensure all programs that receive funds by and through this AGREEMENT expressly provide in written policies that participants are not terminated from the program for the following reasons:

- (i) Failure to participate in supportive services,
- (ii) Failure to make progress on a service plan,
- (iii) Loss of income or failure to improve income,
- (iv) Being a victim of domestic violence, and
- (v) Any other activity not covered in a lease agreement typically found in the project's geographic area.

(i) Comply with all other relevant provisions of the CoC's Quality Assurance Standards that apply to CONTRACTOR or its programs.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 ANNUAL BUDGET TO APPROPRIATE \$50,000 FROM THE HOUSING MITIGATION FUND (236), THEREFORE

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2019-20, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of the City.

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 26th day of June 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ **CERTIFICATION** ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX, adopted by the City Council at the meeting held on June 26, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

039

FUND:

236 Housing Mitigation Fund

DEPARTMENT:

7100 Housing Development

OBJECT:

86441 HOUSING PROGRAMS

AGENDA DATE:

06/26/19

AGENDA ITEM TITLE:

County Agreement Homeless Prevention and Rapid Rehousing

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,716,608	1,613,912	2,297,424	2,033,096
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	1,000,000	1,007,000	(7,000)
RECOMMENDED ACTION	-	-	50,000	(50,000)
RESULT OF RECOMMENDED ACTION	<u>2,716,608</u>	<u>2,613,912</u>	<u>3,354,424</u>	<u>1,976,096</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Michelle Katsuyoshi, Human Resources Director
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Second Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation for 5 years and a not to exceed amount of \$172,220.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The current agreement with ICS has been in effect since June 2016 and 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 their services for two additional years without an increase to their current fees, and another RFP would likely not result in a lower price to the City. Therefore, staff believes that the City is receiving substantial value for a third-party administrator agreement at this dollar level and recommends that Council approve the Second Amendment to Agreement, increasing the contract amount by \$68,760, to a revised not to exceed amount of \$172,220.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended second amendment to the agreement.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the second amendment to the agreement with ICS and direct staff to conduct an RFP and 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, which was subsequently amended for an additional one-year term, pursuant to the City Manager's authority.

FISCAL AND RESOURCE IMPACT:

The second amendment to the agreement would increase the compensation by \$68,760 over a two-year period. Costs for these services are budgeted and paid from the Workers' Compensation Fund (770). (GL#:770.8220.42231).

CEQA (California Environmental Quality Act):

Not a Project.

This is an administrative action that will not result in physical changes in the environment.

LINKS/ATTACHMENTS:

1. ICS Second Amendment to Agreement

SECOND AMENDMENT TO AGREEMENT INNOVATIVE CLAIMS SOLUTIONS, INC.

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

///

///

///

///

///

///

///

///

///

///

///

///

///

///

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:

CITY OF MORGAN HILL

Michelle Bigelow, Deputy City Clerk
 Date: _____

Christina J. Turner, City Manager
 Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney
 Date: _____

INNOVATIVE CLAIMS SOLUTIONS, INC.

Cheryl Westerman

By: Cheryl Westerman
 Title: President & COO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 6/12/19

David L. Allen

By: David L. Allen
 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:

Deputy [Signature]
 City Clerk
 Date: 6/13/18

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

Date: 5-21-2018
[Signature]
 By: GARY ARCHBOLD
 Title: President & CIO
 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.

//

//

//

//

//

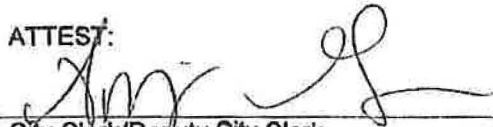
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

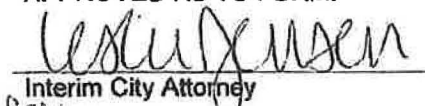
ATTEST:


 City Clerk/Deputy City Clerk

 Michelle Wilson
 Print Name

Date: 6/14/16

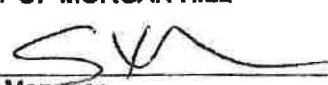
APPROVED AS TO FORM:


 Interim City Attorney

 Gary Baum
 Print Name

Date: 06/14/16

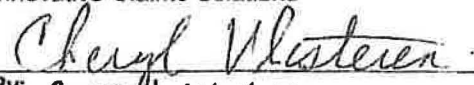
CITY OF MORGAN HILL


 City Manager

Steve Rymer
 Print Name

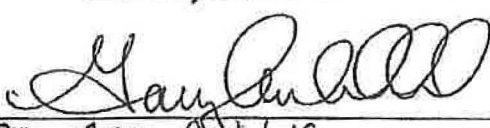
Date: 6/14/16

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 Archibald

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 prepared 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.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Pam van der Leeden, GIS Manager

APPROVED BY: City Manager

APPROVE SMALL GOVERNMENT ENTERPRISE AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI) FOR GIS SOFTWARE LICENSING

RECOMMENDATION(S)

Approve and authorize the City Manager to execute a three-year Small Government Enterprise Agreement with Environmental Systems Research Institute, Inc. (Esri) for GIS software licensing for a total amount of \$105,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Advancing Regional Initiatives

2019 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The purpose of this agreement is to purchase cost-effective software licensing for Geographic Information Systems (GIS) software to be used City-wide. This will allow the new GIS infrastructure to be put in place as part of the GIS Services Project.

What is GIS?

- GIS stands for Geographic Information Systems.
- GIS is rooted in geography and uses specialized software to map anything that has a location, from topography to City zoning to utilities to the location and size of a wildland fire.
- The software company Esri makes the industry standard GIS software called ArcGIS that we use at the City.
- Information is stored in the GIS software as a spatial location, a water pipeline for example, with information about the pipeline, such as diameter, material, age, etc. included in a table that is linked to the location of the pipeline.

- GIS is distinguished from apps like Google Maps and Waze by its ability to overlay layers of information and analyze the relationships between items in those layers.

What is the GIS Services Project?

In 2016, the City conducted a review of Development Services via a consultant, Zucker Systems, to review and recommend improvements to functions, responsibilities, and processes. One of the recommendations was for the City to dedicate resources to maintain and enhance the existing Geographic Information System. Since that time, the City successfully recruited for a GIS Administrator position to improve the City's existing GIS system.

To further build upon the recommendation, staff initiated a GIS Services Project to develop a GIS strategic plan to outline a road map that assesses existing GIS system infrastructure, and designs and implements an Enterprise GIS system. The goal of this project is to create the platform from which we can build out the City's GIS program with spatial data, maps, and applications. Currently, we are not able to support a City-wide Enterprise GIS system due to gaps in infrastructure and technology.

Staff recommended that the City contract with a highly qualified consultant to design a 3 to 5-year GIS strategic plan, assess the existing GIS system infrastructure, and design and implement an Enterprise GIS system. The consultant would also configure and customize an internal web map for the City and provide 2 years of support services. Staff selected Geographic Technologies Group for the GIS Services Project and this agreement was approved by City Council on December 5, 2018.

GIS Service Project Status: The project began in January 2019. To date, the strategic plan is in final review, the system assessment and design is complete (Attachment 1), with system implementation scheduled for end of July of this year. Work on the replacement for the City's internal web map (MHMaps) is also underway. The proposed agreement will allow the City access to the additional software licenses needed to implement the new system.

The proposed system design calls for redundant servers, so that if one fails or needs to be taken down for maintenance, a second server will continue to provide access to GIS software and data. Without the redundant server, the City could experience downtime of up to a day where no GIS products are available to City staff. This represents an unacceptable length of time for critical services to be down, especially in the area of public safety.

In addition, the new system will allow:

- Unlimited ArcGIS Desktop use by staff
- Centralized Enterprise data storage and editing
- New internal web map viewable by staff
- Mobile applications and field data collection on tablets

- Emergency operations mapping and collaboration
- Integration with business applications such as Sedaru (utilities) and Trakit (permitting)
- Open Data shared with the public

This agreement supports the following ongoing priorities as established by the Council:

- Enhancing Public Safety: GIS infrastructure to better support GIS for emergency services.
- Protecting the Environment: System will enable mobile field data collection for Environmental Services projects.
- Supporting our Youth and Seniors and Entire Community: Better GIS integration with City departments will enhance and improve data available
- Fostering a positive organization culture: Increased resources and collaboration possible between City departments.
- Advancing regional initiatives: Will allow the City to fully take advantage of public safety mapping initiatives.

Agreement Specifics: The vendor is Environmental Systems Research Institute, Inc. (Esri), maker of the industry-standard GIS software (ArcGIS) currently in use at the City. This is a three-year agreement for cities of similar population size to Morgan Hill, called a “Small Government Enterprise Agreement”, that allows the City to purchase licensing from Esri for a flat rate yearly fee. It covers unlimited licensing of core Esri products. The agreement will be effective July 1st, 2019 through June 30th, 2022.

The total cost of the agreement is \$105,000 which is billed yearly at \$35,000 per year. Staff determined purchasing of the additional individual licenses necessary on an ad-hoc basis would cost the City approximately \$159,000. Purchasing through this agreement is anticipated to save the City \$54,000 (\$159,000 - \$105,000 = \$54,000). Costs were estimated based on a scaled-back version of the design and the number of desktop licenses currently in use. The agreement will allow the City to implement the full design at the same fixed cost.

This is the first time the City is entering into this type of agreement with Esri, but this is not an unfamiliar vendor. Until now, the City has purchased GIS licenses from Esri on an ad-hoc basis. The new GIS system being implemented requires the purchase of additional GIS Server licenses, which cost \$20,000 each.

The proposed agreement contains three components:

1. Quotation: Esri uses this as the primary agreement. (Attachment 2)
2. Small Enterprise Agreement- sets out the terms and contains the signature page for City signature, Esri does not sign. (Attachment 3)

3. Master Agreement - referenced in the Small Enterprise Agreement, which sets out rights and restrictions of their software and online services. (Attachment 4)

This contract is a standard agreement with Esri and Esri is the only reasonable vendor option. Esri's position in the GIS software market can be compared to Microsoft's dominance in office software applications. ArcGIS software is the industry standard for GIS software in this country. Using the same software as other cities, counties and businesses is efficient and allows the City to easily use and obtain data from outside sources such as the County parcel data and facilitates collaboration.

Because there is no reasonable alternative to this software, City staff requested a quote from Esri for a small government agreement. This is the agreement offered by Esri to provide cost savings for small cities and it cannot be modified. Therefore, staff recommends Council approve the three-year agreement with Esri to procure the necessary GIS software licensing.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended agreement.

ALTERNATIVE ACTIONS:

The City could purchase the additional GIS software licenses needed for the new GIS system from Esri on an ad-hoc basis which would be significantly more expensive and provide fewer products.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

This is a part of the GIS Division's workplan and the agreement amount of \$35,000 for the initial year is included in the current adopted Fiscal Year 2019-20 budget, therefore no additional appropriations are required at this time. Funding for the second and third years will be included in the GIS division's proposed budget for the next biennial budget.

CEQA (California Environmental Quality Act):

Not a Project.

Since the resulting activity is software licensing that will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.

LINKS/ATTACHMENTS:

1. GIS System Design
2. Esri Quote
3. Esri Enterprise Agreement
4. Esri Master Agreement

GIS Architecture Assessment and System Architecture Design

City of Morgan Hill | CA

April 4th, 2019

Attachment: GIS System Design (2362 : Approve Software Licensing Agreement with Esri)

Table of Contents

Introduction	2
Existing System Evaluation	3
Description of Existing GIS.....	3
Network Suitability Analysis	6
Remote and On-site Testing.....	8
Capacity Planning Tool Analysis	10
System Architecture Design.....	13

Introduction

The Geographic Information System (GIS) industry has undergone a rapid, expansive and disruptive transformation in the last decade. The scope of GIS, its technologic capabilities and its ability to integrate with other IT systems and applications has allowed for the true realization of an “enterprise GIS”. In an effort to completely leverage the capabilities of a modern, enterprise GIS, Geographic Technologies Group (GTG) has conducted a GIS Architecture Assessment for the City of Morgan Hill, CA.

A GIS is ultimately a part of an organization’s IT infrastructure and must be designed from the hardware tier up. An organization cannot effectively leverage a GIS if the hardware, software, network and IT resources fail to meet the needs of the organization. An effective GIS is designed at many levels, but the underlying infrastructure will ultimately control whether the system can adequately support the needs of its users.

GTG has reviewed the existing GIS infrastructure of Morgan Hill, gathered information on the current workflows, users and integrations of the system and the resources available to support the City’s GIS. This assessment has produced a representative depiction of how the City’s GIS has been implemented, how it is currently being leveraged and what opportunities exist for strengthening and extending the organization’s GIS.

The technical assessment has been complimented by interviews, documentation reviews and efforts to understand the organization’s goals and vision. This information has been synthesized to create a recommended system architecture design for the City of Morgan Hill. The recommended system architecture contained in this document represents a GIS that will meet the needs of both the current and forecasted needs of the City and provide greater performance, functionality and extensibility.

This document is intended to serve as a technical roadmap for the City of Morgan Hill, offering a clear depiction of the current and recommended GIS for the City. The system architecture design that is contained within this document is recommended based upon GTG’s analysis of the current GIS, analysis of the organization’s IT infrastructure, industry best practices and a review of the organization’s needs, goals and vision.

Existing System Evaluation

GTG has conducted an evaluation and analysis of the current GIS to better understand how the system is being supported, leveraged and integrated. Obtaining information on the current system allows GTG to develop a clear depiction of the state of GIS and to potentially reconcile reported issues with the GIS. Additionally, understanding Morgan Hill's current GIS design and workflows allows GTG to more effectively recommend a system that can properly support its end users and scale with the organization.

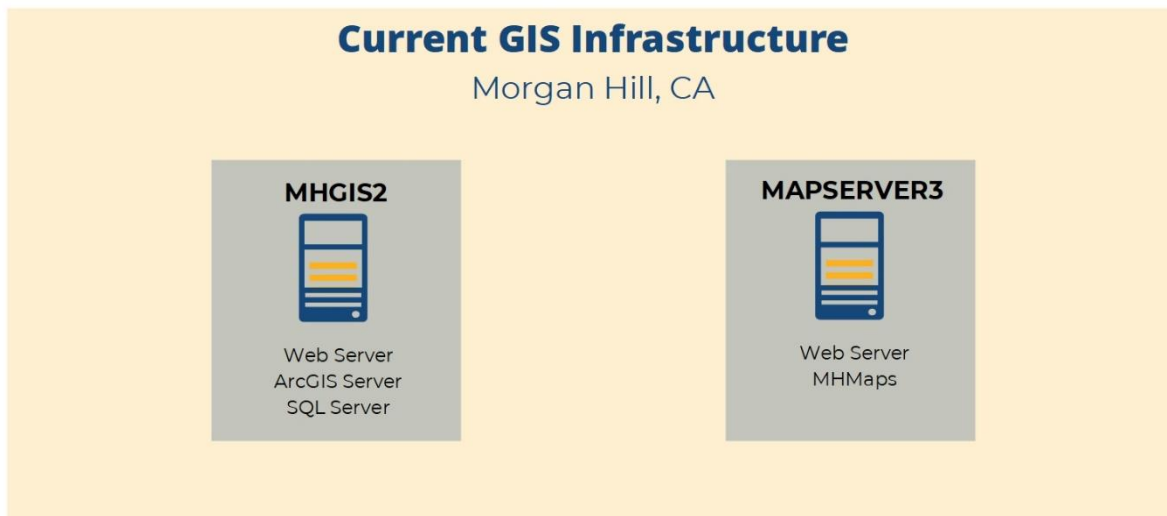
Developing an understanding of the IT infrastructure on which the GIS is deployed is also critical to determining the readiness of the larger IT infrastructure's ability to support a modern, enterprise GIS. Gathering server, networking and resource availability from the IT department is critical to obtaining a complete picture of GIS and its place within the IT ecosystem.

Description of Existing GIS

The City of Morgan Hill currently has a partially-decentralized and mixed-technology GIS implementation. The current GIS is segregated into at least three distinct areas: Administrative Services' GIS, the Police Department's GIS and the GIS supporting the main GIS access-point of the City and Cal Fire, MHMaps. The Administrative Services' and the Police Department both use various components of the Esri technology suite, while the MMaps application is supported by an implementation of OSGeo's MapGuide.

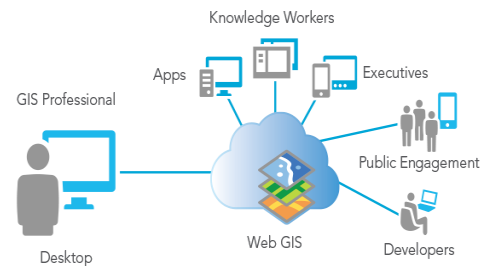
IT currently manages the infrastructure that supports the City's distributed GIS. The current GIS is comprised of two machines: **MHGIS2** - a server running an instance of Microsoft SQL Server 2008 where the Utilities enterprise geodatabase is stored, ArcGIS for Server version 10.0 (ArcGIS Server is not currently being utilized) and is serving as a local web server (a server that has been configured to host and serve web sites or web applications via the intranet or internet). **MAPSERVER3** - houses several custom web applications (including MH Maps) that support both GIS and non-GIS activities of the City.

The basic architecture of the current system is shown below:



The Police Department leverages its own GIS operations in addition to leveraging the available data, services and resources of Administrative Services' GIS. This is required due to privacy, networking and managerial policies. Currently, the Police Department utilizes ArcGIS Online to support their crime analysis operations as it allows staff to manage content with greater control and selective access.

The City's primary GIS application, MHMaps, is an implementation of the open-source web mapping application Mapguide-Maestro. This application allows for web mapping, report generation, spatial analysis and service creation/management and is built to support OSGeo's Mapguide Server and Autodesk's Infrastructure Map Server. The application is primarily supported by an OSGeo MapServer running on the City's web server, the Utilities enterprise geodatabase and a collection of shapefiles on the City's network share. The MHMaps web application is more properly characterized as a standalone web GIS solution, as it maintains its own service and data store architecture outside of the Esri ecosystem.



Currently, the City leverages an Esri geodatabase operating on a Microsoft SQL Server 2008 instance. While on-site, GTG performed several database performance tests. These tests indicated a relatively high query performance and reliability across the network, however, intermittent and unpredictable latency was observed in editing workflows (>6000ms). Also of note, the enterprise geodatabase does not serve as the primary centralized data repository for the City, as shapefiles are stored in multiple locations on the Morgan Hill network, and utilized by staff. Shapefile-centric workflows are common throughout the City and only the Engineering Department, and the GIS Manager currently leverage the full capabilities of the enterprise geodatabase, especially pertaining to data management and multi-user editing. Additionally, metadata within the database is incomplete and non-standardized.



The City's IT network has been documented to support LAN speeds of 1GB to desktop computers and 10GB between buildings and between servers. The City has reported WAN connectivity as 200MB. User reports have indicated that there are inconsistent and unpredictable performance issues for off-site users, however during the on-site user testing and analysis, the network performance for the GIS for all facilities was performant and issues with speed or functionality were not observed or reproduced.

The City's GIS is primarily accessed through MHMaps, ArcGIS Desktop and ArcGIS Online with the heaviest user-base leveraging the MHMaps application. The City's potential GIS user-base is estimated to be around 300 users, the vast majority of which only interact with the City's GIS via the MHMaps interface. The standard PC/laptop specs (i3/i5/i7 processor, 6GB-16GB RAM, 512 GB storage) of these users are adequately resourced for web GIS utilization. ArcGIS Desktop users have adequately resourced machines (the 4 power user machines in use; i7-7700k processor, 64GB RAM, 512 GB storage) to support both ArcGIS Desktop and ArcGIS Pro.

Network Suitability Analysis

The City of Morgan Hill's staff are distributed among several campuses:

- Civic Center
- Aquatic Center
- Centennial Recreation Center
- Community Cultural Center
- Corp Yard
- Police Department Campus
- Cal Fire – Monterey Road

The campuses are connected by 10GB fiber lines to support strong and consistent network performance. These connections are currently leveraged through a contract with a fiber provider and the lease is currently being re-evaluated by the City of Morgan Hill. These connection speeds may change in the future if the City decides to modify the existing contract or lease fiber from a new provider.

As indicated in the above section, Morgan Hill's current LAN speeds are reported at 1GB to desktop workstations and its WAN speeds are reported at 200MB.

In order to evaluate the current capacity of Morgan Hill's infrastructure to support its desired GIS operations, GTG has conducted a network analysis of the City using the information provided to GTG and that has been obtained through remote and on-site testing efforts. The network analysis is based on hypothetical peak utilization conditions and was run with the following assumptions and under the following constraints:

- The analysis will be run against hypothetical peak utilization conditions;
- The City's total GIS user base is 324 users;

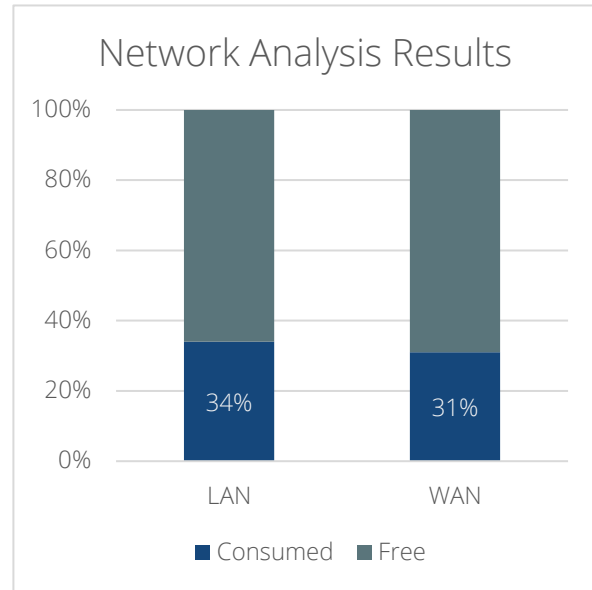
Requirements Analysis									
Workflow Label	Types of Workflows				User Environment				Network
	<Name>	Standard	Peak Concurrent Users	Client per Client	DPM/TPM	Total	Network Mbps	Mbps Data (TPH)	%Cap
LAN Local Clients									
S DeskEdit	S DeskEdit_ArcGIS Desktop Editor	7	3	10.00	100	65,000	DB (6,000)	39,000	
S DeskView	S DeskView_ArcGIS Desktop Viewer	22	22	10.00	440	190,867	DB (28,400)	26,000	
S WebMap	S WebMap_Web Mapping Service	275	275	6.00	3,300	110,000	DB (198,000)	2,000	
WAN Clients									
R1 Remote Site 1									
S CitrxEdit	S CitrxEdit_Remote ArcGIS Desktop Editor	3	3	10.00	60	7,500	DB (3,000)	7,500	
S CitrxView	S CitrxView_Remote ArcGIS Desktop Viewer	8	8	10.00	160	13,867	DB (9)	5,200	
S WebMap	S WebMap_Web Mapping Service	49	50	6.00	594	19,800	DB (55,640)	2,000	
Internet Clients									
R2 Remote Site 2									
S CitrxEdit	S CitrxEdit_Remote ArcGIS Desktop Editor						DB (9)	7,500	
S CitrxView	S CitrxView_Remote ArcGIS Desktop Viewer						DB (9)	5,200	
S WebMap	S WebMap_Web Mapping Service						DB (9)	2,000	
Total Throughput									
Background Traffic			364	361					
Client			Intel Core i5-2500 4 core (1 chip) 3300 Mhz		Intel	Cores = 4	121.0	30.3/Cores	Siloed Machine
4 Tier			Windows Selected Platforms		AGS License 16 Core		Default Availability = Minimum		

- Of those 324 users, 300 use GIS through the MHMaps application;
- Of those 324 users, 40 access GIS resources through a desktop GIS client such as ArcMap, ArcCatalog or ArcGIS Pro;
- Of those 40 users, 10 of the desktop users are considered 'power users' who conduct editing and intensive analysis;
- The City's desktop GIS user community are all using the appropriate GIS workstations (i7-7700k processor, 64GB RAM, 512 GB storage) and not the typical City workstations (i3 /i5 /i7 processor, 6GB-16GB RAM, 512GB storage);
- The City's network consistently delivers the reported speeds;
- The City's MapGuide Server exhibits similar resource consumption and capacity-thresholds to that of ArcGIS for Server; and
- The consumption of shapefiles/data through file-shares is equally performant and resource-intensive as consuming features/data via an enterprise geodatabase by the MHMaps application.

These assumptions, along with the network, machine, user and workflow data provided by the City were analyzed with Esri's Capacity Planning Tool's (CPT) Network Analysis to evaluate the current network's ability to support its user base. The resultant analysis indicates that:

- The network currently has the capacity to support the current GIS user-base of the City;
- At peak utilization, GIS operations can consume up to 34% of the LAN's bandwidth through the use of MHMaps at capacity, the consumption of operationally intensive ArcGIS for Server services, ArcGIS Desktop power-usage and application-mediated editing of tables in the enterprise geodatabase; and
- At peak utilization, GIS operations can consume up to 31% of the WAN's bandwidth under the same conditions.

The current network provides sufficient bandwidth and resources to support the system's efficient operation. However, the assumption that shapefiles/data perform equally as well from a performance and resource-consumption perspective is a major assumption of the analysis. Measured performance while on-site indicates disparities between these two workflows with shapefiles/data accessed through the MHMaps platform consistently underperforming relative to features/data accessed through an enterprise geodatabase.



While the current network capacity is sufficient, the current GIS architecture at the City has the potential to cause system issues that could create conditions symptomatic of network problems. The current web server (MAPSERVER3) is serving as both an organizational web server and an organizational application server, resulting in possible competition for the machine's resources.

Remote and On-site Testing

In addition to network capacity testing, GTG also engaged in both on-site and remote testing activities. These activities included:

- Network Traffic Monitoring;
- Network Performance and Latency Testing;
- Database Trace and Performance Monitoring;
- Preliminary Data Review;
- Load Testing; and an
- Application Under Test (AUT) Evaluation

A summary of on-site user testing was performed as follows:

Test	Location	Date	Time Slot
GIS Server and Database Testing	Council Chambers	1/28/2019	9:30am - 12:00pm
Pam van der Leeden	Council Chambers	1/28/2019	1:00pm - 2:00pm
Mark Rauscher	City Hall	1/28/2019	2:00pm - 5:00pm
John Lang	City Hall	1/28/2019	2:00pm - 5:00pm
Elizabeth Bassett	City Hall	1/28/2019	2:00pm - 5:00pm
Ruben Matuk	Corp Yard	1/29/2019	8:00am - 11:00am
Clint Byrum	Corp Yard	1/29/2019	8:00am - 11:00am
Inga Alonzo	Corp Yard	1/29/2019	8:00am - 11:00am
Tom Neff	Corp Yard	1/29/2019	8:00am - 11:00am
Tina Rodriguez	Corp Yard	1/29/2019	8:00am - 11:00am
Training PC	Corp Yard Service Building	1/29/2019	8:00am - 11:00am
Tanya Carothers	Council Chambers	1/29/2019	11:00am - 12:00pm
Jim Crawford	CalFire - Monterey Rd.	1/29/2019	1:00pm - 2:00pm
Margarita Balagso	Police Department Campus	1/29/2019	2:00pm - 4:00pm
Idalia Echegoyen	Police Department Campus	1/29/2019	2:00pm - 4:00pm
Emergency Operations Center GIS Laptop	Police Department Campus	1/29/2019	2:00pm - 4:00pm
Mark Rauscher - GIS Editing Test	City Hall	1/29/2019	4:30pm - 5:00pm
John Henry	City Hall	1/30/2019	8:00am - 10:30am
Joey Dinh	City Hall	1/30/2019	8:00am - 10:30am
Rich Buikema	City Hall	1/30/2019	8:00am - 10:30am
Mark Rauscher - GIS Editing Test	City Hall	1/30/2019	10:30am - 11:00am

The results of these tests, respectively, indicate the following:

- The current web-server (MAPSERVER3) remains the busiest/nosiest server in Morgan Hill's GIS as both a client (machine issuing requests) and a server (machine serving requests). Additionally, local traffic on the web/application server (MHGIS2) indicated regular errors relating to the SMTP Service, Sophos Antivirus and configuration corruption of Windows services;
- Network performance reasonably and consistently measured close to the performance speeds that were provided by Morgan Hill's IT staff;
- The organization's enterprise geodatabase performed consistently well during our tests. The service accounts "sa," "sde" and "helpdesk" issued the vast majority of requests (>95%) across all testing periods. Intermittent latency was observed on updating/editing statements (>6000ms), but no pattern was identified;

- Currently, there is no complete catalog of data, metadata or data-dependencies for Morgan Hill. This presents an issue for centralizing and standardizing the organization's data into a managed, relational database;
- Load tests indicate that the major bottlenecks occur at the web server level due to competing resources, blocking operations (a computer process that is blocked is one that is waiting for some event, such as a resource becoming available or the completion of an input/output operation) and/or the MHMaps application's underlying methods; and
- The AUT evaluation indicated differences in behavior between browsers (Google Chrome, Firefox, and IE 9+) in the MHMaps application, browser-specific security flags and ADA non-compliance in the application's build.

These results indicate the need for a centralized, standardized and modern GIS that properly implements the concept of separation of functions.

Capacity Planning Tool Analysis

In addition to the conducting network analysis, GTG also completed a Capacity Planning Tool Analysis (CTP) analysis of the current GIS to provide greater insight into the current system, its limitations and what the City of Morgan Hill needs in order to support its current and future users. This analysis was conducted under the following assumptions and constraints:

- The current user-base of the City is 324;
- The forecasted user-base of the City in five years will be 360. This value was determined in direct proportion to the City's annual population growth (~2%);
- The City's Police department requires its own implementation to meet its security and business; and
- The City's network speeds for both its LAN and WAN will not be reduced.

The CTP analysis indicated that, while the network is sufficient to support the user-base, the architecture of the GIS cannot adequately support the organization. The organization's application tier is operating over capacity (~ 107% - 119%) as the organization's web server is also serving as the organization's primary application server to support the MHMaps application. The machine currently exhibits intermittent behavior, competition for resources and the underlying architecture of the MapGuide Server conflicts with industry best practices

in its current implementation. It is possible that the results of this analysis are the cause of the reported MHMaps performance issues.

The CPT analysis reported a significant disparity in desktop performance when connecting directly to a geodatabase compared to connecting to an ArcGIS Server web service that was built using the same data. This disparity was observed for users accessing the resources via LAN and WAN. The analysis also demonstrated that the continued development of services in this deployment disproportionately affects application performance. As illustrated in the graphs in figure 1, by adding an additional five users, the service-mediated performance increases in load time from about three seconds to over six seconds due to the competition for resources at the application level.

For the City of Morgan Hill to adequately support its current and future user-base and their workflows in an enterprise GIS, the results of the CTP analysis recommend the City's GIS be supported by:

- Xeon Gold 5122 8-Core 3600MHz Processor;
- 64 CPU Cores; and
- 128 GB of RAM.

These resources are organized across multiple servers comprising an implementation of Esri's Web GIS. This system is designed to support 350 - 450 users, the majority of which leverage the GIS resources through web applications or through web services.





Xeon Gold 5122 8-Core 3600MHz processors are priced at ~\$1200, so the total cost associated with purchasing the processors for the system would be approximately \$10,000. However, organizations have their own pricing models that can more accurately reflect the true cost. Additional licenses for SQL Server, ArcGIS Desktop, ArcGIS for Server and Portal for ArcGIS are required for this implementation as well.

The City of Morgan Hill currently has VMs with Xeon E5-2680v4 2.40GHz processors. While GTG recommends the Xeon Gold 5122 8-Core 3600MHz processors, the existing Xeon E5-2680v4 2.40GHz processors the City has can be substituted and will serve the City's Enterprise GIS well for the foreseeable future. GTG recommends that the City consider replacing the Enterprise GIS hardware on a 5-year cadence to ensure quality system performance.

System Architecture Design

GTG is committed to designing and delivering an enterprise GIS architecture based upon the user and business needs already documented by the City of Morgan Hill's GIS Manager and by GTG in the Strategic Plan. The system will provide the opportunity for integrations with other enterprise systems (such as TRAKiT and Sedaru) and extensions at both the enterprise and departmental levels.

The recommended design will support the key requirements identified by the GIS Manager and by GTG staff in our meetings with the Morgan Hill teams. These requirements are:

- A highly available or redundant server architecture;
- ArcGIS Desktop's availability for users across buildings;
- A centralized, enterprise data storage and editing environment;
- A separate and secure GIS system for the Police department;
- Internally available Web Maps/Apps for all City staff to access;
- A public ArcGIS Online organization to support mobile applications, field data collection on tablets, using Collector or Survey 123;
- The ability to rapidly deploy emergency mapping solutions;
- The ability to integrate with existing or future business or IT systems.

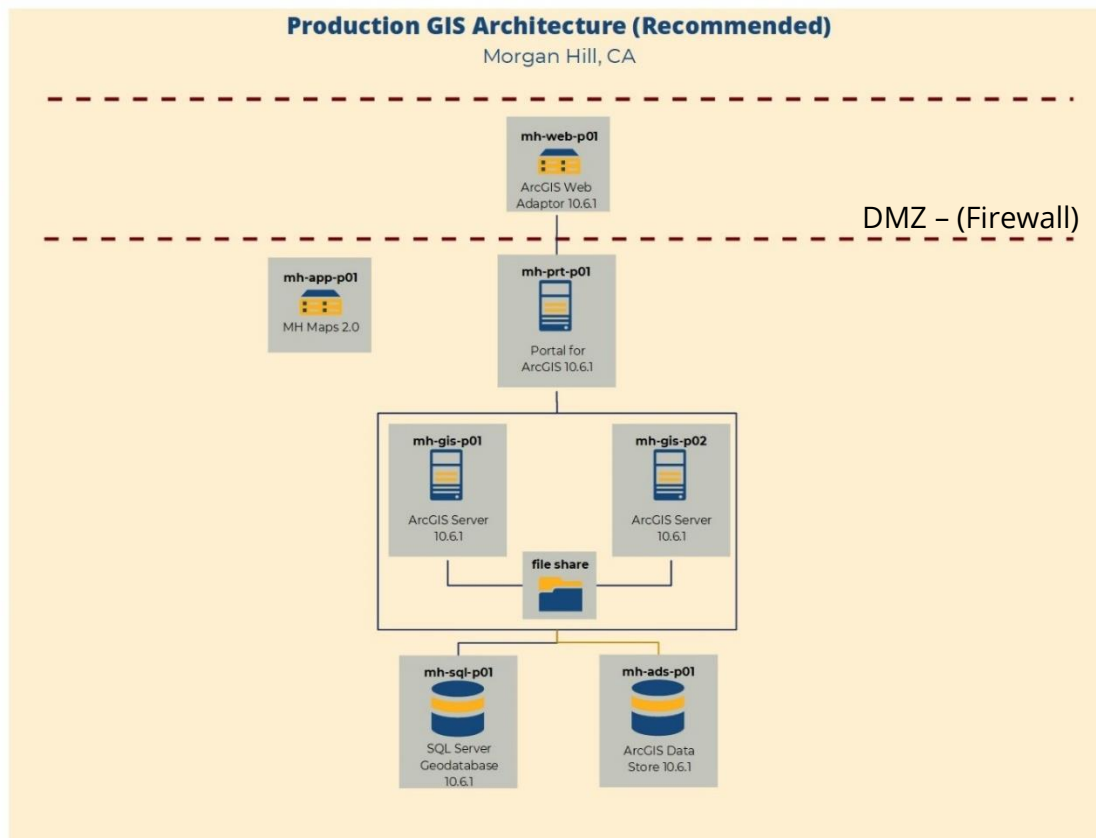
To meet these organizational goals and to provide infrastructural stability and performance to the organization, GTG recommends the implementation of an on-premises Web GIS and for the use of ArcGIS Online. This hybrid deployment model leverages the internal organization's infrastructure for core GIS support, but also provides the ability to engage with the public, selectively expose and secure data and scale efficiently.

The internal Web GIS consists of:

- a dedicated, primary database server running SQL Server;
- a managed database server running ArcGIS Data Store;
- two application servers running ArcGIS for Server;
- an application server running Portal for ArcGIS;
- a web server dedicated to the ArcGIS Enterprise Web Adaptors;
- and an additional web server supporting custom, internal applications.

These components are organized into a federated Web GIS deployment that allows for the continual extension and expansion of the City's GIS.

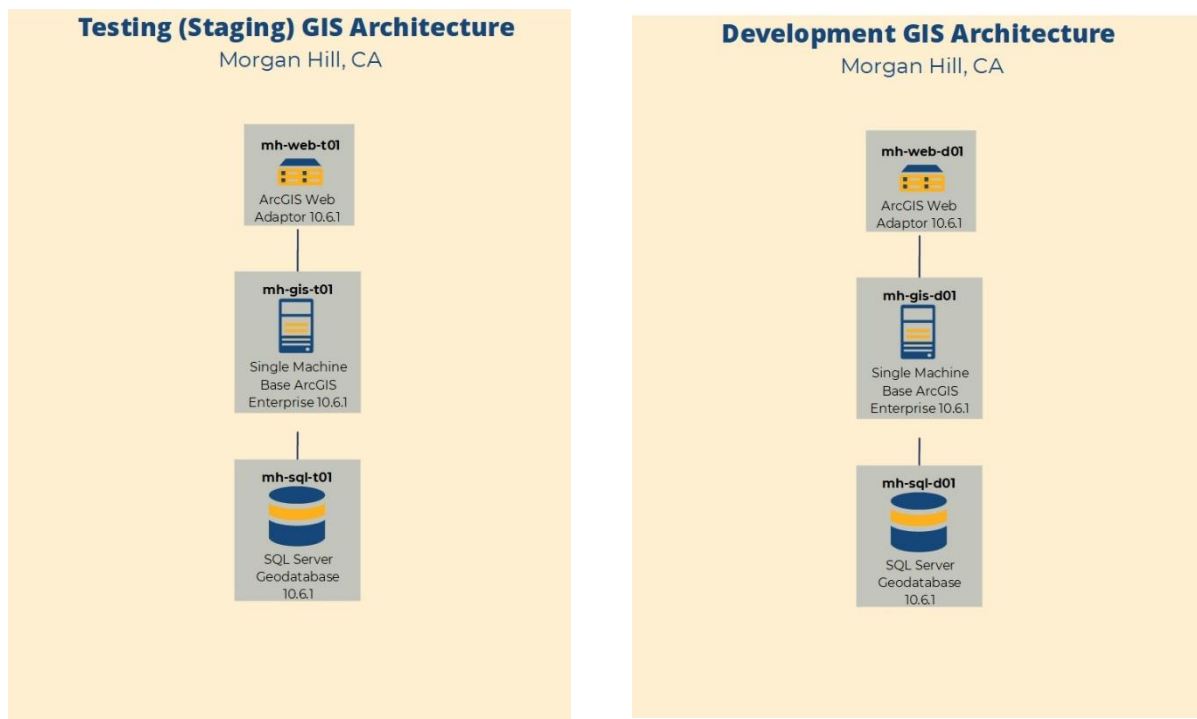
The recommended architecture shown below is for the production environment. This enterprise GIS design will require the City to acquire additional Esri software licensing prior to implementing. GTG recommends that the City acquire an EA licensing agreement from Esri to accommodate this need (see the Licensing Analysis section in the Strategic Plan for details).



Machine Name	Function	Software	CPU	RAM
mh-sql-p01	Database	SQL Server, ArcGIS License Manager	4 x Xeon Gold 5122 (16 Cores)	32 GB
mh-ads-p01	Database	ArcGIS Data Store	2 x Xeon Gold 5122 (8 Cores)	16 GB
mh-gis-p01	App Server	ArcGIS for Server	3 x Xeon Gold 5122 (12 Cores)	24 GB
mh-gis-p02	App Server	ArcGIS for Server	3 x Xeon Gold 5122 (12 Cores)	24 GB
mh-prt-p01	App Server	Portal for ArcGIS	2 x Xeon Gold 5122 (8 Cores)	16 GB
mh-web-p01	Web Server	IIS, ArcGIS Web Adaptor	1 x Xeon Gold 5122 (4 Cores)	8 GB
mh-app-p01	Web Server	IIS, MH Maps 2.0	1 x Xeon Gold 5122 (4 Cores)	8 GB

Although outside the current GIS implementation scope of this project, GTG also recommends developing a development and testing (staging) environment to provide greater stability and reliability in the City's GIS ecosystem.

The recommended development and testing (staging) environments are also diagrammed below. GTG strongly recommends implementing development and testing (staging) environments to prevent outages, streamline and structure the upgrade process and conform with industry best practices.



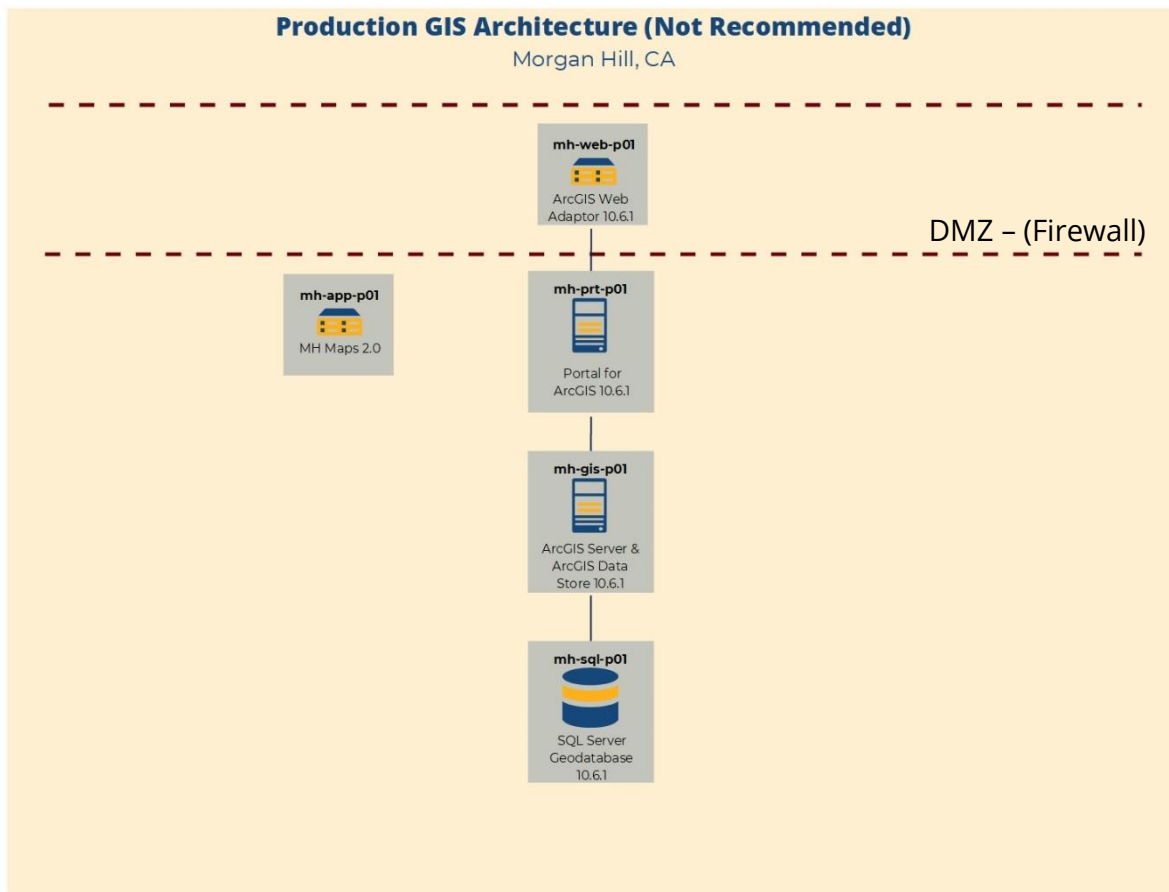
For the Morgan Hill Police Department, GTG recommends investing in a separate ArcGIS Online organization that is separate from Morgan Hill's ArcGIS Online organization. Multiple ArcGIS Online sites can be deployed separately for an organization, allowing teams, departments or partners to fit into their parent organization's licensing agreement, but providing full control over the content, users and security within their own ArcGIS Online site.

ArcGIS Online is FEDRAMP certified, guaranteeing data security, industry-leading encryption methods and best-practice processes for information security. ArcGIS Online also supports many authentication systems, including AD-integration, SAML authentication, OAuth2 tokenization and customized roles and permissions. Given the department's familiarity with

the platform, the security advantages and the SLAs in place to guarantee system uptime, GTG recommends that Morgan Hill deploy another ArcGIS Online site within their organization that is dedicated to supporting Police operations.

GTG recommends that Morgan Hill provide CalFire staff at the Monterey Rd fire station VPN access to the Morgan Hill network in order to provide access to the new MH Maps web application. This will allow CalFire staff to leverage the GIS data and web tools in the application securely. It is also recommended that the City provide CalFire a named user account to the City's ArcGIS Online organization to allow for sharing and collaborating with GIS data.

GTG is also providing the City a fallback or alternative architecture that simplifies the design at the expense of functional separation and redundancy. GTG strongly recommends implementing the production environment detailed above, but if the recommended deployment is cost-prohibitive, will require too much administrative overhead or is perceived as too complex, GTG has provided the alternative or fallback design below.



Machine Name	Function	Software	CPU	RAM
mh-sql-p01	Database	SQL Server, ArcGIS License Manager	4 x Xeon Gold 5122 (16 Cores)	32 GB
mh-gis-p01	App Server	ArcGIS for Server, ArcGIS Data Store	4 x Xeon Gold 5122 (16 Cores)	32 GB
mh-prt-p01	App Server	Portal for ArcGIS	3 x Xeon Gold 5122 (12 Cores)	24 GB
mh-web-p01	Web Server	IIS, ArcGIS Web Adaptor	1 x Xeon Gold 5122 (4 Cores)	8 GB
mh-app-p01	Web Server	IIS, MH Maps 2.0	1 x Xeon Gold 5122 (4 Cores)	8 GB

The components of this system are detailed in the table above. As can be seen, the deployment is considerably simpler with a much larger application-tier machine. This implementation loses the redundancy, separation of functions and high-availability components of the recommended system. Additionally, this system has a single-point of complete failure; if the application server is having an issue, the GIS will be non-functional. Lastly, this implementation has a smaller capacity and can support a user base of 300 – 350.

GTG recommends that the City of Morgan Hill implement the robust architecture GIS design outlined in this section along with both a development and testing environment (development and test environments are not currently scoped for implementation during this project). The enterprise GIS will meet the current and forecasted needs of Morgan Hill, allow for subsequent development and extension, adapt to future needs, offer redundancy and conform with industry best practices. The recommended system will scale efficiently, isolate potential points-of-failure and provide performant GIS services to the organization.

**Quotation # 20549596****Date:** April 23, 2019**Customer # 391960 Contract #**City of Morgan Hill
GIS Dept
17575 Peak Ave
Morgan Hill, CA 95037-4128**ATTENTION:** Pam van der Leeden**PHONE:** (669) 253-4330**FAX:****Environmental Systems Research Institute, Inc.**
380 New York St
Redlands, CA 92373-8100
Phone: 909-793-2853 Fax: 909-307-3049
DUNS Number: 06-313-4175 CAGE Code: 0AMS3***To expedite your order, please attach a copy of
this quotation to your purchase order.******Quote is valid from: 04/23/2019 To: 07/22/2019***

Material	Qty	Description	Unit Price	Tot
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement - Year 1	35,000.00	35,000.0
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement - Year 2	35,000.00	35,000.0
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement - Year 3	35,000.00	35,000.0
			Item Total:	105,000.0
			Subtotal:	105,000.0
			Sales Tax:	0.0
			Estimated Shipping & Handling(2 Day Delivery) :	0.0
			Contract Pricing Adjust:	0.0
			Total:	\$105,000.0

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Crystal Dorn**Email:** cdorn@esri.com**Phone:** (909) 793-2853 x1027

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://assets.esri.com/content/dam/esrisites/media/legal/ma-full/ma-full.pdf> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

If sending remittance, please address to: Esri, P.O. Box 741076, Los Angeles, CA 90074-1076

Esri Use Only:

Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____



SMALL ENTERPRISE AGREEMENT COUNTY AND MUNICIPALITY GOVERNMENT (E214-2)

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Uncapped Quantities**Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical
 Analyst, ArcGIS Publisher, ArcGIS Network
 Analyst, ArcGIS Schematics, ArcGIS Workflow
 Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise and Workgroup
 (Advanced and Standard)
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical
 Analyst, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase
 Update, ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime (Standard)
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS
 Developer*
 Two (2) Esri CityEngine Advanced Single Use
 Licenses
 100 ArcGIS Online Viewers
 100 ArcGIS Online Creators
 17,500 ArcGIS Online Service Credits
 100 ArcGIS Enterprise Creators
 3 Insights for ArcGIS for use with ArcGIS Enterprise
 3 Insights for ArcGIS for use with ArcGIS Online

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	3
Number of Tier 1 Help Desk individuals authorized to call Esri	3
Maximum number of sets of backup media, if requested**	2
Self-Paced e-Learning	Uncapped
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package)	

* Maintenance is not provided for these items

**Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("Effective Date").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

City of Morgan Hill
(Customer)

By: _____
Authorized Signature

Printed Name: Christina Turner

Title: City Manager

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: Pam van der Leeden

Telephone: 669-253-4330

Address: City of Morgan Hill
17575 Peak Ave.

Fax: _____

City, State, Postal Code: Morgan Hill, CA

E-mail: pam.vanderleeden@
morganhill.ca.gov

Country: U.S.A. 95037

Quotation Number (if applicable): 20549596

APPROVED AS TO FORM:

Cynthia Hasson
Cynthia Hasson, Assistant City Attorney

Attachment: Esri Enterprise Agreement (2362 : Approve Software Licensing Agreement with Esri)

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <http://www.esri.com/legal/software-license> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if

Customer is unable to secure funding through the legislative or governing body's approval process.

- 3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

- 4.1 Future Updates.** Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

- 4.2 Product Life Cycle.** During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <http://support.esri.com/en/content/productlifecycles>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <http://www.esri.com/legal>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee before the annual anniversary date for each year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri's federal ID number is 95-2775-732.

- c. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer

the Products to Customer or uninstall, remove, and destroy all copies of the Products.

- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

Master Agreement Products and Services



Revised 10/12/2018
IMPORTANT—READ CAREFULLY

Unless superseded by a signed license agreement between you and Esri, Esri is willing to provide Esri Offerings and Services to you only if you accept all terms and conditions contained in this Agreement as the sole and final agreement of the parties regarding your acquisition of these Esri Offerings and Services. Please read the terms and conditions carefully. You may not use the Esri Offerings unless you agree to the terms and conditions of the Agreement. Your access and use of Esri Offerings, or Services, constitutes your acceptance of the terms and conditions of this Agreement. If you do not agree, contact your local sales representative prior to making your purchase.

This Master Agreement ("**Agreement**") is between you ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [Customer will insert the actual copyright date(s) from the source materials.] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

2.0 SOFTWARE AND ONLINE SERVICES

2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. "**Anonymous Users**" means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.

- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- d. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- e. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- f. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- g. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- h. **"Dual Use License"** means the right to install Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
- i. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- j. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- k. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- l. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- m. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- n. **"Redistribution License"** means a license to reproduce and distribute Software provided that
 1. Customer reproduces and distributes the Software in its entirety;
 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 3. Customer reproduces all copyright and trademark attributions and notices; and
 4. Customer does not charge a fee to others for the use of the Software.
- o. **"Server License"** means a license to install and use Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- p. **"Service Credit(s)"** means a unit of exchange for consumption of services that can be used with an Online Services Subscription.
- q. **"Sharing Tools"** means publishing capabilities included with Online Services that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- r. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- s. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Software Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

2.3 Software Terms of Use

- a. Customer may
 1. Install, access, or store Software and Data on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use.
 4. Move Software in the licensed configuration to a replacement computer;
 5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
 6. Use server Software for Commercial ASP Use only if Customer has procured a Commercial ASP Use license or is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
- c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
- d. Esri publishes Product-specific Software terms of use at <http://www.esri.com/legal/scope-of-use>.

2.4 Online Services Terms of Use

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <http://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in Attachment B.
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools or Online Services, Customer Content, ArcGIS Website, Documentation, or related materials. Customer's use of Sharing Tools is at Customer's sole risk.
- d. **Limits on Use of Online Services, Service Credits.** Each Online Services Subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75 percent of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

2.5 Named User Licenses. The following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

b. Value-Added Applications

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer's private data or content must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services, content, or data that has been published for shared access by Anonymous Users through the use of Sharing Tools included with Customer's authorized use of Software or Online Services.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer's private data or content. Value-Added Applications that enable access to Customer's private data or content must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

- c. Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services, content, or data that has been published for shared access through the use of Sharing Tools included with Customer's authorized use of Software or Online Services.

2.6 Limited-Use Programs

- a. Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
- c. Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
- d. Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

3.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online basemap services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

3.2 Permitted Uses

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups) for use in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Esri does not acquire any rights in Customer Content under this Agreement.

3.3 Use Restrictions

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
 - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 - 2. Synchronized multivehicle routing; or
 - 3. Synchronized route optimization.
- e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses:* If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Esri MapStudio Data.* Customer may create, publicly display, and distribute maps in hard-copy or static electronic format for news-reporting purposes only.

- h. *Michael Bauer Research International Boundaries Data ("MBR Data")*. Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

3.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

4.0 MAINTENANCE

4.1 US Customers. Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

4.2 Customers outside the United States. Customer may obtain maintenance services from their local Esri distributor under the distributor's own standard support policy.

5.0 PROFESSIONAL SERVICES

5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Invention(s)"** means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
- b. **"Inventor(s)"** means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.
- c. **"Professional Service Package(s)"** means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.

5.2 Permitted Uses. Customer may use, copy, and modify Deliverables solely in conjunction with Customer's authorized use of Products.

5.3 Task Orders and Project Schedule

- a. Esri will provide Professional Services and Deliverables as specified in the Task Order.
- b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.
- c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.
- d. Each party will identify, in writing, the project manager who is responsible for Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.
- e. Other than pricing and descriptions of Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order take precedence over conflicting terms in this Agreement.

5.4 Ownership of Deliverables and Inventions

- a. Esri or its licensors own and retain ownership of Deliverables.
- b. Each party will retain title to any Inventions made or conceived solely by its Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement. The parties will jointly own any Inventions made or conceived jointly by Inventors from both parties.
- c. The parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such Invention.

5.5 Acceptance

- a. **For Firm Fixed Price Task Orders.** Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:
1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
 2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1 or a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2 or a.3, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

- b. **For Task Orders with Professional Service Packages.** Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.
- c. **For Time and Materials Task Orders.** Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

5.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of Attachment B.

5.7 Changes. The parties may make changes within the general scope of a Task Order by mutual agreement. To document any agreed-to scope changes within the general scope of the Task Order that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

5.8 Customer Termination for Convenience. Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

5.9 Payment; Invoices

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total

labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.

c. For Time and Materials Task Orders

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

5.10 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

6.0 ESRI MANAGED CLOUD SERVICES

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"EMCS Environment"** means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services (EMCS).
- b. **"Hosting"** means the business of housing and making accessible Customer Content via the Internet.

6.2 Provision of EMCS

- a. **General Terms.** Use of EMCS is subject to the Cloud Services terms found in Attachment B of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the EMCS to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment. This paragraph does not apply to EMCS provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement).
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.

- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

7.0 TRAINING

7.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
- c. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- d. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- e. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- f. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day training price throughout the Term of the Training Pass.

7.2 Permitted and Prohibited Uses

- a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the Training course for which the Training Materials are provided.
- b. Customer may reproduce copies of Training Materials for registered Students.
- c. Customer may not and may not permit any Student to (i) separate the component parts of Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

7.3 Esri's Responsibilities

Esri will

- a. Provide an instructor qualified to conduct Training;
- b. Provide all necessary Training Materials for Student; and
- c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date. Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

7.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations in Esri site classes with payment method information at least 15 business days before the scheduled start date;
- d. Provide the Esri Training Event Assistant with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;
- e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
- h. If the Esri Mobile Lab is used, Customer will
 1. Take delivery of the Esri Mobile Lab from the shipping agent, and keep it in a secure, locked area at all times;
 2. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the shipment; and
 3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession.

7.5 Student Registration and Training Event Change Policy

- a. Customer will provide advance written notice to Esri Customer Service at service@esri.com to reschedule or cancel any Esri Training Event or to substitute a student in a scheduled Esri Training Event.
- b. A replacement Student must be from the same Customer organization as the Student being replaced.
- c. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.
- d. If Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, Customer will be liable for the full Esri Training Event fee.
- e. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Esri Training Event without incurring any liability.
- f. *Termination of Agreement.* Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Esri Training Event, subject to the terms and conditions of this Agreement.

7.6 Invoicing; Prepaid Fees

- a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.
- b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume Training days. For a multiyear order, Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
- c. Training Pass redemption rates are described at <https://www.esri.com/training/training-for-organizations/>.

This paragraph does not apply to Training provided under the Advantage Program.

8.0 ADVANTAGE PROGRAM

8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
- b. **"Advantage Program"** means either the BPAP or the EEAP.
- c. **"Authorized Contact"** means Customer's point of contact for the Advantage Program identified below.
- d. **"BPAP"** means the Business Partner Advantage Program as described at www.esri.com/partners/bpap/components.
- e. **"EEAP"** means the Esri Enterprise Advantage Program as described at www.esri.com/services/eeap/components.
- f. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, EMCS, or related travel expenses as described below.
- g. **"Premium Support Services"** or **"PSS"** means a prioritized incident management and technical support program further described at <http://support.esri.com/en/support/premium>.
- h. **"Technical Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services comprising advising Customer on GIS strategies, facilitating annual account planning, and developing and coordinating a collaborative technical work plan under the Advantage Program.

8.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis allowing access to Professional Services, Training, PSS, and EMCS offerings that provide Customer with the flexibility to select the offerings that best meet its needs with guidance from Technical Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

- a. **Technical Advisor.** Customer will receive up to the number of Technical Advisor hours ordered. Customer may elect to retain additional Technical Advisor hours for a supplemental price.
- b. **Annual Account Planning Session.** A 1-day annual account planning and review meeting is included.
- c. **Technical Work Plan.** A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, EMCS, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the BPAP or EEAP website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.
- e. **Quarterly Technology Webcast.** Esri will provide an email invitation to the Authorized Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.
- f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

8.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact.

(to be completed by Customer):

Contact Name: _____

Telephone: _____

Address: _____

City, State, ZIP: _____

Email: _____

Fax: _____

8.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

8.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

8.6 Activity Descriptions for EMCS. The Activity Description for EMCS orders must include the following:

- a. **The EMCS Term**—The time period in which Esri provides the EMCS to Customer. The EMCS term does not begin until setup and deployment of the data and application are complete.
- b. **Targeted System Availability**—The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all EMCS offerings include a Targeted System Availability.
- c. **Number of Anticipated Requests**—A The number of requests made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the EMCS Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. **Amount of Data Storage**—The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
- e. **Learning and Services Credits Consumption**—The price for the EMCS in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

8.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Customer will use Learning and Services Credits for travel and per diem expenses.

8.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all its Learning and Services Credits.

8.9 Review of Proposed Activities. Any activities proposed to be completed under the Advantage Program will be subject to Esri's review and approval to ensure alignment with the intent of the program.

8.10 Invoicing

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Technical Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Technical Advisor services upon receipt of Customer's order.
- b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

8.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

- a. Services will end as of the expiration or termination date stated; and
- b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and EMCS.

"Commercial ASP Use" means use as a commercial application service provider, that is, to generate revenue by providing access to Software or Online Services through a Value-Added Application, for example, by charging a subscription fee, service fee, or any other form of transaction fee or by generating more than incidental advertising revenue.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" or "EMCS" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides EMCS, Training, or Professional Services directly to Customer, then Services also include EMCS, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("**Term**").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

"Training Materials" means digital or printed content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE 1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms that require any part of the Esri Offering to be
 1. Disclosed in source code form to third parties;
 2. Licensed to third parties for the purpose of making derivative works; or
 3. Redistributable to third parties at no charge.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE 2—TERM AND TERMINATION

2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

2.3 Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and

- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE 3—LIMITED WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.

3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

3.4 Disclaimers

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE 4—LIMITATION OF LIABILITY

4.1 Disclaimer of Liability. Neither Customer, Esri, nor any Esri distributor or licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees, or

current subscription fees, or Services fees paid or owed to Esri for the Esri Offerings or Services giving rise to the cause of action.

4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

4.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE 5—INDEMNIFICATIONS

5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Claim"** means any claim, action, or demand by a third party.
- b. **"Indemnitees"** means Customer and its directors, officers, and employees.
- c. **"Infringement Claim(s)"** means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
- d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

5.2 Infringement Indemnity

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE 6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
 1. Premises and operations;
 2. Blanket contractual liability;
 3. Broad form property damage;
 4. Independent contractors;
 5. Personal injury, with employee exclusion deleted; and
 6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE 7—SECURITY AND COMPLIANCE

7.1 Security. Esri publishes its security capabilities at <http://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/privacy-gdpr>

ARTICLE 8—CLOUD SERVICES

8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Spams, spoofs, or phishes email; transmits junk email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

8.3 Customer Content

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either
 - (i) Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 - (ii) Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE 9—GENERAL PROVISIONS

9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

9.4 Restrictions on Solicitation. Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected. ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.

9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

**ATTACHMENT C
SAMPLE TASK ORDER**

Esri Agreement No. _____
Task Order No. _____

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. ("**Esri**"), and _____ ("**Customer**"), _____ ("**Customer Address**"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: *[As applicable, specifically identify and describe Deliverables including custom code, map data, technical data (including technical assistance), and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data) and place of delivery and location where technical assistance will be provided.]*

In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type: *[Firm Fixed Price (FFP) or Time and Materials (T&M)]*:
3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
4. Customer Address for the Receipt of Esri Invoices:
5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
6. Special Considerations:
7. Esri Project Manager: *[insert name, telephone, fax, and email address]*
Esri Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Project Manager: *[insert name, telephone, fax, and email address]*
Customer Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Accounts Payable Contact: *[insert name, telephone, fax, and email address]*

ACCEPTED AND AGREED:

[sample only—do not sign]
(Customer)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

Attachment: Esri Master Agreement (2362 : Approve Software Licensing Agreement with Esri)

**ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE**

See Quotation for Pricing.

Attachment: Esri Master Agreement (2362 : Approve Software Licensing Agreement with Esri)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE FINAL MAP OF EVERGREEN VILLAGE (BUTTERFIELD & COCHRANE DEVELOPMENT), SUBDIVISION IMPROVEMENT AGREEMENT, AND STORMWATER BEST-MANAGEMENT-PRACTICES (BMP) OPERATIONS AND MAINTENANCE AGREEMENT

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Evergreen–Butterfield & Cochrane, L.L.C., an Arizona limited liability company;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Evergreen Village is an approved 20.43-acre commercial and retail center located at the southeast corner of Butterfield Boulevard and Cochrane Road with Assessor Parcel Numbers 726-25-035 and 726-32-021 (Attachment 1). The project will subdivide the property into 12 parcels and install the off-site and on-site infrastructure improvements and landscaping. The developer, Evergreen–Butterfield & Cochrane, L.L.C., an Arizona limited liability company, has completed all the conditions specified in the Amended Tentative Map approved by the City Council on September 5, 2018.

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 (Attachment 2) and has made provisions with a title company to provide the City with the required fees (Attachment 3), 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.

The Subdivision Improvements Agreement contains a new Reimbursement section (Section 9 of the agreement) that outlines the terms and conditions for reimbursing the developer for the cost of constructing certain public improvements on behalf of the City. The public improvements include a raised landscape median along Cochrane Road and the addition of a second westbound left turn lane at the intersection of Butterfield Boulevard and Cochrane Road. The developer will be reimbursed in the form of credits against the Traffic Impact Fees due from each parcel at the time of building permit issuance.

Staff recommends that the City Council approve the Final Map, authorize the City Manager to sign a Subdivision Improvements Agreement (Attachment 4) on behalf of the City, authorize the City Manager to sign a Stormwater BMP Operation and Maintenance Agreement (Attachment 5) pending review and approval by the City Attorney, and authorize the recordation of the Final Map, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

COMMUNITY ENGAGEMENT: Involve

July 24, 2018 – Planning Commission Recommended Approval of the Amended Tentative Map. The community was informed about the project through public notification including site signage, newspaper notice, and direct mail to property owners within 300 feet. A public hearing was held to allow the public to be involved and voice their concerns over the amended tentative map requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the amended tentative map conditions approved by the City Council to file for a final map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 24, 2018 – Planning Commission Recommended Approval of the Amended Tentative Map.

September 5, 2018 – City Council Approved Amended Tentative Map.

October 17, 2018 – City Council Approved an Impact Fee Freeze Agreement with the Developer.

FISCAL AND RESOURCE IMPACT:

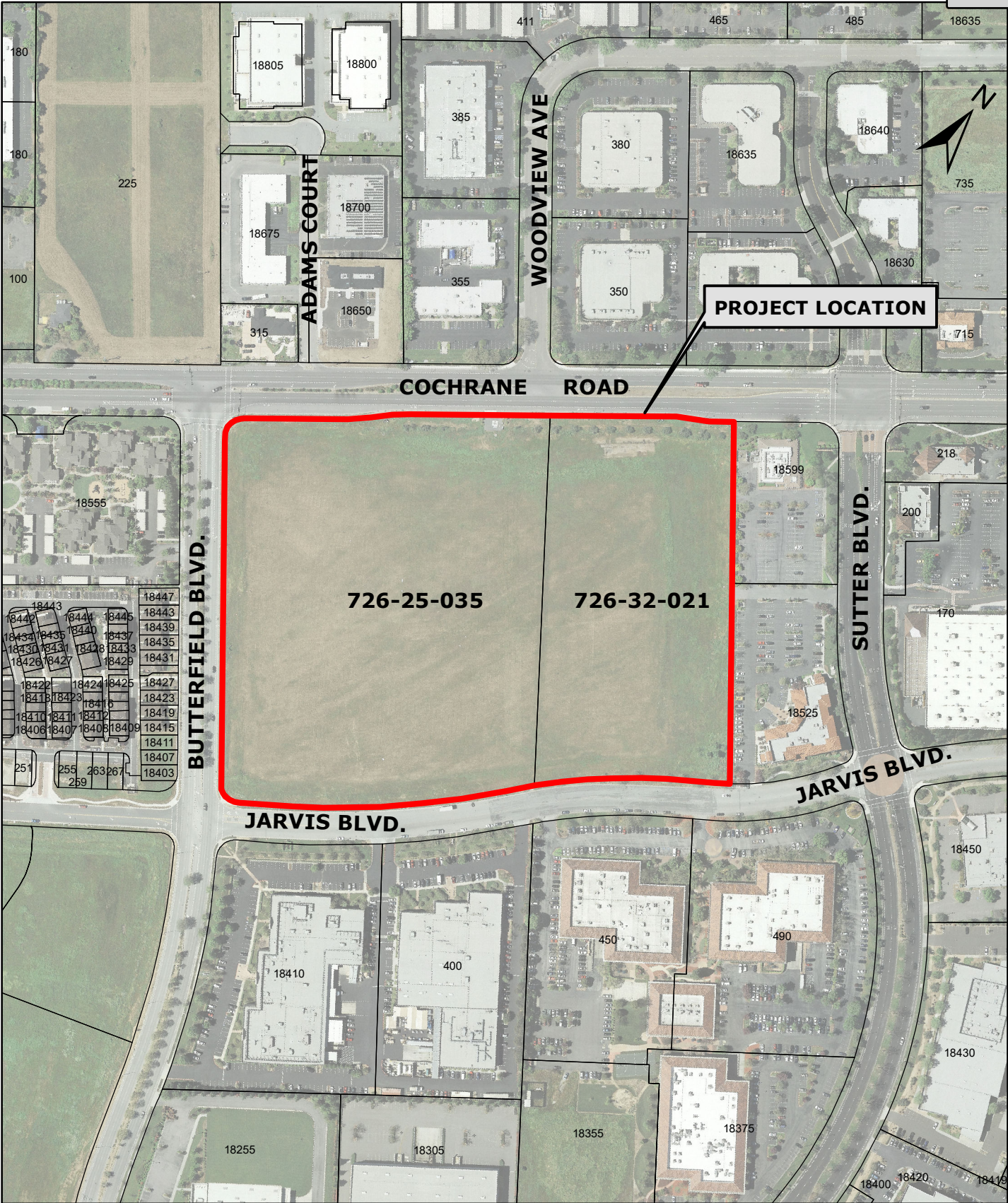
Development review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

An addendum to the Mitigated Negative Declaration previously adopted on June 24, 2014 (Butterfield & Cochrane Development) was prepared for this project pursuant to the provisions of CEQA.

LINKS/ATTACHMENTS:

1. Site Map
2. Final Map
3. Fee Schedule
4. Subdivision Improvements Agreement
5. Stormwater BMP Operation and Maintenance Agreement



CITY OF MORGAN HILL
Development Services Department

SITE MAP EVERGREEN VILLAGE DEVELOPMENT

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.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL, THE REAL PROPERTY DESCRIBED BELOW IN FEE FOR PUBLIC PURPOSE: ALL STREETS AND PORTIONS OF STREETS NOT HERETOFORE EXISTING AND DESIGNATED AS COCHRANE ROAD AND BUTTERFIELD BOULEVARD, 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.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL 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 PARCELS 2, 9 AND 10, FOR THE BENEFIT OF PARCELS 1, 8 AND 7, EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITY FACILITIES AND APPURTENANCES THERETO LYING IN, UNDER, UPON AND ACROSS THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS "P.U.E." (PRIVATE UTILITY EASEMENT), THE OWNERS OF EACH PARCEL SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THAT PORTION OF SAID EASEMENT THAT LIES WITHIN THE BOUNDS OF THEIR RESPECTIVE LOTS.

WE HEREBY RESERVE FOR THE MAINTENANCE ASSOCIATION FOR THE BENEFIT OF ALL PARCELS WITHIN 'EVERGREEN VILLAGE' DEVELOPMENT, IN, UNDER, UPON AND ACROSS THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS LANDSCAPE EASEMENTS (L.E.) FOR THE PURPOSES OF LANDSCAPING AND ALL OTHER APPURTENANCES THERETO AS SHOWN ON THE WITHIN MAP. SAID LANDSCAPE EASEMENTS SHALL BE MAINTAINED BY THE MAINTENANCE ASSOCIATION. PER "COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT" (COREA), SECTION 2.1(i) & (k).

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:

EVERGREEN - Butterfield & Cochrane, L.L.C., An Arizona Limited Liability Company

Evergreen Development Company - 2017, L.L.C., An Arizona Limited Liability company
Its: Manager

Evergreen Devco, Inc., A California Corporation
Its: Manager

BY: [Signature]

ITS: President

DATE: May 31, 2019

AS BENEFICIARY:

Bankers Trust Company, Beneficiary under Deed of Trust recorded May 31, 2019 as Document No. 24192000 of Official Records.

BY: [Signature]

ITS: SVP

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 Arizona
County Of Maricopa

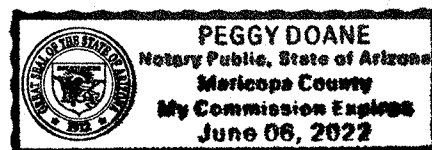
On 5/31/19, before me, Peggy Doane,
personally appeared JUSTIN WILZ,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), 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.

Peggy Doane
Name: Peggy Doane, Notary Public In

And For Said County And State



(Seal)

Principal County Of Business: Maricopa
Commission Expires: 6/6/2022
Commission # Of Notary: 546452

PARCEL MAP "EVERGREEN VILLAGE"

BEING ALL OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON JULY 19, 2000 IN BOOK 730 OF MAPS AT PAGES 3 AND 4, AND BEING ALL OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON JULY 3, 2000 IN BOOK 729 OF MAPS AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

LYING WITHIN THE
CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
MAY 2019

NOTES

- 1.) THE DISTINCTIVE BOUNDARY LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS PARCEL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE BOUNDARY IS 20.429 ACRES.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL REPORT WAS PREPARED BY SALEM ENGINEERING GROUP, INC. ON MAY 16, 2018 AND RECORDED BY SAID COMPANY AS REPORT NO. 5-218-0334.
- 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.
- 6.) THE PROPERTY OWNER IS ALSO PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO COVENANT AND CONDITIONS SPELLED OUT IN THE RECORDED DOCUMENT ENTITLED "COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT" (COREA). SAID COVENANT AND CONDITIONS SUPPLEMENT THE WITHIN MAP FOR RIGHTS OF INGRESS AND EGRESS, INSTALLATION AND MAINTENANCE AND PUBLIC ACCESS EASEMENTS NOT SHOWN ON THE WITHIN MAP.

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.

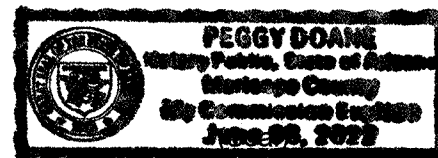
State Of Arizona
County Of Maricopa

On 5/31/19, before me, Peggy Doane,
personally appeared Laura Ortiz,
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.

Peggy Doane
Name: Peggy Doane, Notary Public In
And For Said County And State



Principal County Of Business: Maricopa
Commission Expires: 6/6/2022
Commission # Of Notary: 546452

COMMUNITY DEVELOPMENT DIRECTOR'S STATEMENT

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN PARCEL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED AS APPROVAL CERTIFICATE NO. ____ ON ____, 20__, BY THE COMMUNITY DEVELOPMENT DEPARTMENT OF THE CITY OF MORGAN HILL, CALIFORNIA, APPLICATION NO. ____.

JENNIFER CARMAN
COMMUNITY DEVELOPMENT DIRECTOR
OF THE CITY OF MORGAN HILL, CALIFORNIA

DATE

SURVEYOR'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 SOUTH BAY DEVELOPMENT COMPANY, ON OCTOBER 9, 2014. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

ARMAN NAZEMI, PLS 8437
EXPIRATION DATE
6-3-2019
DATE



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS PARCEL MAP. THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF. ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

SCOTT C. CREEER - CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 58879

DATE



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS PARCEL MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

RICHARD C. MAHER - ACTING CITY SURVEYOR
KDM MERIDIAN PLS NO. 7564

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 PARCEL MAP SHOWN HEREON, AUTHORIZED ITS RECORDATION, AND ACCEPTS ON BEHALF OF THE PUBLIC, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, THE STREETS AND EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION.

IRMA TORREZ
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 \$ _____

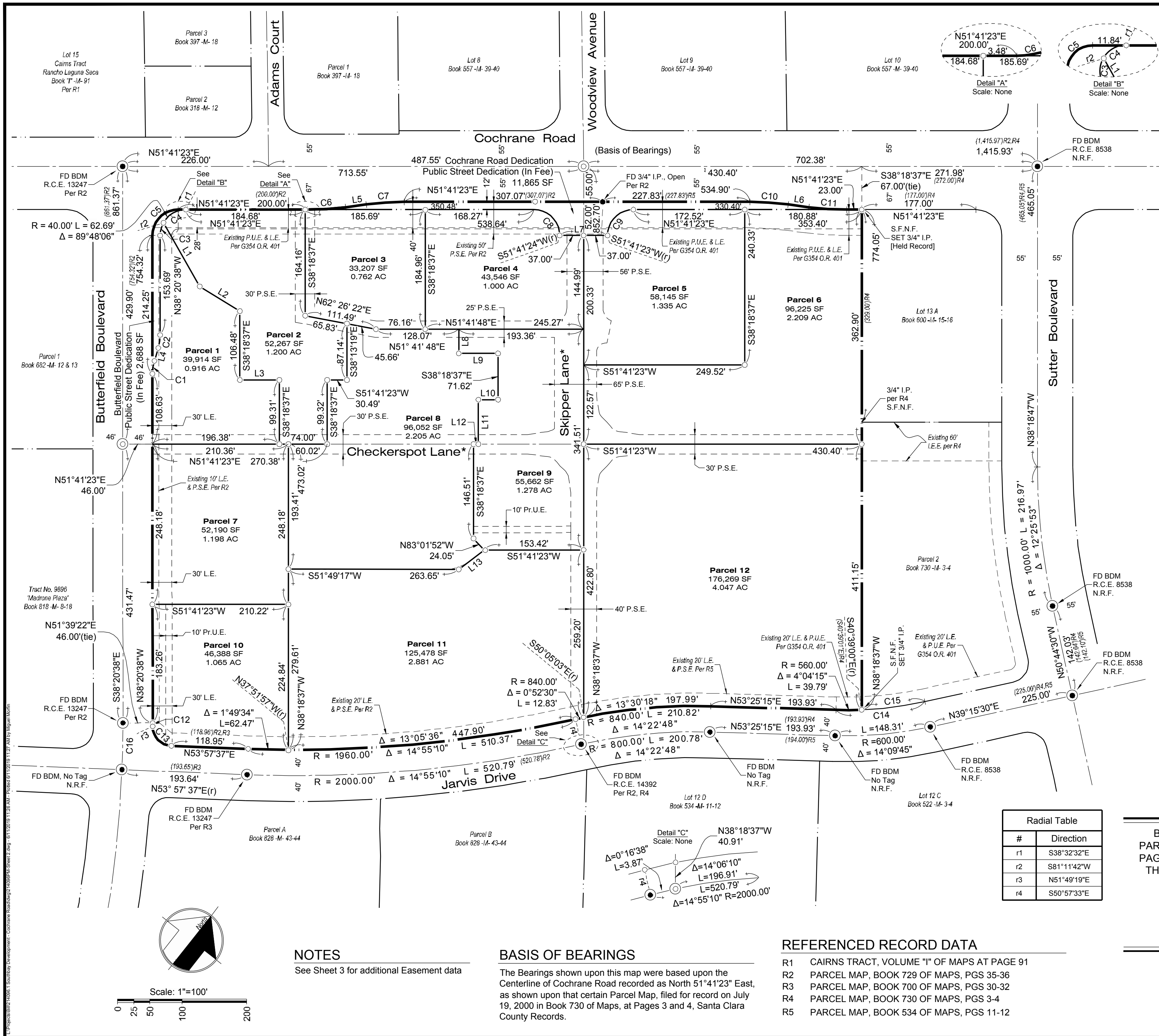
REGINA ALCOMENDRAS, COUNTY RECORDER OF SANTA CLARA COUNTY

BY: _____
DEPUTY

SHEET 1 OF 3

MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037

214096.1



- LEGEND**
- FOUND STANDARD CITY MONUMENT, AS INDICATED
 - SET STANDARD CITY MONUMENT, TAGGED L.S. 8437
 - FOUND 3/4" IRON PIPE, TAGGED L.S. 4444 UNLESS NOTED OTHERWISE.
 - SET 3/4" IRON PIPE, TAGGED L.S. 8437
 - BDM BRASS DISK MONUMENT
 - FD FOUND
 - L.E. LANDSCAPE EASEMENT
 - N.R.F. NO RECORD FOUND
 - O.R. OFFICIAL RECORD
 - Pr.U.E. PRIVATE UTILITY EASEMENT
 - P.S.E. PUBLIC SERVICE EASEMENT
 - P.U.E. PRIVATE UTILITY EASEMENT
 - S.F.N.F. SEARCHED FOR, NOT FOUND
 - (r) RADIAL BEARING

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

* = SEE NOTE 6 ON SHEET 1

Curve Table				Line Table		
#	Radius	Delta	Length	#	Direction	Length
C1	70.00'	016°41'51"	20.40'	L1	S68°01'17"E	113.30'
C2	70.00'	016°41'51"	20.40'	L2	N83°22'35"E	73.12'
C3	40.00'	029°32'20"	20.62'	L3	N51°41'23"E	61.00'
C4	40.00'	060°15'46"	42.07'	L4	N21°38'47"W	21.22'
C5	40.00'	090°02'01"	62.86'	L5	S44°09'31"W	32.31'
C6	450.00'	007°31'52"	59.15'	L6	S59°13'17"W	32.31'
C7	450.00'	007°31'52"	59.15'	L7	N51°41'23"E	74.00'
C8	40.00'	090°00'01"	62.83'	L8	S38°18'37"E	37.51'
C9	40.00'	090°00'00"	62.83'	L9	N51°41'23"E	61.00'
C10	450.00'	007°31'54"	59.15'	L10	S51°41'23"W	30.56'
C11	450.00'	007°31'54"	59.15'	L11	S38°18'37"E	68.81'
C12	1846.00'	000°09'57"	5.34'	L12	S51°41'23"W	7.42'
C13	30.00'	087°51'42"	46.00'	L13	S14°20'50"W	50.14'
C14	560.00'	014°09'45"	138.42'			
C15	560.00'	010°05'30"	98.63'			
C16	1800.00'	002°18'15"	72.39'			

PARCEL MAP "EVERGREEN VILLAGE"

BEING ALL OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON JULY 19, 2000 IN BOOK 730 OF MAPS AT PAGES 3 AND 4, AND BEING ALL OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON JULY 3, 2000 IN BOOK 729 OF MAPS AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

LYING WITHIN THE
CITY OF MORGAN HILL COUNTY OF SANTA CLARA
STATE OF CALIFORNIA
JUNE 2019

MH

MHengineeringCo.

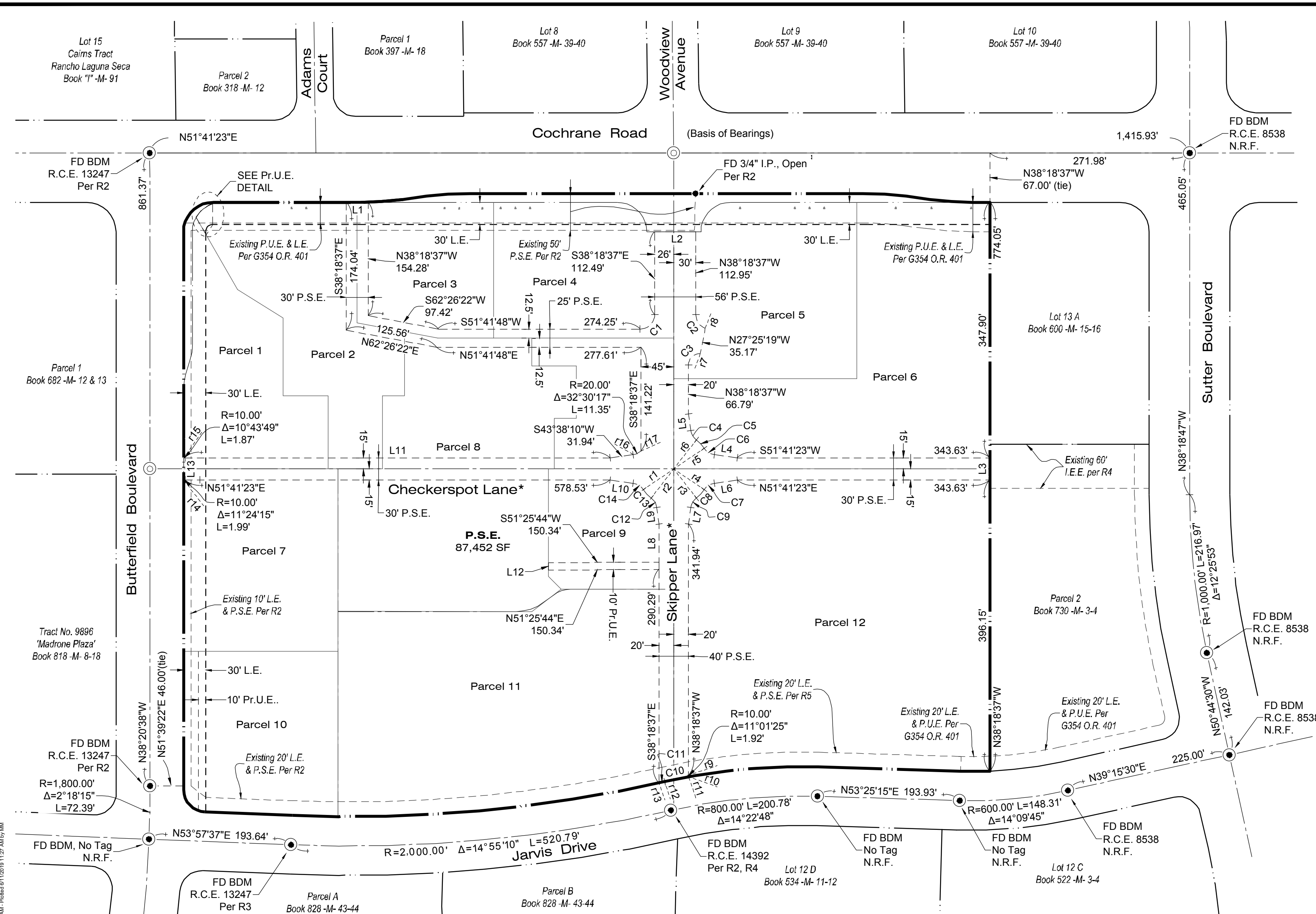
16075 Vineyard Boulevard
Morgan Hill, CA 95037

214096.1

NOTES
See Sheet 3 for additional Easement data

BASIS OF BEARINGS
The Bearings shown upon this map were based upon the Centerline of Cochrane Road recorded as North 51°41'23" East, as shown upon that certain Parcel Map, filed for record on July 19, 2000 in Book 730 of Maps, at Pages 3 and 4, Santa Clara County Records.

- REFERENCED RECORD DATA**
- R1 CAIRNS TRACT, VOLUME "I" OF MAPS AT PAGE 91
 - R2 PARCEL MAP, BOOK 729 OF MAPS, PGS 35-36
 - R3 PARCEL MAP, BOOK 700 OF MAPS, PGS 30-32
 - R4 PARCEL MAP, BOOK 730 OF MAPS, PGS 3-4
 - R5 PARCEL MAP, BOOK 534 OF MAPS, PGS 11-12



Line Table			Curve Table			
#	Direction	Length	#	Radius	Delta	Length
L1	S51°41'23"W	30.00'	C1	20.00'	090°00'25"	31.42'
L2	S51°41'23"W	56.00'	C2	20.00'	069°13'14"	24.16'
L3	N38°18'37"W	30.00'	C3	15.00'	094°49'12"	24.82'
L4	S59°44'12"W	31.94'	C4	20.00'	044°03'44"	15.38'
L5	N46°21'24"W	22.76'	C5	50.00'	017°58'46"	15.69'
L6	N43°38'34"E	31.94'	C6	20.00'	047°49'27"	16.69'
L7	N30°15'58"W	22.77'	C7	20.00'	047°49'27"	16.69'
L8	S38°18'37"E	51.87'	C8	50.00'	017°58'46"	15.69'
L9	S46°19'57"E	22.77'	C9	20.00'	044°03'52"	15.38'
L10	N59°44'12"E	31.94'	C10	840.00'	002°16'46"	33.42'
L11	S51°41'23"W	578.67'	C11	1960.00'	000°13'25"	7.65'
L12	S38°18'37"E	10.00'	C12	20.00'	044°05'54"	15.39'
L13	S38°20'38"E	30.37'	C13	50.00'	017°59'30"	15.70'
			C14	20.00'	047°49'27"	16.69'

Radial Table			
#	Bearing	#	Bearing
r1	S17°33'38"W	r9	S50°58'19"W
r2	N0°25'52"W	r10	N39°56'54"E
r3	N76°12'06"W	r11	N48°40'47"W
r4	N85°49'08"E	r12	S50°57'33"E
r5	N17°33'38"E	r13	N50°44'08"W
r6	S0°25'08"E	r14	N49°42'52"W
r7	N33°29'25"E	r15	S27°34'48"E
r8	S17°31'51"E	r16	S46°59'51"E
		r17	N79°30'08"W

* = SEE NOTE 6 ON SHEET 1

PARCEL MAP "EVERGREEN VILLAGE"

BEING ALL OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON JULY 19, 2000 IN BOOK 730 OF MAPS AT PAGES 3 AND 4, AND BEING ALL OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON JULY 3, 2000 IN BOOK 729 OF MAPS AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

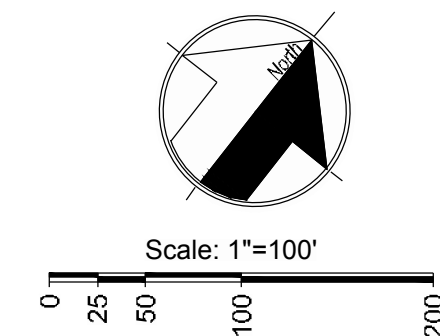
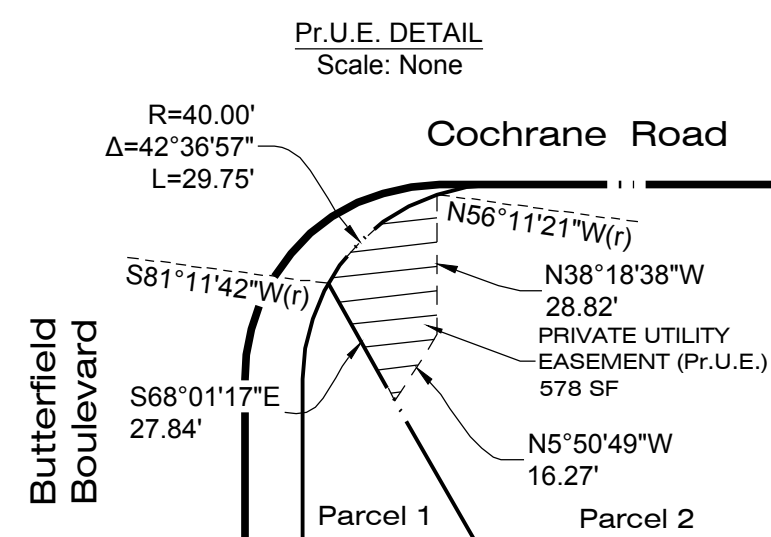
LYING WITHIN THE
CITY OF MORGAN HILL COUNTY OF SANTA CLARA
STATE OF CALIFORNIA
JUNE 2019

SHEET 3 OF 3

MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037
214096.1

RECORDED EASEMENTS DATA

Purpose	Recorded	Document Number
Landscaping and Public Utilities Easement In favor of the City of Morgan Hill	September 24, 1981	Book G354, Page 401, Official Records
Reciprocal Easement between Parkland and MCPT Modified Modified	June 16, 1989 December 16, 1998 February 07, 2008	Book K988, Page 1623, Official Records Document No. 14554697 Document No. 19736430
Landscape and Public Service and Incidental purposes In favor of the City of Morgan Hill	July 03, 2000	Book 729, Pages 35-36, Parcel Maps



NOTES

SEE SHEET TWO FOR LINE, CURVE,
LEGEND AND BASIS OF BEARINGS



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

5/3/2019 DATE	FEE SCHEDULE: 07.01.2016	Evergreen-Butterfield & Cochrane LLC NAME
726-25-035 & 726-32-021 TRACT / APN	PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS	2390 E. Camelback Rd, Ste 410 MAILING ADDRESS
Butterfield Blvd & Cochrane Rd ADDRESS / LOT		Phoenix, AZ 85016 CITY, STATE, ZIP CODE
The Village - Map/Offsite Fees PROJECT DESCRIPTION		(602) 808-8600 PHONE NUMBER
	6/30/2020 FEE SCHEDULE EXPIRATION DATE	

NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☐ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

MA
CALCULATED BY

CHECKED BY

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

File No. PWPR2018-0011

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☐ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
 TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ **RESIDENTIAL PROJECTS WITHIN RDCA DOWNTOWN AREA**

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
 TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☒ **NOT IN RDA AREA BOUNDARY**

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
 TO ANNUAL CPI INCREASES.

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

**RDA SEWER ALLOCATION
 COMPLETED BY:**

(write Initials below)

version 07.01.16 std

WATER FEES:**1. METER DEPOSIT: 650-37672**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1"	\$468	x	0	=	\$0
1 1/2"	\$1,434	x	0	=	\$0
2"	\$1,619	x	0	=	\$0
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$0**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

\$62 x 0 Each = \$0

3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	0	LF	=	\$0
2 Sides	\$37	x	0	LF	=	\$0

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential						
\$3,624 /DU	x	0	DU	=	\$0	
(Single Family)						
\$3,269 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
(Includes Landscape Service)						
\$10,288 /AC	x	0	AC	=	\$0	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$0**WATER FEE TOTALS = \$0****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)

ENGINEERING ESTIMATE:					\$853,451
DATE ENGINEERING EST. SUBMITTED:					4/18/2019
% APPLIES TO ENGINEER'S ESTIMATE					
13.3%	\$1	to	\$100,000	=	\$13,300
11.8%	\$100,001	to	\$200,000	=	\$11,800
10.3%	\$200,001	to	\$500,000	=	\$30,900
8.8%	OVER		\$500,000	=	\$31,104
ENGINEERING FEE				=	\$87,103
DEPOSIT PAID				=	\$10,000

ENGINEERING FEE TOTAL = \$77,103**5A. LONG RANGE PLANNING FEE: 207-37912****LONG RANGE PLANNING FEE (15% of E&I) = \$13,066****SEWER FEES:****6. SEWER FRONTAGE CHARGE: 640-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	0	LF	=	\$0
2 Sides	\$37	/LF	x	0	LF	=	\$0

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 &

Res. #5592 approved 08.21.02, Increased 01.15.16).

a) Residential						
\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
b) Commercial & Industrial						
\$48.56 /GPD	x	0	GPD	=	\$0	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

RDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$48.56 /GPD	x	0	GPD	=	\$0	
(Commercial & Industrial)						

SUBTOTAL = \$0**SEWER FEE TOTALS = \$0****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	0	LF	=	\$0
2 Sides	\$53	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$3,847 /DU	x	0	DU	=	\$0	
(Single Family)						
\$2,001 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$41,897 /ACRE	x	20.10	AC	=	\$842,130	
(Commercial & Office)						
\$30,505 /ACRE	x	0	AC	=	\$0	
(Industrial)						

STORM CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$842,130**STORM DRAIN FEE TOTALS = \$842,130**

10. UNDERGROUNDING UTILITIES:					350-37649
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1 Side	\$681	x	0	LF	= \$0
2 Sides	\$343	x	0	LF	= \$0
11a. PARK IMPACT FEE:					301-37648
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)					
\$5,378 /DU		x	0	DU	= \$0
(Single Family - Sub)					
\$3,910 /DU		x	0	DU	= \$0
(Single Family - No Sub)					
\$5,181 /DU		x	0	DU	= \$0
(Multi Family - Sub)					
\$3,771 /DU		x	0	DU	= \$0
(Multi Family - No Sub)					
11b. PARK MAINTENANCE DEV. FEE:					302-37649
\$0		x	0	EACH	= \$0
PARK CREDITS					
\$0		x	0		= \$0
PARK FEE TOTAL =					\$0
12. TRAFFIC IMPACT FEE:					309-37648
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16).					
\$1,863 /DU		x	0	DU	= \$0
(Single Family)					
\$1,155 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,863 /PHT		x	0	PHT	= \$0
(Commercial)					
\$1,863 /PHT		x	0	PHT	= \$0
(Industrial)					
TRAFFIC CREDITS					
\$0		x	0		= \$0
TRAFFIC FEE TOTAL =					\$0
13. LIBRARY IMPACT FEE:					348-37648
(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)					
\$1,974 /DU		x	0	DU	= \$0
(Single Family)					
\$1,902 /DU		x	0	DU	= \$0
(Multi Family)					
LIBRARY CREDITS					
\$0		x	0		= \$0
LIBRARY FEE TOTAL =					\$0
14. BURROWING OWL MITIGATION:					232-38145
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)					
\$200 /DU			0	DU	= \$0
(Residential)					
\$1,395 /AC			20.10	AC	= \$28,040
(Commercial/Industrial)					

15a. MAP CHECK FEE:					206-38716
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
PARCEL MAP:	\$3,805	=			\$0
TRACT MAP:	\$5,667	=			\$0
16. POLICE IMPACT FEE:					311-37648
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)					
\$767 /DU		x	0	DU	= \$0
(Single Family)					
\$741 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,666 /ACRE		x	0	AC	= \$0
(Commercial)					
\$2,333 /ACRE		x	0	AC	= \$0
(Industrial)					
POLICE CREDITS					
\$0		x	0		= \$0
POLICE FEE TOTAL =					\$0
17. FIRE IMPACT FEE:					313-37648
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)					
\$118 /DU		x	0	DU	= \$0
(Single Family)					
\$112 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,550 /ACRE		x	0	AC	= \$0
(Commercial)					
\$1,550 /ACRE		x	0	AC	= \$0
(Industrial)					
FIRE CREDITS					
\$0		x	0		= \$0
FIRE FEE TOTAL =					\$0
18. PUBLIC FACILITIES IMPACT FEE:					347-37648
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)					
\$512 /DU		x	0	DU	= \$0
(Single Family)					
\$493 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,128 /ACRE		x	0	AC	= \$0
(Commercial)					
\$1,579 /ACRE		x	0	AC	= \$0
(Industrial)					
PUBLIC FACILITIES CREDITS					
\$0		x	0		= \$0
PUBLIC FACILITIES FEE TOTAL =					\$0
20. COMMNTY/REC CTRS IMPACT FEE:					360-37648
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)					
\$3,663 /DU		x	0	DU	= \$0
(Single Family)					
\$3,213 /DU		x	0	DU	= \$0
(Multi Family)					
PUBLIC FACILITIES CREDITS					
\$0		x	0		= \$0
PUBLIC FACILITIES FEE TOTAL =					\$0

19. RDCS MEASURE C FEES:		
School Pedestrian Safety	(355-37655) =	N/A
Public Facilities	(346-37649) =	N/A
Park Development	(302-37649) =	N/A
Public Fac. - Circulation	(346-37649) =	N/A
TOTAL RDCS MEASURE C FEES =		<u>\$0</u>

OTHER:		
Stormwater Runoff Mgmt Plan Review	=	\$2,725
(206-38734)		
SWPPP Review	=	\$1,168
(232-37687)		
	=	
TOTAL FEES DUE =		<u>\$964,231</u>

Notes & Comments:

THE TOTAL FEES SHOWN IN THIS FEE SCHEDULE ARE DUE PRIOR TO FINAL MAP APPROVAL.

THE MAP CHECK FEE HAS BEEN PAID ON 11/20/18.

THE RDA/BUTTERFIELD RIGHT-OF-WAY FEE DUE IN THE AMOUNT OF \$43,585 WILL BE APPLIED AS A CREDIT TOWARDS THE CONSTRUCTION OF THE NEW RAISED LANDSCAPE MEDIAN ISLAND ALONG THE PROJECT'S COCHRANE FRONTAGE. ANY OUTSTANDING BALANCE FROM THE MEDIAN CONSTRUCTION WILL BE REIMBURSED UNDER THE TERMS OF THE SUBDIVISION IMPROVEMENTS AGREEMENT.

OTHER APPLICABLE FEES WILL BE CHARGED AT BUILDING PERMIT/DEVELOPMENT OF EACH PARCEL.

Proposed frontage improvements, private streets and backbone utilities for The Village Project.

Site (2 APNs): APN 726-25-035 ~ 13.03 AC [within Morgan Hill Ranch Assessment District (RAD No. 2015-1)]

APN 726-32-021 ~ 7.4 AC [not part of any assessment district]

Total site acreage = 20.43 AC

Public Street Dedication:

Cochrane Road	=	11,865	sf
Butterfield Blvd	=	2,688	sf
Total Street Dedication		14,553	sf (0.33 AC)

Total Site Net Acreage: 20.43 - 0.33 = 20.10 AC

No Frontage Fees apply.

****OTHER FEE RESOLUTIONS:**

RESOLUTION 5006, EFFECTIVE 07.03.1996
 RESOLUTION 5128, EFFECTIVE 01.05.1998
 RESOLUTION 5658, EFFECTIVE 03.19.2003
 RESOLUTION 5686, EFFECTIVE 08.18.2003
 RESOLUTION 5765, EFFECTIVE 01.21.2004
 RESOLUTION 5837, EFFECTIVE 10.18.2004
 RESOLUTION 6080, EFFECTIVE 01.17.2007
 RESOLUTION 6133, EFFECTIVE 12.05.2007
 RESOLUTION 6326, EFFECTIVE 04.28.2010
 RESOLUTION 6671, EFFECTIVE 09.16.2013

Attachment: Fee Schedule (2329 : FINAL MAP APPROVAL OF EVERGREEN VILLAGE (BUTTERFIELD & COCHRANE DEVELOPMENT))

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

EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.

EVERGREEN VILLAGE COMMERCIAL DEVELOPMENT

(APN 726-25-035 and 726-32-021)

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **Evergreen-Butterfield & Cochrane, L.L.C.**, an Arizona limited liability company ("Subdivider"), is entered into this ____ day of _____, 2019. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for a proposed commercial and retail center, the project known as **Evergreen Village** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain public improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans - Evergreen Village**" ("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 - Evergreen Village"**.

(b) 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 April 18, 2019 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 estimated construction cost of the Improvements (as listed in Section 4(a) above) 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 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 incidental 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 thirty (30) 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 that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services 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. Reimbursements

a) Subdivider/Property Owner acknowledges and agrees that the City will reimburse the Subdivider/Property Owner for the costs associated with the public improvements completed by the Subdivider which are determined by the City Engineer to exceed the need directly attributable to and reasonably related to the project ("Reimbursable Improvements"). The Subdivider/Property Owner shall

be reimbursed the actual consultant fees, review fees, permit fees, and construction costs of constructing the following public improvements:

(1) Raised landscape median along project frontage at Cochrane Road with reimbursable amount to be determined prior to the start of construction of this improvement (Traffic Impact Fee Fund).

(2) Portion of the improvements along Cochrane Road and at the intersection of Butterfield Boulevard and Cochrane Road to accommodate a second westbound left turn lane with reimbursable amount to be determined prior to the start of construction of this improvement (Traffic Impact Fee Fund).

b) The City shall reimburse the Subdivider/Property Owner subject to the following terms and conditions:

(1) The City shall reimburse the Subdivider/Property Owner in an amount not to exceed the reimbursable amounts in the form of credits against the Traffic Impact Fees due from each Parcel. After completion of the improvements, the credits will be applied to each building permit applied for by each Parcel until the full credit amount has been used. Any Traffic Impact Fees collected thereafter shall be retained by the City.

(2) Traffic Impact Fees credited shall not in any circumstance exceed the cost determined by the City Engineer for the Reimbursable Improvements.

(3) The Subdivider/Property Owner shall keep records with complete and correct entries of all construction costs related to the improvements. These records shall be made available to the City for review prior to any reimbursement.

Section 10. 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 10 will survive termination of this Agreement.

Section 11. Insurance

Concurrent with the execution of this Agreement, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider’s General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

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

(1) Commercial General Liability Insurance (“CGL”): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider’s or its Subcontractor’s acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. Further, if CGL coverage is being provided by Subdivider’s General Contractor pursuant to Section 11, 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.

(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 11, 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.

(3) General Liability:

- a. “Primary and Non-Contributing” - Insurance shall be primary non-contributing;
- b. “Separation of Insureds” - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 11 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 12. Permits and Requisite Fees

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

- (1) **\$964,231** payable at the time of recording of the Final Map, and
- (2) The fees due for each individual parcel will be determined upon development of the parcel and payable prior to issuance of a building permit for the specific parcel.
- (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 13. 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 14. 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 15. 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:

EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.
c/o Evergreen Devco, Inc.
2390 East Camelback Road, Suite 410
Phoenix, AZ 85016

b. Address of City is as follows:

City Engineer
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

Section 16. 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 17. 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 18. 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) After thirty (30) days' written notice to cure a material breach or default, 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 19. 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 20. Effective Date

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

Section 21. 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 22. 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 23. 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 24. 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 25. Limitations Upon Subcontracting and Assignment.

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

Section 26. 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

"Subdivider"

By: _____
Christina J. Turner, City Manager

**EVERGREEN-BUTTERFIELD & COCHRANE,
L.L.C.,
an Arizona limited liability company**

Date: _____

Evergreen Development Company-2017, L.L.C.,
an Arizona limited liability company
Its: Manager

ATTEST:

By: _____
Michelle Bigelow, Deputy City Clerk

Evergreen Devco, Inc.,
a California corporation
Its: Manager

Date: _____

By: [Signature]
Its: President
Date: 5/31/19

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

By: [Signature]
Its: CFO
Date: 5/31/19

Date: _____

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.

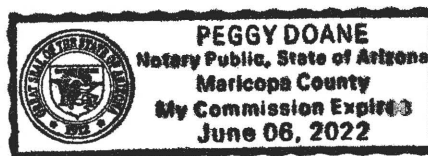
State of **Arizona**
County of **Maricopa**

On May 31 2019, before me, PEGGY DOANE a Notary Public in and for said County and State, personally appeared LAURA ORTIZ 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.

Peggy Doane
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.

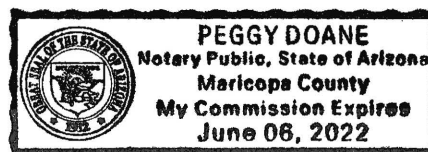
State of **Arizona**
County of **Maricopa**

On May 31 2019, before me, PEGGY DOANE a Notary Public in and for said County and State, personally appeared REUBEN GARIBETT 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.

Peggy Doane
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF APRIL 18, 2019

MH 214096

Engineers Cost Estimate

For "The Village " Phase 1 Public Improvements

Item	Description	Quantity	Unit	Unit Price	Total
Schedule I - Streets and Earthwork (Public)					
1	Clearing and grubbing	1	LS	\$ 10,000.00	\$ 10,000.00
2	Curb & gutter demolition and haul-off	916	LF	\$ 5.00	\$ 4,580.00
3	Sawcut existing pavement	2,004	LF	\$ 2.00	\$ 4,008.00
4	Sidewalk removal and haul-off	2,457	SF	\$ 2.00	\$ 4,914.00
5	Street finish grading	38,174	SF	\$ 0.30	\$ 11,452.20
6	5" AC on 15" CL II AB pavement	14,437	SF	\$ 7.00	\$ 101,059.00
7	City std. curb & gutter on agg. Base	896	LF	\$ 25.00	\$ 22,400.00
8	6" PCC vertical curb at median	1,082	LF	\$ 25.00	\$ 27,050.00
9	Median pavement	344	SF	\$ 10.00	\$ 3,440.00
10	Relocate existing electroliers and pull boxes	2	EA	\$ 1,500.00	\$ 3,000.00
11	Relocate existing fire hydrants	2	EA	\$ 1,500.00	\$ 3,000.00
12	Demo existing water meters	2	EA	\$ 500.00	\$ 1,000.00
13	Demo existing curb inlet	1	EA	\$ 1,000.00	\$ 1,000.00
14	City std. curb inlet	2	EA	\$ 3,000.00	\$ 6,000.00
15	15" RCP storm drain	10	LF	\$ 55.00	\$ 550.00
16	Relocate existing water meter and RPBP	1	EA	\$ 1,500.00	\$ 1,500.00
17	Relocate existing signs	2	EA	\$ 500.00	\$ 1,000.00
18	Grade adjustment on existing telephone manhole	1	EA	\$ 800.00	\$ 800.00
19	Existing telephone box to be relocated	3	EA	TBD	
20	Existing Telephone vault to be relocated	1	EA	TBD	
21	Relocate existing traffic signal boxes	2	EA	TBD	
22	Existing PG&E vault to be relocated	1	EA	TBD	
23	Signing and restriping Cochrane Road	1	LS	\$ 60,000.00	\$ 60,000.00
24	City std. electroliers	10	EA	\$ 4,000.00	\$ 40,000.00
25	City Standard Sidewalk	9,198	SF	\$ 10.00	\$ 91,980.00
26	Remove and replace ex. electoliers on Jarvis Road	4	EA	\$ 3,000.00	\$ 12,000.00
27	Traffic signal complete in place	1	LS	\$ 220,000.00	\$ 220,000.00
Total Schedule I					\$ 630,733.20
Schedule II - Water (Public)					
1	8" D.I.P. water main incl fittings and valves	2,071	LF	\$ 58.00	\$ 120,118.00
2	Fire hydrant assembly	13	EA	\$ 3,600.00	\$ 46,800.00
3	2" domestic water service stubs w/trench restoration	12	EA	\$ 1,200.00	\$ 14,400.00
4	4" domestic water service w/RPBP	2	EA	\$ 3,000.00	\$ 6,000.00
5	6" fire water service stub w/trench restoration	12	EA	\$ 1,500.00	\$ 18,000.00
6	2" irrigation service stub w/trench restoration	12	EA	\$ 1,200.00	\$ 14,400.00
7	City std. blow off valves	3	EA	\$ 1,000.00	\$ 3,000.00
Total Schedule II					\$ 222,718.00
Total Est. Const. Cost (Sch. I - II)					\$ 853,451

Attachment: Subdivision Improvements Agreement [Revision 1] (2329 : FINAL MAP APPROVAL OF EVERGREEN VILLAGE (BUTTERFIELD &

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 **EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.**, an Arizona limited liability company (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.
EVERGREEN VILLAGE COMMERCIAL DEVELOPMENT
(APN 726-25-035 and 726-32-021)

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **EVERGREEN VILLAGE**, 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:

Performance Bond Page 1 of 4
Version July 2017

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]

[form document – do not execute]

Principal

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 **Arizona**
County of **Maricopa**

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 **Arizona**
County of **Maricopa**

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)

Performance Bond Page 4 of 4
Version July 2017

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 **EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C., an Arizona limited liability company** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.
EVERGREEN VILLAGE COMMERCIAL DEVELOPMENT
(APN 726-25-035 and 726-32-021)

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **EVERGREEN VILLAGE**, 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.

Labor and Material Bond Page 1 of 4
Version 2017

Attachment: Subdivision Improvements Agreement [Revision 1] (2329 : FINAL MAP APPROVAL OF EVERGREEN VILLAGE (BUTTERFIELD &

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]

[form document – do not execute]

Principal

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 **Arizona**
County of **Maricopa**

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 **Arizona**
County of **Maricopa**

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)

Labor and Material Bond Page 4 of 4
Version 2017

EXHIBIT "D"
WARRANTY BOND
(50% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and **EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C., an Arizona limited liability company** (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement (hereinafter "Agreement"):

EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.
EVERGREEN VILLAGE COMMERCIAL DEVELOPMENT
(APN 726-25-035 and 726-32-021)

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20_____, and identified as project **EVERGREEN VILLAGE**, 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

Warranty Bond Page 1 of 4
Version July 2017

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.

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:

[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 **Arizona**
County of **Maricopa**

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 **Arizona**
County of **Maricopa**

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)

Warranty Bond Page 4 of 4
Version July 2017

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

APN: 726-32-021 and 726-25-035

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STORMWATER BEST MANAGEMENT PRACTICES,
OPERATION, AND MAINTENANCE AGREEMENT**

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 2019, by **EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.**, an Arizona limited liability company, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.140 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **Stormwater Runoff Management Plan for The Village** prepared by **M.H. Engineering Co.** and dated **April 20, 2019**, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by COVENANTOR, its successors, and assigns, as a result of CITY's approval of the Stormwater Runoff Management Plan, COVENANTOR, hereby covenants and agrees with CITY as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be

binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.

2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR or its successors and assigns. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT.

Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.

8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.

16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, it successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

EVERGREEN-BUTTERFIELD & COCHRANE, L.L.C.,
an Arizona limited liability company

Evergreen Development Company-2017, L.L.C.,
an Arizona limited liability company
Its: Manager

Evergreen Devco, Inc.,
a California corporation
Its: Manager

By: 
Its: PRESIDENT

CITY OF MORGAN HILL:

By: _____

Name: CHRISTINA J. TURNER

Title: CITY MANAGER, CITY OF MORGAN HILL

APPROVED AS TO FORM:

By: _____

Name: DONALD A. LARKIN

Title: CITY ATTORNEY, CITY OF MORGAN HILL

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.

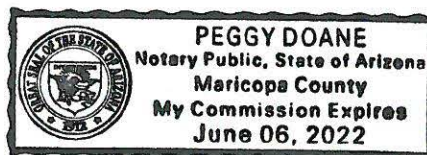
State of **Arizona**
County of **Maricopa**

On May 02 2019, before me, Peggy Doane a Notary Public in and for said County and State, personally appeared LAURA ORTIZ 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.

Peggy Doane
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 **Arizona**
County of **Maricopa**

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"**LEGAL DESCRIPTION****PARCEL ONE:**

PARCEL 1 AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A SUBDIVISION OF A PORTION OF LOT 13 (REVISED) AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 534 OF MAPS, AT PAGES 11 AND 12, SANTA CLARA COUNTY RECORDS," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 19, 2000 IN BOOK 730 OF MAPS, PAGE(S) 3 THROUGH 4, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

PARCEL 1 AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A SUBDIVISION OF A PORTION OF PARCEL 1 AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 235 OF MAPS AT PAGE 49, SANTA CLARA COUNTY RECORDS," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 3, 2000 IN BOOK 729, OF MAPS, AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

APN: 726-32-021 and 726-25-035



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD ANNUAL ON-CALL ELECTRICAL MAINTENANCE SERVICES AGREEMENTS

RECOMMENDATION(S)

1. Award Maintenance Service Agreements to Morgan Hill JET Electric, Inc., JT Electric, Inc. and Bear Electrical Solutions, Inc. for up to \$100,000 each for on-call electrical maintenance and repair services; and
2. Authorize the City Manager to execute and administer the Agreements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider awarding agreements to three electrical contractors for on-call services in the amount of \$100,000, each.

The City had contracted for electrical maintenance and repair services for many years on an on-call as-needed basis. In 2015, the California Department of Industrial Relations (DIR) began requiring all contractors working on public works projects over \$1,000 to register on the DIR website and retain their certified payrolls. In order to meet this requirement, the City is contracting with several electrical contractors for multiyear contracts that require the electrical contractors to meet the DIR registration and certified payroll requirements.

A Request for Proposals (RFP) for on-call electrical maintenance and repair services from California licensed electrical contractors was issued on March 25, 2019, and bids were received on May 1, 2019. In soliciting these proposals, the City advertised in the Morgan Hill Times, on the City website, Public Purchase and Online Plan Service.

Three proposals were received in response to the RFP. Community Services Department – Maintenance Division staff evaluated and scored the proposals based on each contractor's pricing, references and narrative responses to questions regarding previous experience, work quality, client relations and communication systems. Attached is a bid evaluation summary (Attachment 4). Based upon the scoring criteria, Bear Electrical Solutions, Inc. scored the highest in terms of pricing and narrative

responses. Staff believes that having a contract with more than one electrical contractor is necessary in order to ensure there is adequate coverage for on-call electrical repair services and recommends awarding contracts to all three firms. If approved by the City Council, the contract terms would begin on July 1, 2019 and end on June 30, 2021 with options to extend each agreement for three, one-year periods.

COMMUNITY ENGAGEMENT: Inform

On-call electrical maintenance and repair is a routine and standard service provided at City Facilities. Staff will post signage informing the public of any electrical maintenance repairs that affect the use of City facilities. If the electrical repairs will occur over several days, a general notice will be posted on the City's website and on Next Door Morgan Hill informing residents of any disruptions to services at City facilities.

ALTERNATIVE ACTIONS:

An alternative action would be to approve a contract with only one firm. This would limit the City's options when repairs are needed and may result in a decrease in public services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council previously awarded contracts for electrical repair services on November 4, 2015 and these contracts are now expiring which necessitated this RFP process.

FISCAL AND RESOURCE IMPACT:

The electrical repair costs were anticipated and included in the adopted Building Maintenance budgets for City facilities and parks. The total not-to-exceed amount was set at \$100,000 to ensure that the contract maximum amount does not restrict the City's capability to obtain needed repairs in a timely manner in order to limit any disruption to services or public safety issues.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. JT Electric FY 19 21 Signed
2. Morgan Hill JET Electric FY 19 21 signed
3. Bear Electrical Solutions FY 19 to 21_signed
4. Electrician RFP Scoring Summary

MAINTENANCE SERVICE AGREEMENT JT Electric, 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 JT Electric, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2019 of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for up to three, one-year periods. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on-call electrical maintenance and repair services to CITY. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call electrical maintenance and repair services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One hundred thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

JT Electric, Inc.
17485 Monterey Road, Ste. 104
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

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

17. **Maintenance of Records.**

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: JT Electric FY 19 21 Signed (2338 : On-Call Electrical Maintenance)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

JT ELECTRIC, INC.

City Attorney

By: _____

Donald A. Larkin

Diek Swartz CEO

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 6-16-19

By: _____

Rebecca Linnepeel CFO

Print Name and Title of Signer.

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

Date: 6/6/19

815888

Contractor's License Number(s) (if applicable)

1000029386

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

Expiration Date(s) 9/30/2019

Expiration Date(s) 6/29/20

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call electrical maintenance and repair services and administer the duties and responsibilities as stated in this contract, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call electrical maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, wiring and testing electrical service and electrical wire systems and components used to provide heat, light, power, air conditioning, and refrigeration in municipal buildings and facilities. Services may also include installing and repairing conduit and other materials; connecting electrical machinery, equipment and controls and transmission systems and servicing other electrical related issues as they arise and services necessary to insure safe, well maintained electrical systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call electrical maintenance and repair services to City Facilities. Contractor shall retain professional personnel who have successfully and competently provided municipal facility electrical maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of electrical systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility electrical maintenance and repair functions during hours of operation and for response after normal

working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2019 through June 30, 2021. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2021. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Electrical Maintenance and Repair Services to the City.

Pricing apply to the period of July 1, 2019 to June 30, 2021. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p.m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time
NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the Contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid

evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call electrical maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-10 General Electrical license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining electrical systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing electrical systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of electrical systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

ATTACHMENT A MUNICIPAL FACILITIES LOCATIONS

ELECTRICAL SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center Playhouse	17000 Monterey Road	20,500; 5,000
Future Community Garden	Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
El Toro Youth Center	17620 Crest Avenue	3,800
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

Attachment: JT Electric FY 19 21 Signed (2338 : On-Call Electrical Maintenance)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Shop Rate for Electrical Services (Apprentice):	\$170 per hour
Shop Rate for Electrical Services (Journeyman):	\$180 per hour
Overtime Rate for Electrical Services (Apprentice):	\$255 per hour
Overtime Rate for Electrical Services (Journeyman):	\$270 per hour
Saturday, Sunday and Holiday Rate (Apprentice):	\$340 per hour
Saturday, Sunday and Holiday Rate (Journeyman):	\$360 per hour

Attachment: JT Electric FY 19 21 Signed (2338 : On-Call Electrical Maintenance)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff

Attachment: JT Electric FY 19 21 Signed (2338 : On-Call Electrical Maintenance)

MAINTENANCE SERVICE AGREEMENT
Morgan Hill JET Electric, 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 Morgan Hill JET Electric, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2019 of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for up to three, one-year periods. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on-call electrical maintenance and repair services to CITY. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call electrical maintenance and repair services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One hundred thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Morgan Hill JET Electric, Inc.
16230 Church Street
Morgan Hill, CA 95037

Address of CITY is as follows:

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

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
16. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
17. **Maintenance of Records.**
 - 17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
 - 17.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
 - 17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
18. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or

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

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

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

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

22. **Defense and Indemnification**.

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

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

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

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

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

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

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

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

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

27. **Binding Agreement**. Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: Morgan Hill JET Electric FY 19 21 signed (2338 : On-Call Electrical Maintenance)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

MORGAN HILL JET ELECTRIC INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

JAMES E. TARP - PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: _____

HAREN L. TARP Secretary

By: _____

HAREN L. TARP

Print Name and Title of Signer.

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

Date: _____

6/6/19

1000040274

342193
 Contractor's License Number(s) (if applicable)

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

Expiration Date(s) 9/30/19

Expiration Date(s) 6/30/19

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

Attachment: Morgan Hill JET Electric FY 19 21 signed (2338 : On-Call Electrical Maintenance)

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call electrical maintenance and repair services and administer the duties and responsibilities as stated in this contract, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call electrical maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, wiring and testing electrical service and electrical wire systems and components used to provide heat, light, power, air conditioning, and refrigeration in municipal buildings and facilities. Services may also include installing and repairing conduit and other materials; connecting electrical machinery, equipment and controls and transmission systems and servicing other electrical related issues as they arise and services necessary to insure safe, well maintained electrical systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call electrical maintenance and repair services to City Facilities. Contractor shall retain professional personnel who have successfully and competently provided municipal facility electrical maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of electrical systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility electrical maintenance and repair functions during hours of operation and for response after normal

working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2019 through June 30, 2021. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2021. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Electrical Maintenance and Repair Services to the City.

Pricing apply to the period of July 1, 2019 to June 30, 2021. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time

NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the Contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid

evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call electrical maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-10 General Electrical license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining electrical systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing electrical systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of electrical systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

**ATTACHMENT A
MUNICIPAL FACILITIES LOCATIONS**

ELECTRICAL SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center Playhouse	17000 Monterey Road	20,500; 5,000
Future Community Garden	Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
El Toro Youth Center	17620 Crest Avenue	3,800
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

Attachment: Morgan Hill JET Electric FY 19 21 signed (2338 : On-Call Electrical Maintenance)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Shop Rate for Electrical Services (Apprentice):	\$160 per hour
Shop Rate for Electrical Services (Journeyman):	\$230 per hour
Overtime Rate for Electrical Services (Apprentice):	\$240 per hour
Overtime Rate for Electrical Services (Journeyman):	\$345 per hour
Saturday, Sunday and Holiday Rate (Apprentice):	\$320 per hour
Saturday, Sunday and Holiday Rate (Journeyman):	\$460 per hour

Attachment: Morgan Hill JET Electric FY 19 21 signed (2338 : On-Call Electrical Maintenance)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff

Attachment: Morgan Hill JET Electric FY 19 21 signed (2338 : On-Call Electrical Maintenance)

MAINTENANCE SERVICE AGREEMENT
Bear Electrical Solutions, 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 Bear Electrical Solutions, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2019 of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for up to three, one-year periods. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on-call electrical maintenance and repair services to CITY. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call electrical maintenance and repair services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One hundred thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Bear Electrical Solutions, Inc.
1341 Archer Street
Alviso, CA 95002

Address of CITY is as follows:

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

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

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

17. **Maintenance of Records.**

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: Bear Electrical Solutions FY 19 to 21_signed (2338 : On-Call Electrical Maintenance)

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: _____

BEAR ELECTRICAL SOLUTIONS, INC.

By: _____

Robert Asuncion, Vice President

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

Date: 06/10/19

By: _____

Andrew Bader, CFO

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

Date: 06/10/19

982079

 Contractor's License Number(s) (if applicable)

1000002158

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

Expiration Date(s) 03/31/21

Expiration Date(s) 06/30/22

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call electrical maintenance and repair services and administer the duties and responsibilities as stated in this contract, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call electrical maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, wiring and testing electrical service and electrical wire systems and components used to provide heat, light, power, air conditioning, and refrigeration in municipal buildings and facilities. Services may also include installing and repairing conduit and other materials; connecting electrical machinery, equipment and controls and transmission systems and servicing other electrical related issues as they arise and services necessary to insure safe, well maintained electrical systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call electrical maintenance and repair services to City Facilities. Contractor shall retain professional personnel who have successfully and competently provided municipal facility electrical maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of electrical systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility electrical maintenance and repair functions during hours of operation and for response after normal

working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2019 through June 30, 2021. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2021. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Electrical Maintenance and Repair Services to the City.

Pricing apply to the period of July 1, 2019 to June 30, 2021. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time

NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the Contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid

evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call electrical maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-10 General Electrical license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining electrical systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing electrical systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of electrical systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

**ATTACHMENT A
MUNICIPAL FACILITIES LOCATIONS**

ELECTRICAL SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center Playhouse	17000 Monterey Road	20,500; 5,000
Future Community Garden	Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
El Toro Youth Center	17620 Crest Avenue	3,800
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

Attachment: Bear Electrical Solutions FY 19 to 21_signed (2338 : On-Call Electrical Maintenance)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Shop Rate for Electrical Services (Apprentice):	\$ 85 per hour
Shop Rate for Electrical Services (Journeyman):	\$175 per hour
Overtime Rate for Electrical Services (Apprentice):	\$150 per hour
Overtime Rate for Electrical Services (Journeyman):	\$230 per hour
Saturday, Sunday and Holiday Rate (Apprentice):	\$150 per hour
Saturday, Sunday and Holiday Rate (Journeyman):	\$295 per hour

Attachment: Bear Electrical Solutions FY 19 to 21_signed (2338 : On-Call Electrical Maintenance)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff

Attachment: Bear Electrical Solutions FY 19 to 21_signed (2338 : On-Call Electrical Maintenance)

City of Morgan Hill Annual On-Call Electricians Proposals Scoring

Narrative Scoring (40 points)

	Points Available	Morgan Hill JET Electric	JT Electric	Bear Electrical Solutions
Previous Experience in providing superior level service on like-sized public and/or private projects	15.00	13.50	13.50	13.50
Assessment of Work Quality, Performance and Working Relationships with Current and Recent Clients	10.00	10.00	10.00	10.00
Qualifications of Staff to be Assigned to Provide Electrical Services at City Facilities	5.00	4.50	4.50	4.50
Well Organized Communication Systems and Reporting Capabilities	10.00	7.50	8.00	9.50
Total Narrative Points (A)	40.00	35.50	36.00	37.50

Pricing Scoring (60 points)

	Bid Pricing					Point Scoring			
	Price from Lowest Bidder	Morgan Hill JET Electric	JT Electric	Bear Electrical Solutions		Points Available	Morgan Hill JET Electric	JT Electric	Bear Electrical Solutions
Shop Rate Apprentice (8am to 5 pm)	85.00	160.00	170.00	85.00		10.00	5.31	5.00	10.00
Shop Rate Journeyman (8am to 5 pm)	175.00	230.00	180.00	175.00		10.00	7.61	9.72	10.00
Overtime Rate Apprentice (5 pm to 8 am)	150.00	240.00	255.00	150.00		10.00	6.25	5.88	10.00
Overtime Rate Journeyman (5 pm to 8 am)	230.00	345.00	270.00	230.00		10.00	6.67	8.52	10.00
Saturday, Sunday and Holiday Rate-Apprentice	150.00	320.00	340.00	150.00		10.00	4.69	4.41	10.00
Saturday, Sunday and Holiday Rate-Journeyman	295.00	460.00	360.00	295.00		10.00	6.41	8.19	10.00
Total Pricing Points (B)						60.00	36.94	41.73	60.00

Point Score is lowest bidder's price divided by each of the bid pricing items times the number of points available.

GRAND TOTAL POINTS (A + B)	100.00	72.44	77.73	97.50
-----------------------------------	---------------	--------------	--------------	--------------



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD ANNUAL ON-CALL PLUMBING MAINTENANCE SERVICE AGREEMENTS

RECOMMENDATION(S)

1. Award Maintenance Service Agreements to Burr Plumbing and Pumping Co, Inc., Ernie's Plumbing, and Century Commercial Service for \$100,000 each for on-call plumbing maintenance and repair services; and
2. Authorize the City Manager to execute and administer the Agreements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider awarding agreements to three plumbing contractors for on-call services in the amount of \$100,000, each.

The City had contracted for plumbing maintenance and repair services for many years on an on-call as-needed basis. In 2015, the California Department of Industrial Relations (DIR) began requiring all contractors working on public works projects over \$1,000 to register on the DIR website and retain their certified payrolls. In order to meet this requirement, the City is contracting with several plumbing contractors for multiyear contracts that require the plumbing contractors to meet the DIR registration and certified payroll requirements.

A Request for Proposals (RFP) for on-call plumbing maintenance and repair services from California licensed plumbing contractors was issued on March 25, 2019, and bids were received on May 1, 2019. In soliciting these proposals, the City advertised in the Morgan Hill Times, on the City website, Public Purchase and Online Plan Service.

Four proposals were received in response to the RFP. Community Services Department – Maintenance Division staff evaluated and scored the proposals based on each contractor's pricing, references and narrative responses to questions regarding previous experience, work quality, client relations and communication systems. Attached please find a summary of the bid evaluations (Attachment 1). Based upon the scoring criteria, Burr Plumbing and Pumping, Inc. scored the highest in terms of pricing and narrative

responses. Staff believes that having a contract with more than one plumbing contractor is necessary in order to ensure there is adequate coverage for on-call plumbing repair services and recommends approving contracts with three of the firms that submitted bids. If approved by the City Council, the contract terms would begin on July 1, 2019 and end on June 30, 2021 with options to extend for three, one-year periods.

COMMUNITY ENGAGEMENT: Inform

On-call plumbing maintenance and repair is a routine and standard service provided at City Facilities. Staff will post signage informing the public of any plumbing maintenance repairs that affect the use of City facilities. If the plumbing repairs will occur over several days, a general notice will be posted on the City's website and on Next Door Morgan Hill informing residents of any disruptions to services at City facilities.

ALTERNATIVE ACTIONS:

An alternative action would be to approve a contract with only one firm. This would limit the City's options when repairs are needed and may result in a decrease in public services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Burr Plumbing and Pumping, Inc. has an existing maintenance service agreement with the City, which was awarded by the City Council on November 11, 2015 and was amended three times on November 1, 2016, April 23, 2017 and March 7, 2018. The term of the existing agreement ends on June 30, 2019.

FISCAL AND RESOURCE IMPACT:

The plumbing repair costs were anticipated and included in the adopted Building Maintenance budgets for City facilities and parks. The total not-to-exceed amount in each contract has been set at \$100,000 to ensure that the contract maximum amount does not restrict the City's capability to obtain needed repairs in a timely manner and to limit service disruptions and public safety concerns.

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.

LINKS/ATTACHMENTS:

1. Plumbing RFP Scoring Summary
2. Ernie's Plumbing and Repair_signed
3. Burr Plumbing and Pumping_signed
4. Century Commercial Service_signed

City of Morgan Hill Annual On-Call Plumbing Proposals Scoring

Narrative Scoring (40 points)

	Points Available	Burr Plumbing	Kinetics Mechanical Service	Ernie's Plumbing	Century Commercial Service
Previous Experience in providing superior level service on like-sized public and/or private projects	15.00	14.50	11.50	13.50	14.00
Assessment of Work Quality, Performance and Working Relationships with Current and Recent Clients	10.00	10.00	10.00	10.00	10.00
Qualifications of Staff to be Assigned to Provide Plumbing Services at City Facilities	5.00	4.50	1.00	3.00	4.5
Well Organized Communication Systems and Reporting Capabilities	10.00	9.00	4.50	6.50	4.5
Total Narrative Points (A)	40.00	38.00	27.00	33.00	33.00
			Did not achieve minimum 30 points on narrative		

Pricing Points (60 points)

	Bid Pricing					Point Scoring				
	Price from Lowest Bidder	Burr Plumbing	Kinetics Mechanical Service	Ernie's Plumbing	Century Commercial Service	Points Available	Burr Plumbing	Kinetics Mechanical Service	Ernie's Plumbing	Century Commercial Service
Shop Rate Apprentice (8am to 5 pm)	145.00	145.00	157.32	150.00	210.00	10.00	10.00		9.67	6.90
Shop Rate Journeyman (8am to 5 pm)	168.14	185.00	168.14	250.00	210.00	10.00	9.09		6.73	8.01
Overtime Rate Apprentice (5 pm to 8 am)	150.00	210.00	191.68	150.00	315.00	10.00	7.14		10.00	4.76
Overtime Rate Journeyman (5 pm to 8 am)	209.03	260.00	209.03	250.00	315.00	10.00	8.04		8.36	6.64
Saturday, Sunday and Holiday Rate-Apprentice	200.00	210.00	252.79	200.00	315.00	10.00	9.52		10.00	6.35
Saturday, Sunday and Holiday Rate-Journeyman	260.00	260.00	273.35	350.00	315.00	10.00	10.00		7.43	8.25
Total Price Points (B)						60.00	53.79		52.18	40.91

Point Score is lowest bidder's price divided by each of the bid pricing items times the number of points available.

GRAND TOTAL POINTS (A + B)	100.00	91.79		85.18	73.91
-----------------------------------	---------------	--------------	--	--------------	--------------

MAINTENANCE SERVICE AGREEMENT
Ernie's Plumbing and Repair Service, 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 Ernie's Plumbing and Repair Service, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2019 of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for up to three, one-year periods. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on-call electrical maintenance and repair services to CITY. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call plumbing and pumping maintenance and repair services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One hundred thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Ernie's Plumbing and Repair Service, Inc.
7411 Railroad Street
Gilroy, CA 95020

Address of CITY is as follows:

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

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

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

17. **Maintenance of Records.**

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: Ernie's Plumbing and Repair_signed (2339 : On-Call Plumbing)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

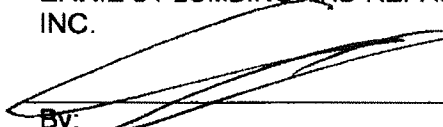
Date: _____

Date: _____

APPROVED AS TO FORM:

ERNIE'S PLUMBING AND REPAIR SERVICE,
 INC.

 City Attorney

By:  President

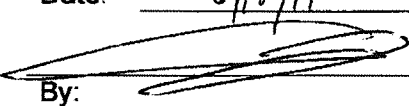
 Donald A. Larkin
 Print Name

 Ernie B. Lopez President
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 6/10/19

By:  Secretary

 Ernie B. Lopez Secretary
 Print Name and Title of Signer.

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

Date: 6/10/19

81492.5

 Contractor's License Number(s) (if applicable)

1000027418

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

Expiration Date(s) 9/20

Expiration Date(s) 6/20

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

Attachment: Ernie's Plumbing and Repair_signed (2339 : On-Call Plumbing)

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call plumbing maintenance and repair services and administer the duties and responsibilities as stated in this contract, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call plumbing maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, piping, and testing plumbing service and plumbing systems and components. Systems include, but are not limited to domestic water, heating, cooling, hot water systems, conditioned water systems, pool water systems, sanitary sewer and storm systems as well as all related components required for municipal buildings and facilities. Services will include, but not be limited to installing and repairing piping, fixtures and maintenance for commodes, urinals, drinking fountains, pools, water spray features, heating and air conditioning systems as well as additional plumbing related issues as they arise and the services necessary to insure safe, well maintained influent, effluent and closed loop systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call plumbing maintenance and repair services to City Facilities. Contractor shall retain professional personnel who have successfully and competently provided municipal facility plumbing maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of plumbing systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

Attachment: Ernie's Plumbing and Repair_signed (2339 : On-Call Plumbing)

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility plumbing maintenance and repair functions during hours of operation and for response after normal working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2019 through June 30, 2021. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2021. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Plumbing Maintenance and Repair Services to the City.

Pricing apply to the period of July 1, 2019 to June 30, 2021. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time
NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the Contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call plumbing maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-36 Plumbing license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining plumbing systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing plumbing systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of plumbing systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain

locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

ATTACHMENT A MUNICIPAL FACILITIES LOCATIONS

PLUMBING SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center and Playhouse	17000 Monterey Road	20,500; 5,000
Future Community Garden	Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
El Toro Youth Center	17620 Crest Avenue	3,800
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

Attachment: Ernie's Plumbing and Repair_signed (2339 : On-Call Plumbing)

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Shop Rate for Plumbing Services (Apprentice):	\$150 per hour
Shop Rate for Plumbing Services (Journeyman):	\$250 per hour
Overtime Rate for Plumbing Services (Apprentice):	\$150 per hour
Overtime Rate for Plumbing Services (Journeyman):	\$250 per hour
Saturday, Sunday and Holiday Rate (Apprentice):	\$200 per hour
Saturday, Sunday and Holiday Rate (Journeyman):	\$350 per hour

Attachment: Ernie's Plumbing and Repair_signed (2339 : On-Call Plumbing)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff

Attachment: Ernie's Plumbing and Repair_signed (2339 : On-Call Plumbing)

MAINTENANCE SERVICE AGREEMENT Burr Plumbing and Pumping, 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 Burr Plumbing and Pumping, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2019 of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for up to three, one-year periods. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on-call electrical maintenance and repair services to CITY. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call plumbing and pumping maintenance and repair services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One hundred thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Burr Plumbing and Pumping, Inc.
1645 Almaden Road
San Jose, CA 95125

Address of CITY is as follows:

Cynthia Iwanaga
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

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
16. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
17. **Maintenance of Records.**
 - 17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
 - 17.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
 - 17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
18. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: Burr Plumbing and Pumping_signed (2339 : On-Call Plumbing)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

BURR PLUMBING AND PUMPING, INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

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

Date: _____

Date: 06/04/2019

By: _____

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

Date: 06/04/2019

730349
 Contractor's License Number(s) (if applicable)

1000010323
 Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 12/31/2020

Expiration Date(s) 06/30/2019

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call plumbing maintenance and repair services and administer the duties and responsibilities as stated in this contract, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call plumbing maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, piping, and testing plumbing service and plumbing systems and components. Systems include, but are not limited to domestic water, heating, cooling, hot water systems, conditioned water systems, pool water systems, sanitary sewer and storm systems as well as all related components required for municipal buildings and facilities. Services will include, but not be limited to installing and repairing piping, fixtures and maintenance for commodes, urinals, drinking fountains, pools, water spray features, heating and air conditioning systems as well as additional plumbing related issues as they arise and the services necessary to insure safe, well maintained influent, effluent and closed loop systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call plumbing maintenance and repair services to City Facilities. Contractor shall retain professional personnel who have successfully and competently provided municipal facility plumbing maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of plumbing systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility plumbing maintenance and repair functions during hours of operation and for response after normal working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2019 through June 30, 2021. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2021. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Plumbing Maintenance and Repair Services to the City.

Pricing apply to the period of July 1, 2019 to June 30, 2021. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time
NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the Contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call plumbing maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-36 Plumbing license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining plumbing systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing plumbing systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of plumbing systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain

locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

ATTACHMENT A MUNICIPAL FACILITIES LOCATIONS

PLUMBING SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center and Playhouse	17000 Monterey Road	20,500; 5,000
Future Community Garden	Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
El Toro Youth Center	17620 Crest Avenue	3,800
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

Attachment: Burr Plumbing and Pumping_signed (2339 : On-Call Plumbing)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Shop Rate for Plumbing Services (Apprentice):	\$145 per hour
Shop Rate for Plumbing Services (Journeyman):	\$185 per hour
Overtime Rate for Plumbing Services (Apprentice):	\$210 per hour
Overtime Rate for Plumbing Services (Journeyman):	\$260 per hour
Saturday, Sunday and Holiday Rate (Apprentice):	\$210 per hour
Saturday, Sunday and Holiday Rate (Journeyman):	\$260 per hour

Attachment: Burr Plumbing and Pumping_signed (2339 : On-Call Plumbing)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff

Attachment: Burr Plumbing and Pumping_signed (2339 : On-Call Plumbing)

MAINTENANCE SERVICE AGREEMENT
Century Commercial Service, 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 Century Commercial Service, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2019 of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for up to three, one-year periods. City Manager may exercise this option only if, in City Manager's discretion, SERVICE PROVIDER has demonstrated superior performance in provision of on-call electrical maintenance and repair services to CITY. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call plumbing and pumping maintenance and repair services as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One hundred thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Century Commercial Service, Inc.
12820 Earhart Avenue
Auburn, CA 95602

Address of CITY is as follows:

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

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

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

17. **Maintenance of Records.**

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

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

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

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

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date:

Date:

APPROVED AS TO FORM:

CENTURY COMMERCIAL SERVICE, INC.

City Attorney

By: KEITH ESTES

Donald A. Larkin

PRESIDENT

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

Date:

6-6-2019

Traci Estes

By: TRACI ESTES

SECRETARY

Print Name and Title of Signer.

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

Date:

6-6-2019

668894

Contractor's License Number(s) (if applicable)

10000002650

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

Expiration Date(s)

4/21

Expiration Date(s)

06/2020

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call plumbing maintenance and repair services and administer the duties and responsibilities as stated in this contract, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call plumbing maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, piping, and testing plumbing service and plumbing systems and components. Systems include, but are not limited to domestic water, heating, cooling, hot water systems, conditioned water systems, pool water systems, sanitary sewer and storm systems as well as all related components required for municipal buildings and facilities. Services will include, but not be limited to installing and repairing piping, fixtures and maintenance for commodes, urinals, drinking fountains, pools, water spray features, heating and air conditioning systems as well as additional plumbing related issues as they arise and the services necessary to insure safe, well maintained influent, effluent and closed loop systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call plumbing maintenance and repair services to City Facilities. Contractor shall retain professional personnel who have successfully and competently provided municipal facility plumbing maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of plumbing systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility plumbing maintenance and repair functions during hours of operation and for response after normal working hours. Contractor shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2019 through June 30, 2021. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2021. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Plumbing Maintenance and Repair Services to the City.

Pricing apply to the period of July 1, 2019 to June 30, 2021. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2021.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time
NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the Contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call plumbing maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-36 Plumbing license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining plumbing systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing plumbing systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of plumbing systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain

locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

ATTACHMENT A MUNICIPAL FACILITIES LOCATIONS

PLUMBING SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center and Playhouse	17000 Monterey Road	20,500; 5,000
Future Community Garden	Railroad Avenue	
Chambers Building	17555 Peak Avenue	12,104
El Toro Youth Center	17620 Crest Avenue	3,800
Boys and Girls Club	17666 Crest Avenue	3,168
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Shop Rate for Plumbing Services (Apprentice):	\$ n/a
Shop Rate for Plumbing Services (Journeyman):	\$210 per hour
Overtime Rate for Plumbing Services (Apprentice):	\$ n/a
Overtime Rate for Plumbing Services (Journeyman):	\$315 per hour
Saturday, Sunday and Holiday Rate (Apprentice):	\$ n/a
Saturday, Sunday and Holiday Rate (Journeyman):	\$315 per hour

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff

Attachment: Century Commercial Service_signed (2339 : On-Call Plumbing)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Inga Alonzo, Management Analyst
APPROVED BY: City Manager

AWARD OF JOINT TRUNK PIPELINE CONDITION ASSESSMENT CONTRACT AND APPROVAL OF RELATED COST SHARING AGREEMENT WITH THE CITY OF GILROY

RECOMMENDATION(S)

1. Approve and authorize the City Manager to execute and administer a Cost Sharing Agreement with the City of Gilroy for the Condition Assessment Project. This authorization is conditioned on the City of Gilroy approving the Cost Sharing Agreement prior to execution; and
2. Approve and authorize the City Manager to execute and administer an agreement with Water Works Engineers, LLC in the amount of \$602,567 for a Joint Trunk Pipeline Condition Assessment. This authorization is conditioned on the City of Gilroy approving the Cost Share Agreement prior to execution.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

In July 1967, the cities of Morgan Hill and Gilroy executed an agreement to construct, operate, and maintain a joint interceptor pipeline (aka Joint Trunk Pipeline) to convey wastewater from both cities to the Gilroy wastewater treatment plant. The Joint Trunk Pipeline (JTP) starts at the intersection of California and Monterey Road and continues southward through San Martin and Gilroy until it reaches the treatment plant (Attachment 3). The JTP is approximately 10.63 miles long and ranges in size from 15" to 33" diameter. The JTP includes an estimated 148 manholes and is constructed of a combination of material types, including vitrified clay, PVC, and Concrete. The average daily flow ranges from 2.55 to 3.29 million gallons per day (MGD).

The JTP is critical infrastructure for Morgan Hill as it carries all City wastewater to the treatment plant. The purpose of this project is to clean, inspect, and assess the condition of the JTP. The results from the condition assessment will guide proactive repairs and maintenance activities. The pipeline was constructed and commissioned circa 1970 and has been operating continuously for approximately 50 years without a comprehensive inspection, condition assessment, or cleaning. Understanding the

condition of the JTP will inform when repairs should be made and provide insight into the remaining life of the pipeline.

To assist in completing this work the City of Morgan Hill issued a Request for Proposal (RFP) in July 2018 to select a consultant/contractor to perform cleaning, inspections and assessments as needed to determine and rate the condition of the Joint Trunk Pipeline. The RFP was advertised in both the Morgan Hill Times and the San Jose Mercury News. Additionally, it was posted to the City's website and Public Purchase. The City received two proposals:

Water Works Engineers	San Mateo	\$ 602,657
Pipe & Plant	Oakland	\$1,332,142

Selection Method:

Proposals were evaluated by a panel made up of staff from the City of Morgan Hill and the City of Gilroy to ascertain which one best met the needs of the City. Evaluation considerations were as follows:

- Overall responsiveness of the proposal in clearly demonstrating an understanding of the City's objectives and the ability to meet the City's needs.
- Technical experience of the Consultant/Contractor and those assigned to the project.
- Demonstrate ability to effectively plan and execute the project in a timely manner.
- References
- Cost

The evaluation panel decided both firms were highly qualified to do the work and set up interviews with both to determine which firm most closely met the City's needs for this project and the panel ultimately recommends awarding this project to Water Works Engineers (Attachment 2).

Staff is also recommending that the project be a cost sharing venture with the City of Gilroy because the JTP is owned and operated by both cities. The agreement recommends that the City of Gilroy fund 25% of the project based on overall capacity allocations for the entire pipeline. The cost share agreement also addresses permitting fees within the City of Gilroy for which Gilroy will waive as a joint funded project. The cost share would be accomplished via the agreement provided as Attachment 1. Approval of the cost share agreement by the Gilroy City Council is scheduled on July 1.

To expedite project commencement, City staff is recommending conditioning the City Manager's authorization to execute both agreements pending approval by City of Gilroy.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommended agreement for a trunk line condition assessment. City staff will provide communication to San Martin residents for work occurring in San Martin, via email and the City website. The City will partner with the City of Gilroy on communications relating to work occurring in the City of Gilroy.

ALTERNATIVE ACTIONS:

Council could decide not to award to this consultant and forego the JTP Condition Assessment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS: None

FISCAL AND RESOURCE IMPACT:

The Joint Trunk Pipeline Condition Assessment is a CIP Project (317a18) budgeted in Fund 643, the Sewer System Replacement Fund, and included in the City's adopted FY 2018-19 through FY 2023-24 Capital Improvement Program. The City of Gilroy shall reimburse the City for 25% of project costs.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Gilroy MH Cost Sharing Agreement
2. Exhibit A: Water Works Consultant Agreement
3. Exhibit B: Existing Trunk Line Map

**COST SHARING AGREEMENT BETWEEN THE CITY OF MORGAN HILL,
CALIFORNIA AND THE CITY OF GILROY, CALIFORNIA FOR THE
JOINT TRUNK LINE ASSESSMENT**

This Agreement is made and entered into on _____, by and between the City of Morgan Hill, California, a general law municipal corporation of the State of California ("Morgan Hill"), and the City of Gilroy, California, a chartered municipal corporation of the State of California ("Gilroy"), collectively referred to herein as the "Parties" or individually as "Party."

RECITALS

WHEREAS, the Parties share ownership of a trunk line for the disposal of sewage to the South County Regional Wastewater Authority facility;

WHEREAS, the Parties desire to contract with an experienced service provider to conduct a condition assessment of that trunk line;

WHEREAS, Morgan Hill has conducted a request for proposals process with support from Gilroy and selected a service provider for the assessment;

WHEREAS, the Parties have determined that the trunk line assessment will provide great benefit to both cities;

WHEREAS, the Parties have identified capacity share for separate sections of the trunk line as identified, attached hereto, and incorporated herein as Exhibit B. For the purpose of this project, the responsibility of the cost has been determined to be 75% Morgan Hill and 25% Gilroy and each of the Parties has indicated its willingness to fund ~~a~~ these percentage share of the costs for the assessment; and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

AGREEMENT

1. Scope ~~of~~ ~~Work~~. The scope of the work consists of the assessment of the entire joint trunk line extending from California Avenue to the South County Regional Wastewater Treatment Plant ~~and as~~ identified in Exhibit B.
2. Costs. Morgan Hill, as the lead agency on this Project, has prepared an agreement including scope of work, and itemized costs for trunk line assessment and is attached hereto as Exhibit A.
3. Cost Sharing of Project. All consultant costs for the assessment are to be shared by the established cost share percentage of 75% by Morgan Hill and 25% Gilroy. The cost shall include all consultant work authorized by the agreement, but exclude staff costs or overhead for either Party.

4. **Payment of Costs.** Morgan Hill, as the lead agency, shall invoice Gilroy for its portion of costs on a monthly basis based on payment of invoices to the consultant. Gilroy shall pay all invoices within 30 days of receipt.
5. **End Product.** Both Parties shall have available to them all assessment information and consultant work product as outlined in the consultant agreement, Exhibit A. As the lead agency, Morgan Hill, shall be responsible for ensuring all work product is delivered to the City of Gilroy.
6. **Permits.** In consideration for its participation in this Agreement, both Parties agree to waive or pay directly any permit fees associated with the consultant doing work within the right of way of each Party. Each Party may require the consultant to apply for an encroachment permit for work occurring in the public right of way.
7. **Indemnification.** Pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify, defend with counsel reasonably acceptable to the other Party and hold the other Party, its officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, contractors, subcontractors, material suppliers or agents, under or in connection with any work, authority or jurisdiction delegated to such Party under this Agreement. Neither Party, nor any officer, 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 Party hereto, its officers, employees, contractors, subcontractors, material suppliers or agents, under or in connection with any work, authority or jurisdiction delegated to such other Party under this Agreement.
8. **Notices.** Notice shall be effective five days after date of mailing, or upon date of hand delivery or facsimile transmission. Notices given under this Agreement may be hand delivered or delivered by facsimile, with an additional copy sent by first class mail, postage prepaid, and addressed to the appropriate party at the following addresses:

To Gilroy: City of Gilroy
 Attn: Public Works Director
 7351 Rosanna Street
 Gilroy, CA 95020

To Morgan Hill: City of Morgan Hill
 Attn: Public Services Director
 17555 Peak Avenue
 Morgan Hill, CA 95037

9. Term. The term of this Agreement shall run concurrently with the consultant agreement attached hereto as Exhibit A. – This Agreement will be automatically extended if the agreement with the consultant is extended. – Should the agreement with the consultant terminate, the Parties agree that this Agreement shall terminate as well. – Any outstanding invoices shall be paid by Gilroy within 30 days of termination.
10. 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.
11. Additional Provisions. The Parties further agree as follows:
- a. One or both Parties' waiver of any term, condition or covenant of this Agreement shall not be construed as a waiver of any other term, condition or covenant of this Agreement.
 - b. This Agreement contains the entire Agreement between the Parties relating to the joint trunk line assessment. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
 - c. This Agreement shall be governed and construed in accordance with the laws of the State of California.
 - d. This Agreement may be executed in counterparts and will be binding as executed.
 - e. This Agreement shall become effective when executed by both cities and shall continue in force and effect so until final work product is delivered unless otherwise terminated pursuant to paragraph 9.
 - f. All amendments to this Agreement must be approved in writing by both Parties to be effective. – The Parties agree that any amendment to the consultant agreement shall be negotiated and agreed to by the Parties, unless such amendment solely affects only one Party. Any amendments to the consultant agreement shall be incorporated herein.
 - g. The Parties agree that they shall endeavor to resolve any dispute about this Agreement in good faith. The Parties further agree that should such dispute

remain unresolved, they shall engage in mediation and/or non-binding arbitration to resolve such disputes, prior to resorting to court action. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

- h. Severability. – The partial or total invalidity of one or more parts of this Agreement will not affect the intent or validity of the remaining parts of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT
AS OF THE DATE FIRST ABOVE WRITTEN.

CITY OF MORGAN HILL

CITY OF GILROY

City Manager

Date:

City Administrator

Date:

ATTEST:

City Clerk

Date:

City Clerk

Date:

APPROVED AS TO FORM:

City Attorney

Date:

City Attorney

Date:

CONSULTANT AGREEMENT WATER WORKS ENGINEERS, LLC

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 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 the inspection and condition assessment of the joint trunk pipeline as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$602,567.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Six Hundred Two Thousand, Five Hundred Sixty-Seven dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 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.

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. 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, 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.
- 7.1.5.3. 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.**

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 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.**

- 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:

Water Works Engineers, LLC
1730 E. El Camino Real Suite 280
San Mateo, CA 94402

Address of CITY is as follows:

Engineering & Utilities Dept.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
16. **Maintenance of Records.**
 - 16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least

3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

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

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

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

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

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

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

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** 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.

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Water Works Engineers, LLC

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

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

Date: _____

Date: _____

By: _____

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

Date: _____

EXHIBIT A SCOPE OF SERVICES

I. General Overview

Water Works Engineers, LLC (Consultant) and their sewer cleaning and assessment Contractor, Professional Pipe Services (ProPipe), shall provide to the City of Morgan Hill (City) licensed professional Engineering services to complete field inspection and conduct condition assessment for the City of Morgan Hill and City of Gilroy Joint Trunk Pipeline (JTP). The scope of work generally includes executing cleaning and debris removal of all line segments during live flow with the Hvidved-Larson 315 Recycler; conducting a condition assessment (utilizing IBAK's Panoramo 3D Optoscanner technology) of the trunk main and its manholes; identifying and prioritizing the line segments in most need of repair, rehabilitation and/or replacement; and development of a report summarizing the results. Ancillary work includes: preliminary construction cost estimating, schedule monitoring, preparation of reports and recommendations, and project management.

II. Project Background

The JTP is a critical pipe carrying sewage from Morgan Hill, through unincorporated Santa Clara County, into the City of Gilroy, where it collects flow from Gilroy customers and discharges to the joint South County Regional Wastewater Authority (SCRWA). The JTP is approximately 10.63 miles long and ranges in size from 15" to 33" diameter. The JTP includes an estimated 148 manholes and is constructed of a combination of material types, including vitrified clay, PVC, and Concrete. The average daily flow ranges from 2.55 to 3.29 million gallons per day (MGD).

The intent of this study is to assess the current condition and capacity of the JTP, and to identify and prioritize degraded portions of the sewer line for rehabilitation. Capacity Assessment is not a part of this scope of work, however hydraulic modeling data, as provided by the City's modeling consultant (Akel Engineering Group, Inc.) as a teaming partner with Consultant, will be utilized where deemed appropriate by Consultant to assist with inspection and condition assessment activities. Consultant will include an evaluation of potential operation and maintenance (O&M) enhancements and/or capital improvements that could extend the useful life of the JTP, provide redundancy for emergency or by-pass operations. As needed stipends for select services are included to address unknown conditions, including: locating and uncovering buried manholes; heavy pipe cleaning and debris removal beyond 3- passes with the recycler; floating the inspection camera over immovable debris; and sonar of submerged pipes that cannot be cleaned or bypassed.

The JTP manhole entry points are located in varying conditions for access, including moderately traveled traffic lanes and intersections requiring traffic control and potential limited working hours for access, paved or landscaped areas that require limited traffic control, cross country that may not require significant traffic control but will require dry ground surface working conditions; and one crossing of California State Highway 101. Consultant/Contractor will obtain Encroachment Permits for work in the County of Santa Clara and Caltrans Right- of-Way, as well as work with the project partner Cities of Morgan Hill and Gilroy to meet their encroachment permit requirements.

The Consultant/Contractor shall perform cleaning, inspections and assessments to determine and rate the condition of the pipeline and manholes. The inspections and assessment shall follow the National Association of Sewer Service Companies' (NASSCO) Pipe and Manhole Assessment and Certification Programs (PACP and MACP). The Consultant/Contractors shall provide a condition assessment consistent with the PACP and MACP methodologies for all JTP pipe segments and manholes. The assessment shall include defect descriptions, remaining life estimates, and repair

and rehabilitation options. The Consultant/Contractor shall also prepare a prioritized rehabilitation program including a table summary, by pipe segment, of the remediation program that includes type of defect, severity, recommended rehabilitation/repair method, schedule and cost estimate. Final report

Shall be signed and sealed by Professional Engineer.

The Consultant/Contractor shall provide all the equipment, labor, and materials necessary to perform all work for the pseudo-Closed-Circuit Televising (CCTV) inspection, utilizing IBAK's Panoramio 3D Optoscanner technology and assessment of mains, manholes, and appurtenances that make up the gravity sanitary sewer system. The City requires the use of NASSCO's PACP and/or MACP version 7.0 or later collected on IBAK compatible software and exported/imported into the to City's current version POSM inspection software program utilizing a standard NASSCO-PACP exchange database. Video files will not be transferred into POSM, but NASSCO-PACP/MACP header data and defect coding and scoring shall be. Video files will be accessible via a GIS linked IBAK Panoramio viewer provided to the City.

III. Scope of Services

Task 1 – Project Management, Encroachment Permitting and Mobilization

The consultant will perform all engineering and project management related work necessary to conduct the inspection and condition assessment as further detailed below.

Consultant services shall include, but are not limited to: project management, investigation, condition assessment, analysis, prioritization, scheduling, estimating, encroachment permitting/regulatory compliance for condition assessment work in County, City or Caltrans controlled Right-of-Way or City owner easement and project reporting. Services shall also include coordination with the City, County, utility companies, and contractors working in the area. Provide and maintain traffic control and safety devices, including all personnel necessary for effectively directing vehicular, pedestrian, and bicycle traffic through project zone. Also develop and implement a health and safety plan and comply with all OSHA and CAL/OSHA requirements when working in the sewers or vicinity of hazardous substances. All manhole entry shall follow the confined space entry requirements of CAL/OSHA, County of Santa Clara, and the Cities of Gilroy and Morgan Hill.

A. Project Management

The consultant will be the primary responsible party for managing the project's schedule and consultant contract budget. In addition, the consultant is expected to attend a minimum of two progress meetings and prepare action item logs for subsequent follow-up. The consultant is expected to maintain frequent (minimum weekly during field activities) and timely communication with City staff throughout the duration of the project.

All project schedules shall be prepared in Gantt chart format, utilizing Microsoft Project software. Schedule updates shall be provided periodically (minimum monthly).

Consultant's own team should have provisions for quality assurance/quality control over work product prepared for the City, including peer review for overall thoroughness, coordination, and reasonable reduction in errors and omissions.

The consultant shall host an FTP site (using project specific folders on www.DropBox.com or similar file sharing site) throughout the project's duration for electronic file sharing.

B. Site Investigation and Mobilization

Consultant / Contractor shall complete a site investigation to confirm the method and sequence of the cleaning and condition assessment; assess encroachment permitting and traffic control requirements; and utilize City provided survey to locate all manholes and identify those that may be buried and/or inaccessible and may require use of “as-needed” stipend to uncover (see Task 1.D – Buried Manholes). Consultant shall provide a list of any such “inaccessible” manholes to City along with estimated cost of work to uncover and obtain approval from City prior to commencing field work to uncover manhole. Where “inaccessible” manholes can be bypassed but all line segments still assessed, Consultant will provide such option to City as an alternate to utilizing “as-needed” stipend for field work. Contractor will mobilize cleaning and inspection equipment to site when deemed appropriate based on confirmation of methodology, sequence of work, accessibility to entry points, and encroachment permit approval.

C. Encroachment Permitting

1. Based on field reconnaissance, Consultant and Contractor shall identify, develop and submit encroachment permit applications (including traffic control plans) to:

- a. City of Morgan Hill
- b. City of Gilroy
- c. County of Santa Clara
- d. Caltrans

2. City will provide administrative assistance to facilitate communications with these entities, including:

- a. Provide contact names for permitting entities as available.
- b. Assist with internal communications within the Cities of Morgan Hill and Gilroy to facilitate submittal review and approval.
- c. Produce letter on City letterhead to Caltrans and the County of Santa Clara identifying Consultant/Contractor as your approved agent for securing the permit.
- d. If required by the agency (likely for Caltrans and County of Santa Clara), accompany Consultant/Contractor to agency department for submittal and/or meeting related to project overview and discussion of permit requirements.

D. Buried Manholes

Consultant shall contract with a local underground contractor to uncover all buried manholes approved by the City for such provision of access. Exact cost of each location meeting this need will be provided to the City on a case by case basis and only those approved for work shall be completed by Consultant’s underground contractor. Exact underground contractor will be based on availability of their staff and equipment at such time as work is needed. A stipend amount for this “as needed” work has been included in the cost estimate.

Task 2 – Line Cleaning

The Contractor will perform all field work necessary to conduct the cleaning and debris removal for JTP segments identified for inspection as part of the project. Contractor shall complete large diameter pipe cleaning (in live flow) utilizing the Hvidved-Larson 315 “Recycler”, which enhances safety during operations and provides the following advantages.

- Operated on recycled wastewater, in a flowing pipeline, thus enabling jetting operations for the day, significantly reducing the use of “potable” water.
- Enhances large diameter cleaning without bypass.
- Supports operation of truck cleaning accessories remotely.

- Utilizes a single flexible tube vacuum hose, which eliminates the need to connect rigid tubular connections over an open maintenance hole.
- Significantly reduces number of times water filling from fire hydrants.
- Higher cleaning footage production when compared to traditional hydro-vacuum combination cleaning trucks.

A. Base Cleaning and Debris Removal

1. Contractor will operate the “Recycler” in step cleaning cycle for every pipe segment such that no material that can be moved by the “Recycler” remains in the pipe.
 - a. 3-pass step cleaning is included as part of base cleaning price (\$/lf cleaned by pipe size)
2. Contractor may decant water out of solids holding tanks at the city’s WWTP and will dispose of remaining solids at Contractor identified location capable of accepting such materials.

B. Additional Cleaning

1. Any additional cleaning (beyond 3-pass) required for moveable debris will be done as an hourly added price (\$/hr additional cleaning by the “Recycler”)
2. If the material found is solidified or of a size (i.e. large boulders, concrete, etc.) that cannot be moved with the “Recycler” those lines will not be cleaned completely and will be assessed with the “raft” camera set-up for condition assessment and identified for cleaning as part of a future “Heavy Cleaning” Capital Improvement Project
 - a. Consultant shall assess these pipe conditions and provide the City a recommendation as to the benefit of sonar to quantify material and/or camera ‘float’ inspection of these lines also, either of which would be completed only after approval by the City under the “as needed” additional line item cost (\$/LF) found under subsequent task work descriptions.

C. Debris Disposal

Consultant shall be responsible for disposal of materials collected as part of work (solids and water collected and stored in “Recycler” or other project equipment) including, solids storage and dewatering bin placement at WWTP; loading; and transport by disposal company. Payment for this disposal effort shall be on an actual cost +10% basis estimated at a not to exceed amount of \$8,750 based on industry typical expectations for debris from 3-pass Line Cleaning (light cleaning).

D. IBAK Panorama Manhole Inspection

1. Contractor will complete cleaning of manholes in preparation for IBAK Panorama SI 3D Optical Scanner (\$/each manhole cleaned)

Task 3 – Pipeline and Manhole Field Inspection

The Contractor will perform all field work necessary to conduct pseudo-Closed-Circuit Televising (CCTV) inspection, utilizing IBAK’s Panorama 3D Optoscanner technology, of approximately 10.63 miles of JTP pipe and 148 manholes. The condition assessment and analysis shall generally include the following:

- Examination of the line including condition of the pipe and manholes utilizing IBAK’s Panorama 3D Optoscanner technology as provided by Professional Pipe Services (Pro- Pipe) a Division of Hoffman Southwest Corp.
- Panorama Optoscanner digital documentation of lines and manholes
- Identify any deficiencies including, but not limited to surcharged manholes, grease buildup, leaks, sags, off-sets, sedimentation, or root intrusion
- Identify visible sources of infiltration and inflow (I/I) and include strategies for inspection/reduction/elimination of identified sources in preliminary design report

- Identify any sections of the trunk main that are expected to require higher levels of ongoing maintenance due to grease build up, sedimentation, or other conditions

The field investigation and analysis must be adequate to confirm the existing condition of JTP components and identify components that are deficient, or need to be upgraded to ensure reliable, long-term operation of the line. Consultant recommendations for enhanced maintenance, rehabilitation or replacement shall be based on structural and O&M defects identified during the field assessment. Consultant shall review all field collected data and make recommendations based on this data.

Special Certification Requirements: All CCTV operators and Quality Control (QA/QC) staff shall be certified by the National Association of Sewer Service Companies (NASSCO) by passing the Pipeline Assessment and Certification Program (PACP) and Manhole Assessment and Certification Program (MACP). The methodology of evaluation, data collection, and reporting criteria used for the NASSCO certification shall be practiced for all CCTV/Panorama inspections. The project tabular data shall be delivered electronically to the City in the current NASSCO Standard Database Exchange format for PACP and MACP, which will be importable into the City's POSM CCTV software. Optoscanner digital data shall be exported and delivered in a no license required PipeLogix viewer format (1 each per segment with a self-executable viewer launch file), PACP coding, integrated reports into the viewer, PACP exchange database and GIS shape files with linked viewers to pipe segments and observations delivered on portable flash media or hard drive. This format does not require proprietary software to be reviewed and can be viewed with the standard self-executable MS Windows compatible software. Cost for these services shall be included in the following unit price pay items.

A. IBAK Panorama Inspection with Tractor

1. Contractor will complete inspection of pipelines using IBAK Panorama 3D Optoscanner with tractor centered in pipe (\$/lf inspected by pipe size)

B. IBAK Panorama Inspection "Float"

1. Contractor will complete inspection of pipelines using IBAK Panorama 3D Optoscanner with "floated" camera (\$/lf inspected, only possible on pipes > 24" diameter)
2. Consultant will identify pipes that cannot be cleaned to sufficient level to eliminate immovable debris and present those segments to City as potential locations where "float" set-up could provide adequate condition data.
3. Upon approval by City, Consultant/Contractor will "float" these lines for Condition Assessment on an "as-needed" stipend basis.

C. Plug and Release Flow Control

1. Contractor will plug upstream manhole for periodic short duration (5-15 min) to reduce flow and provide view of pipe invert (\$/each plug set-up), assuming 64 plug set-ups, one per two pipe segment inspections.
2. Consultant will consult with City's modeling consultant to determine maximum durations of plugging based on dry and wet weather flow conditions for each manhole where plugging is to be used.
3. Contractor shall provide observation of upstream manhole pull plug at any point in time where surcharging of line exceeds 3'ft above pipe crown or within 3-ft of rim at any point in system.

D. IBAK Panorama Manhole Inspection

1. Contractor will complete inspection of manholes using IBAK Panorama SI 3D Optical Scanner (\$/each manhole inspected)

The following are assumed conditions for the Pipeline and Manhole Field Inspection scope of services:

1. It is assumed submerged pipes that are siphons will be cleaned and assessed under a separate line item.
2. Work will be completed during dry season, commencing after April 1, 2019.
 - a. Inaccessible manholes / entry points due to wet weather and/or no access rights will be addressed as follows:
 - i. If due to wet weather combined with lack of wet weather road access, Contractor will mobilize to all weather access segment and return later in the project to complete those segments without a remobilization cost.
 - ii. If its later in the project and no segments are accessible for more than 2 consecutive days, a remobilization cost and the project deliverables will be delayed so as to include those segments in this assessment
3. If due to entry points that cannot be accessed because the City does not have the access rights or the manhole is located in a place where no equipment can get to it, then Contractor will attempt to video from a downstream or upstream manhole and go through multiple manholes with the equipment to bypass the need for access, but if that cannot be accomplished then Contractor will not assess that manhole unless access can be provided by the City.

The following are assumed to be excluded from the Pipeline and Manhole Field Inspection scope of services:

1. Bypass pumping and operating pump stations
2. Environmental/erosion control
3. Actual cost of permits, licenses and performance bonds (if any)
4. Excavation of any kind
5. Access- (Owner shall provide adequate access, i.e. provide access to easements and/or approve use of "as-needed" stipend funds to uncover buried manholes or allow Contractor to CCTV through those manholes, if possible, which would eliminate that manhole from MACP inspection)
6. Additional mobilizations- (proposal is based upon 1 instance of mobilization for the above services)
7. Mechanical Cleaning or Cleaning beyond normal conditions- (Cleaning footage prices are for cleaning 3 passes with a "Recycler" and hourly rate for additional "Recycler" debris removal, no mechanical cleaning shall be completed as part of this scope of services)
8. Water (City shall provide approved location to obtain water for "Recycler" and other project water uses at no cost to Consultant/Contractor).

Task 4 – Submerged Pipeline Field Inspection

The Contractor will perform all field work necessary to conduct inspection of pipelines found to be submerged and flow control and/or debris removal cannot provide accessibility to that segment for condition assessment.

A. Siphon Cleaning and Inspection

Contractor shall provide all labor, material and equipment to provide by-pass pumping; cleaning; debris removal/disposal; and CCTV inspection of one (1) known siphon on JTP alignment, estimated at 500-lf of length between bypass manholes.

B. Sonar Submerged Pipe and Produce Debris Report

Consultant shall evaluate sewer main using a non-destructive pipe assessment technology as proposed by the consultant if it will result in detailed information about the condition of lines that can't be obtained by CCTV inspections. This may be considered for fully submerged pipes, where bypass pumping is impractical in most of the main due to traffic, to quantify the amount of sediment present, to identify structural anomalies or to check the integrity of RCP line segments. The severity of surcharge and/or complete submergence in each pipe segment will be evaluated by Consultant team during the initial Panoramo Optoscanner condition assessment and recommendations as to the effectiveness of sonar deployment will be made to the City at that time.

For the purposes of this scope of services and fee estimate, Consultant has assumed sonar inspection for Non-Destructive Pipe Condition Assessment services shall be completed on a "as-needed" not to exceed stipend basis upon approval from City. Sediment levels are identified in the pipe using a sonar unit. The sonar equipment operates on the general principal of measuring the different velocities of sound in water from differing materials. The sonar head sends out ultrasonic signals that are reflected from materials in the sewer below the waterline. The time delay of the reflected signals is used to generate a profile of the surfaces under water. Sonar can be used to provide information on submerged debris, with additional limited ability to identify and quantify pipe settlement, joint alignment and submerged deformations in sewers. Results of the post-inspection data processing will be reviewed by Consultant and resultant recommendations for O&M enhancements, additional more detailed inspection; repair or rehabilitation would be included in the draft and final reports.

Task 5 – Traffic Control Plan Development and Implementation

Contractor will develop and perform all field work necessary to provide traffic control for inspection of pipelines and manholes in accordance with encroachment permit requirements. For the purposes of meeting County of Santa Clara, City of Morgan Hill, City of Gilroy and Caltrans encroachment permitting and project work zone conditions, it is assumed the following types and quantities of traffic control permits will be developed and implemented:

- A. Qty (1) Typical "Easement" Traffic Control Plan not requiring PE stamp;
- B. Qty (3) Typical "City Right of Way" and/or "County Right of Way" Traffic Control Plan(s) not requiring PE stamp;
- C. Qty (1) Individual Location "Caltrans Right of Way" Traffic Control Plan requiring PE stamp.

Task 6 – Condition Assessment Report

Consultant will produce a Condition Assessment Report (Draft and Final Report) that summarizes the results of all field activities and office assessments; describes the viability of the existing pipeline and appurtenances; details the process used to make that assessment; and provides recommended improvements and costs. The Report will include:

- ☐ Purpose of the Investigation
- ☐ Summary of Field Assessment and Field Procedures
- ☐ Findings of the Field Condition Assessment
- ☐ Risk Assessment Algorithm and Results

- ☐ Description of Proposed Repair, Rehabilitation & Replacement (RRR / Renewal) Alternatives and Recommendations
- ☐ Unit Cost for each RRR Activity and Supporting Documentation
- ☐ Methodology for Project Bundling
- ☐ Construction Cost Estimates (“hard” and “soft” costs)
- ☐ Proposed Improvement Project Bundles and Prioritization (0-3 year / 3-10 year / 10- 20 year)
- ☐ Competitive Bidding Potential and Recommendations (by methodology, pipe material, location, etc.)
- ☐ Potential Constraints (Geotech, ROW, Environmental, Utilities, Constructability, Permitting, O&M, etc.)
- ☐ Project Summary Sheets (plan, summary of work, costs, bid alternatives, permits & constraints)
- ☐ Operations and Maintenance Enhancements (line cleaning, increased CCTV, etc.)

The Report shall be clean, clear, concise and complete; and submitted to the City in Draft format for comment and Final format with all City comments addressed. The Report will serve several key functions as follows:

- ☐ Identify all engineering issues and constraints and recommended resolutions;
- ☐ Provide guidance for effective and efficient execution of final design;
- ☐ Discuss potential procedures for maintaining service during construction;
- ☐ Locate tie-in requirements and expectations so City can confirm; and
- ☐ Provide a defect summary table, defect maps, rehab recommendations, project map and summary for use with future design and potential permit application (should they be necessary).

A. Draft Report

The report shall be clean, clear, concise and complete; and submitted to the City in Draft format at a Draft Report Review Workshop facilitated by Consultant staff. Consultant will receive comments during workshop, as well as written review comments as provided by City, and produce Final Report with all City comments addressed.

B. Final Report

Once the draft report has been approved by the City, the consultant shall finalize the Report by incorporating any last comments provided by the City and consultant’s internal peer review. The final signed and stamped Condition Assessment Report will be submitted, including six (6) color hardcopies along with digital copies (PDF and native format) of all documents.

IV. Available Documents

The documents listed below shall be made available to the Consultant by the City.

1. AutoCAD Civil 3D of the alignment and associated survey (DWG in AutoCAD Civil 3D)
2. GIS of the City of Morgan Hill and Gilroy entire system(s) with any size, material, rim and invert attribution date (geodatabase preferred, .shp file as an alternate)
3. Hydraulic model files
 - a. Access via City of Morgan Hill’s modeling subconsultant to the City’s 2017 InfoSWMM by Innovyze hydraulic model files as a .CSV and .SHP file for existing conditions Average Dry Weather Flow (ADWF) and Peak Wet Weather Flow (PWWF) at each manhole along the alignment.

V. Schedule of Costs

Consultant will perform the services outlined herein according to the terms of payment in the Agreement on a unit price by quantity, by % complete, or time and expense basis in accordance with the Schedule of Costs in Exhibit B (revised based on NTP/Executed Contract date below) and

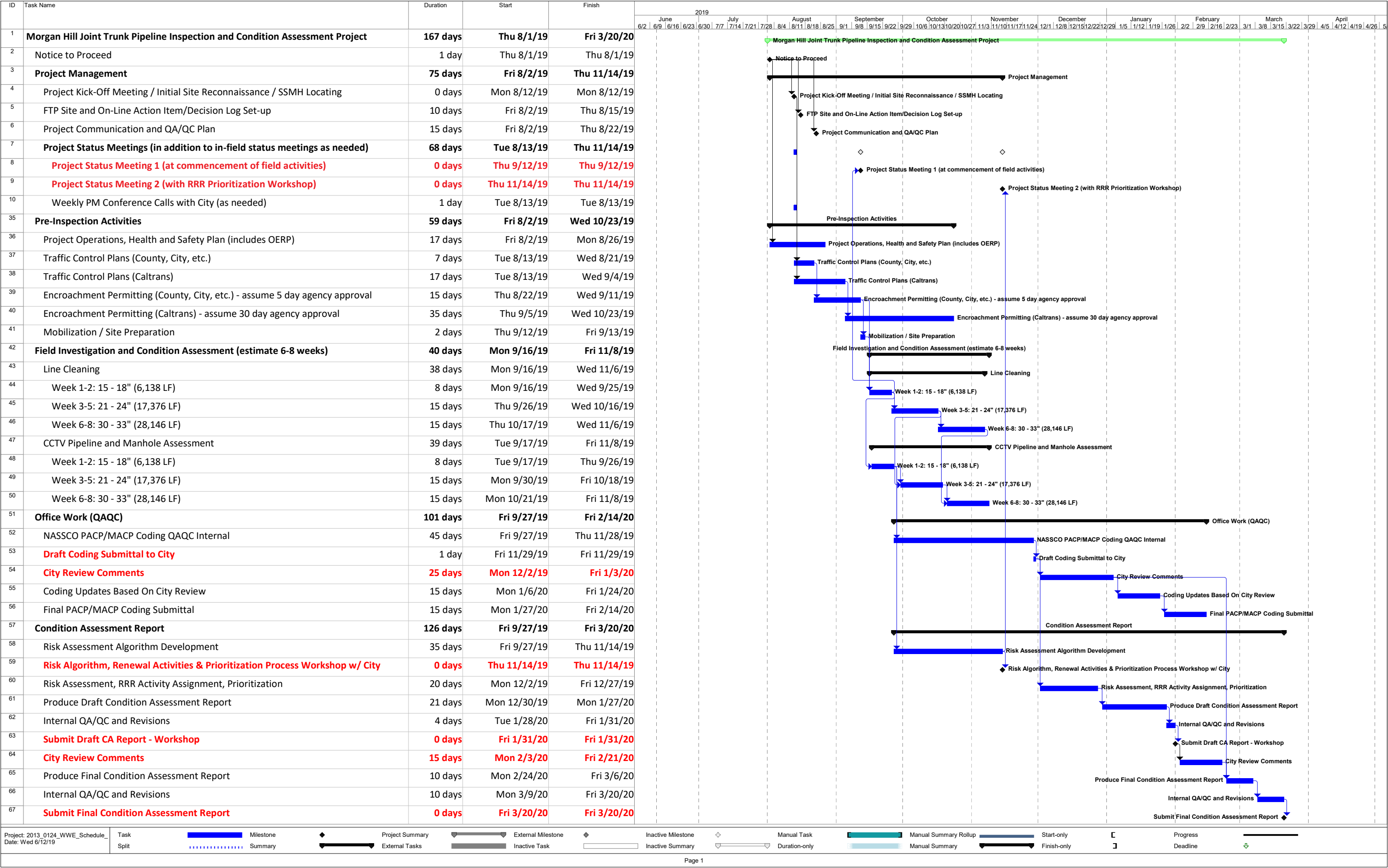
the Water Works Standard Rate Schedule. Total payment shall not exceed the following without written consent of the City.

Notice to Proceed / Contract Execution	Total Not to Exceed Budget
8/1/19 (Base Cost) \$602,567	
after 8/1/19 (1% increase over Base)	\$608,593
after 9/1/19 (2% increase over Base)	\$614,618
after 10/1/19 (4% increase over Base)	\$626,670
after 12/1/19 (6% increase over Base)	\$638,721

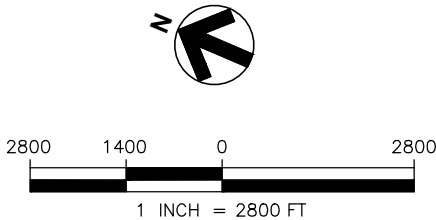
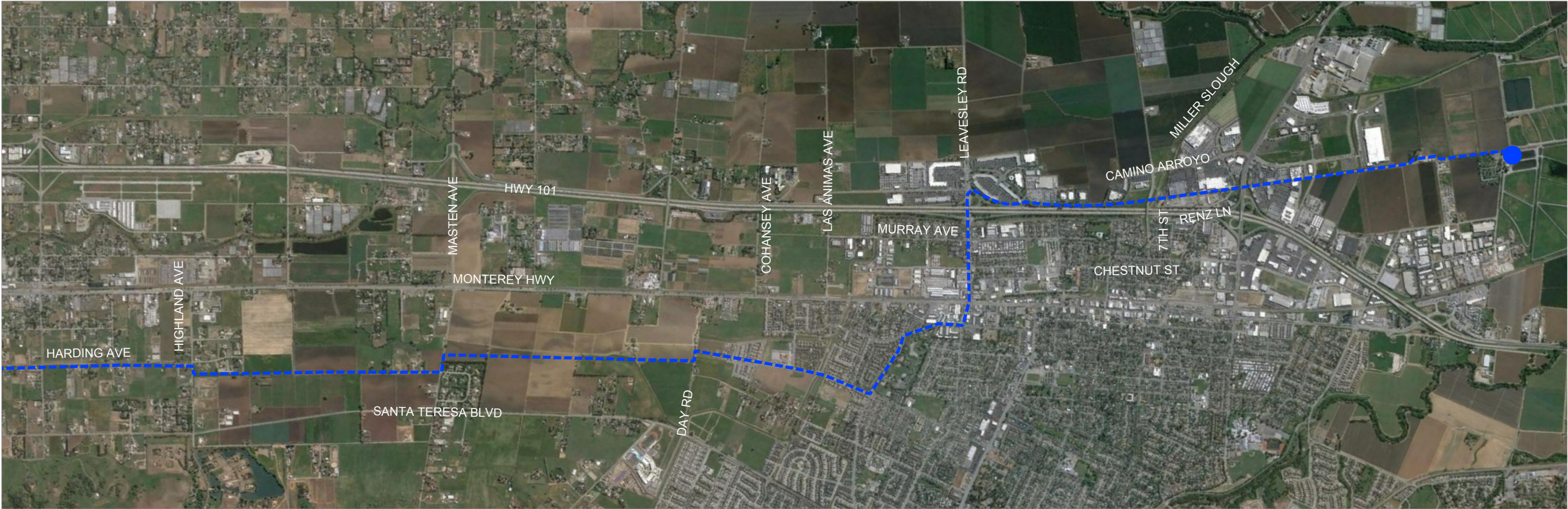
EXHIBIT B**Schedule of Costs**

Item	Description	Unit	Quantity	Unit Price	Total
1.A	Project Management	T&M NTE	1	\$18,750.00	\$18,750
1.B	Site Investigation & Mobilization	I.S.	1	\$12,500.00	\$12,500
1.C	Encroachment Permit(s)	T&M NTE	1	\$12,500.00	\$12,500
1.D	Locate & uncover buried MHs*	I.S.	1	\$25,000.00	\$25,000
2.A	Pipe Cleaning 3-pass with "Recycler" (assumes pipe 15% full of soft debris)				
	15 - 18 inch dia	I.f	6183	\$1.94	\$11,995
	21 - 24 inch dia	I.f	17376	\$2.30	\$39,965
	30 - 33 inch dia	I.f	38553	\$3.44	\$132,622
2.B	Pipe Cleaning beyond 3-pass with "Recycler" (assumes pipe > 15% full of soft debris)				
	"Recycler" Hourly Rate*	Hr.	60	\$431.00	\$25,860
2.C	Debris disposal	I.S.	1	\$8,750.00	\$8,750
2.D	Manhole Cleaning	each	148	\$118.00	\$17,464
3.A	CCTV Inspection w/ IBAK Panoramo. PACP coding converted to POSM, periodic invert insp.				
	15 - 18 inch dia	I.f	6183	\$0.81	\$5,008
	21 - 24 inch dia	I.f	17376	\$0.81	\$14,075
	30 - 33 inch dia	I.f	38553	\$0.81	\$31,228
3.B	CCTV Inspection "Float" Camera only if immovable debris levels (>24" pipes)				
	"Float" Stipend adder*	I.f	5000	\$2.00	\$10,000
3.C	Plug and Release Flow Control				
	Pipe Plug Set-up & Ops	each	64	\$700.00	\$44,800
3.D	Manhole Inspection w/ SI	each	148	\$90.00	\$13,320
4.A	Siphon Cleaning with Bypass Pumping and CCTV				
	Siphon Cleaning (mobilization)	I.S. (each)	1	\$4,250.00	\$4,250
	Siphon CCTV	I.f	500	\$4.25	\$2,125
	Bypass pumping for Siphon	I.S.	1	\$15,000.00	\$15,000
4.B	Sonar Submerged Pipe and Produce Debris Report				
	Sonar Mobilization*	I.S. (each)	1	\$3,360.00	\$3,360
	Sonar Field Activities*	I.f	500	\$4.99	\$2,495
5	Traffic Control Plans				
5.A	"Easement"	each	1	\$2,250.00	\$2,250
5.B	"City /County Right of Way"	each	3	\$4,250.00	\$12,750
5.C	"Caltrans Right of Way"	each	1	\$37,000.00	\$37,000
6	Condition Assessment Report	T&M NTE	1	\$99,500.00	\$99,500
TOTAL	Base Project Cost (no permitting, stipends or alternate methods)				\$523,352
	Total Project Cost (with permitting, no stipends or alternate methods)				\$535,852
	Total Project Cost (with all permitting, stipends & alternate methodology amounts)				\$602,567

* "As-Needed" Not to Exceed Stipend Upon Approval from City



Cost Sharing - Exhibit B



----- EXISTING JOINT SEWER TRUNK



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Lynette Kong, Associate Engineer
APPROVED BY: City Manager

AWARD 2019 PAVEMENT RESURFACING PROJECT TO GRANITE ROCK COMPANY

RECOMMENDATION(S)

1. Approve the 2019 Pavement Resurfacing Project plans and specifications;
2. Award contract to Granite Rock Company for the 2019 Pavement Resurfacing Project in the amount of \$3,943,226;
3. Authorize expenditure of construction contingency funds not to exceed \$394,323; and
4. Authorize the City Manager to execute and administer the construction contract with Granite Rock Company pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

The 2019 Pavement Resurfacing Project includes the resurfacing of the following streets and neighborhoods:

- Butterfield Boulevard (Cochrane Rd. – East Main Ave.)
- Cochrane Road (Monterey Rd. – Mission View Dr.)
- Depot Street (East Main Ave. – 5th St.)
- Jackson Meadows neighborhood (the neighborhood streets bordered by East Dunne Ave., Hill Rd., and Fountain Oaks Dr.)
- Monterey Road (350' north of Tilton Ave. – Cochrane Rd.)

On March 6, 2019, City staff presented the streets planned for inclusion in the 2019 pavement project. All the streets identified on March 6 are included in the project or have already been rehabilitated, with one exception. Dunne Avenue between Condit Road and Walnut Grove Drive, which includes the overpass, is not included. This section of roadway has been removed and will be planned for the 2020 pavement

project. This change is due to several factors, including Caltrans permitting timelines and concerns on the overall cost of the project.

The scope of work includes pavement milling, cold-in-place recycling (CIR) pavement rehabilitation, hot mix asphalt concrete (AC) overlay, full depth AC pavement repairs, slurry sealing, crack sealing, replacement of all existing traffic delineation and markings, utility adjustments, and traffic signal loop restorations. The striping work will include the following improvements:

- Buffered bicycle lanes on Cochrane Rd. (between Cochrane Cir. and Sutter Blvd.);
- Green bicycle lanes on Cochrane Rd. at the Highway 101 interchange;
- Bicycle boulevards for both directions on Depot St., and
- Buffered bicycle lanes on Monterey Rd. (between Tilton Ave. and Cochrane Rd.).

The plans and specifications are available for review on the City's web page under the Government tab and Community Projects site found [here](#).

The bid opening was held on June 19, 2019 and the two bids received are listed below:

Granite Rock Company	\$3,943,226
A. Teichert & Son, Inc.	\$4,676,267

The low bidder, Granite Rock Company is an experienced public works contractor with over 90 years of paving construction experience throughout the Bay Area. Granite Rock Company's bid amount of \$3,943,226 was 5.2% higher than the engineer's estimate of \$3.75 million. Staff recommends moving forward with this project to improve the condition of the project streets and prevent further deterioration leading to costlier pavement rehabilitation treatments. Therefore, staff recommends the award of the contract to Granite Rock Company for \$3,943,226. Staff anticipates construction to commence in late-July 2019 and be completed by October 2019.

COMMUNITY ENGAGEMENT: Inform

The project sites are located adjacent to residences and business and the contractor will provide written notifications to affected residents and businesses in advance of construction activities. Staff will develop a communication plan specifically for the project, which will include providing updated construction information weekly through Nextdoor, City social media accounts and on the City's website. Additionally, City staff will send a Citywide email focused specifically on the project.

ALTERNATIVE ACTIONS:

The award of this contract will improve the overall condition of the project streets as identified in the approved Capital Improvement Program and the City's Pavement Management Report. No alternative actions are presented at this time. Should the Council not elect to move forward with the project, funds would not be expended and could be used on a future pavement project. Future projects would not occur until the summer of 2020.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- 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 March 6, 2019, the City Council received FY 2018-19 Pavement Rehabilitation Project Update, which specifically outlined the improvements to be included in the project.
- On April 18, 2018, City Council adopted a Resolution approving the FY 2018-19 list of street rehabilitation projects funded by SB 1: The Road Repair and Accountability Act; the adopted project list included Monterey Road (between the intersections of Cochrane Road and Tilton Avenue).
- On May 4, 2016, City Council adopted a Resolution supporting TDA Article 3 grant funding to add green bike lane striping along Cochrane Road at the highway 101 intersection.

FISCAL AND RESOURCE IMPACT:

If approved, the total authorization for this project would be \$4,337,549, which includes a 10% contingency of \$394,323. To fund this project, \$3.25 million from FY 2018-19 and \$1.09 million of the FY 2019-20 will be allocated from the Street CIP Fund (308). Staff anticipated higher paving construction costs due to more demand for roadway improvements throughout the entire State with increased transportation funding; agencies in the Bay Area region are experiencing increased construction costs of up to 20% compared to last year. The bids the City received appear to be consistent with the on-going trend of higher paving construction costs and staff will need to account for the market trend for future projects. The proposed award is approximately 5% above the engineer's estimate of \$3.75 million.

The Street CIP Fund (308) includes contributions from SB 1: The Road Repair and Accountability Act, the Santa Clara County 2016 Measure B (Local Streets and Roads Program), and the Vehicle Registration Fee (VRF) Local Road Improvement and Repair Program. After construction of the green bike lane striping along the Cochrane Road and highway 101 intersections, staff will submit invoicing to VTA for reimbursement of \$32,482 from the TDA Article 3 grant; the grant funding reimbursement will be deposited back into the Street CIP Fund.

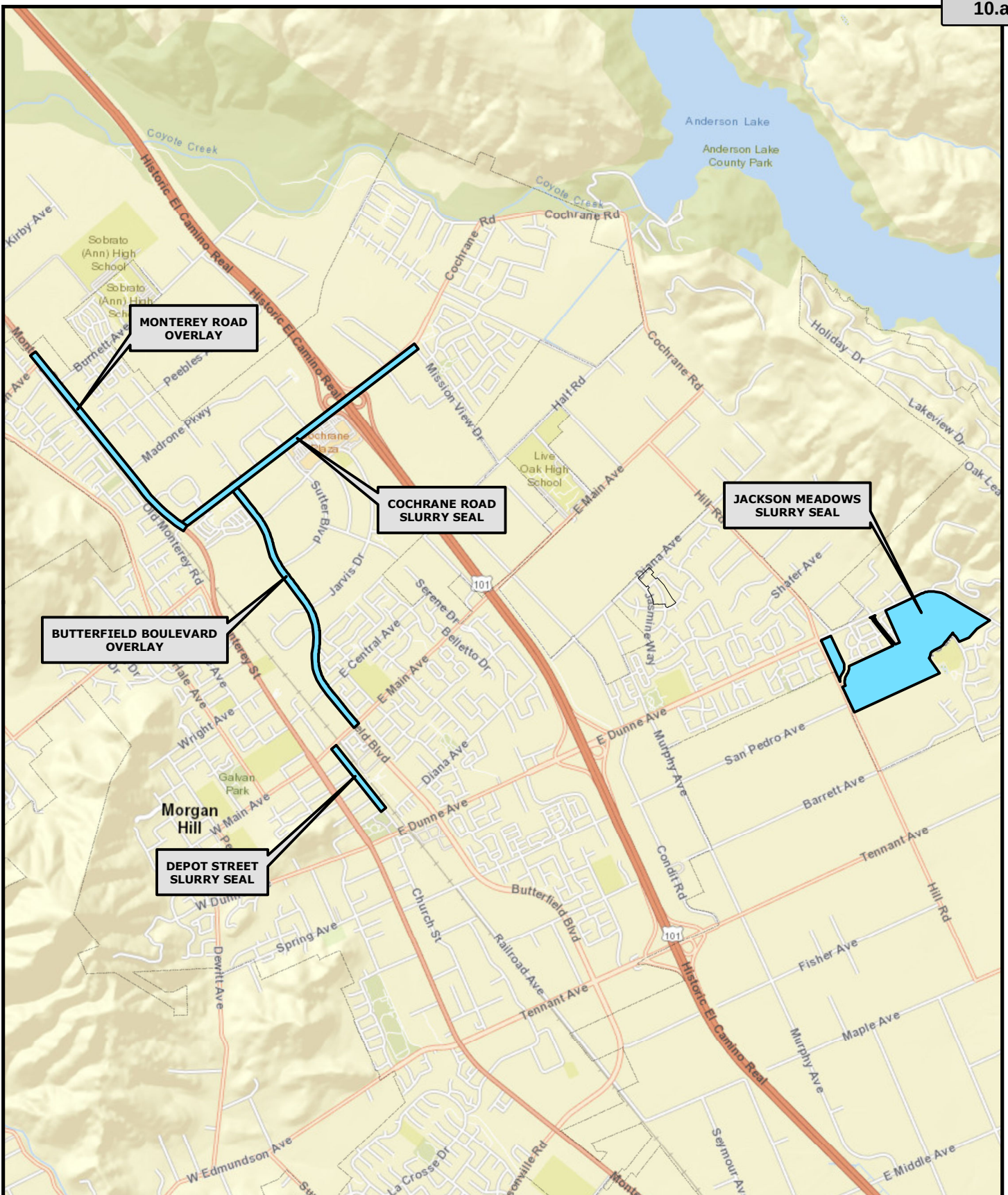
CEQA (California Environmental Quality Act):

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.

LINKS/ATTACHMENTS:

1. Project Location Map



Attachment: Project Location Map (2354 : Award 2019 Pavement Resurfacing Project to Granic Rock)



CITY OF MORGAN HILL
Department of Public Works
Engineering and Utilities Division

G:\R-14\Proj\GIS\John\Lynette_2019PmntProj\Diag.mxd

2019 PAVEMENT RESURFACING PROJECT



0 1,000 2,000 4,000 6,000 8,000
 Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

ACCEPT AND APPROVE GALVIN PARK PAR COURSE GRANT MEMORANDUM OF UNDERSTANDING AND RELATED BUDGET AMENDMENT

RECOMMENDATION(S)

1. Accept the *Meet Me at the Park* grant from the National Recreation and Park Association (NRPA);
2. Approve and authorize the City Manager to execute the Memorandum of Understanding; and
3. Adopt resolution amending the City's Adopted FY 2019-20 Budget to appropriate \$30,000 as grant revenue and \$60,000 as expenditures in the Park Impact Fund (301) for the Galvin Park Inclusive Par Course project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to consider accepting a grant for the installation of inclusive exercise equipment at Galvan Park and to make a matching budget appropriation.

When reviewing grant opportunities to improve City parks, a Community Services Department intern found a grant available from the National Recreation and Park Association in collaboration with The Walt Disney Company. The *Meet Me at the Park* grant program is specifically focused on expanding access to local parks. The grant required a relatively short application, provides a set amount of \$30,000 in grant funds, mandates a minimum 100% local match, and must be completed by December 31, 2019. In early June, the City was informed that our application was successful.

The City's application was specifically for the addition of exercise equipment at Galvan Park that would be accessible to a range of community residents with differing abilities.

Since the tot lots at the park were recently replaced and updated, equipment for teens and adults was the focus of the grant application.

Moving forward on the project requires submission of the attached Memorandum of Understanding (Attachment 1) and approval of a resolution (Attachment 2) amending the City's budget to accommodate the project as detailed below.

The Parks and Recreation Commission reviewed the grant opportunity on June 18th and has recommended approval.

COMMUNITY ENGAGEMENT: Inform

Adding inclusive features and exercise equipment to local parks are two actions included in the City's Bikeways, Trails, Parks and Recreation Master Plan which was developed with substantial community engagement. The mandatory short timelines for this grant did not provide time for consulting with the community on the specific design of this particular project. If the project is approved, the City will inform the community about the new equipment prior to its installation and promote its availability once the project is complete.

ALTERNATIVE ACTIONS:

The Council could direct staff to decline the grant and focus on other projects.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While the Council has approved several contracts improving Galvan Park over the past five years, this particular concept has not been the subject of prior Council or Commission action.

FISCAL AND RESOURCE IMPACT:

If approved, this project is an entirely new project that has not been included in the Adopted Budget. The budget scorecard, Exhibit A of the resolution, reflects the total \$60,000 budget for the project, accounts for the \$30,000 in new grant revenue, and appropriates \$30,000 from the Park Impact Fund (301) to match the grant funds.

Completing minor park improvement projects is included in the work program of the Community Services Department. The intern that solicited the grant is available to work on implementing the project in a cost-effective manner.

CEQA (California Environmental Quality Act):

Categorical Exemption

This project is categorically exempt from CEQA per Section 15303 (New Construction or Conversion of Small Structures) of the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Memorandum of Understanding
2. Budget Amendment Resolution



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), dated May 31, 2019 (Effective Date), is made between **National Recreation and Park Association**, a Virginia-based not-for-profit 501(c)3 with a mailing address of 22377 Belmont Ridge Road, Ashburn, Virginia, 20148 (NRPA) and **City of Morgan Hill**, a provider of park, recreation, or community services in Morgan Hill, California (Grantee).

1. Purpose

The purpose of this MOU is to confirm approval of the terms governing the acceptance and use of Thirty Thousand Dollars (\$30,000) made available to Grantee for the implementation of the project selected for grant funding (Project): Galvan Park inclusive par course.

Made possible through the support of The Walt Disney Company, NRPA is managing the administration of the *Meet Me at the Park* Play Spaces grant program (Program). Grants made through this Program are intended to provide increased access to inclusive play and physical activity for kids and families.

Having been selected as a recipient of funding through this Program, Grantee is required to accept the terms contained within this MOU in order to receive funding as a grant recipient.

2. Project Funding

Within 30 days upon execution of this MOU, NRPA will send Grantee a check in the amount of Thirty Thousand Dollars (\$30,000). Funds will be distributed by NRPA.

3. Grantee Requirements

Grantee will:

- A. Implement Project in alignment with the application submitted to NRPA by Grantee.
- B. Participate in a mandatory orientation call for all grantees on Wednesday June 19, 2019 at 3:00 pm ET.
- C. Demonstrate significant progress toward project outcomes by August 16, 2019.
- D. Complete Project by December 13, 2019.
- E. Conduct local community outreach through web, social media, and local press release to help promote the project, the grant and opportunities for volunteerism. NRPA will provide a toolkit of sample content for this outreach.
- F. Document and share with NRPA success stories, press releases, photos, videos, quotes, local media coverage and highlights throughout the project and grant period.
- G. Offer at least one opportunity for volunteerism for the community and Disney personnel (if applicable) during the grant period.
- H. Administer surveys to community members who are users of the project once the project is complete. Template and further instruction to be provided by NRPA.
- I. If selected, participate in a more in-depth evaluation of the project site and its usage. Templates and further instruction to be provided by NRPA.
- J. When requested, provide brief updates on the project to NRPA.
- K. If selected, allow the project to be featured in a video to be coordinated and produced by NRPA.
- L. Submit final report via online template provided by NRPA by December 31, 2019 to include:
 - Narrative summary of the Project
 - Narrative summary of Project-related community engagement and employee volunteer event(s)



- Project metrics and outcomes as outlined in the proposal submitted by Grantee
- Budget summary documenting how the grant funds were used
- Any photos, local press coverage, videos, quotes and stories

4. Promotion

NRPA and Disney may use the Grantee and/or park names, photos, and/or information in connection with the Project for promotional or other purposes associated with the Project, in any and all media, without limitation and without further payment, notification, or permission, except where prohibited by law. If the grantee's photo release form does not cover promotional and other uses, NRPA can provide one upon request.

The Grantee may make public statements regarding the gift to be made hereunder, including the identity of NRPA and Disney and the total amount of the gift, using pre-approved language from the communications toolkit or provided that any such statements have been approved in advance in writing by NRPA and Disney with at least two weeks for review. Such information may be used by the Grantee in its efforts to solicit additional contributions and for general information purposes.

5. Limits of Liability

Neither NRPA, nor Disney, or any of their respective parents, subsidiaries, affiliates, officers, directors or employees shall be liable to Grantee and/or its affiliates for any liability of any kind relating to or arising out of participation in this Project hereunder.

6. Confidentiality

During the term of this MOU, the parties may learn certain confidential information of each other. For purposes of this MOU, confidential information means the confidential and proprietary information, not generally known by non-party personnel, used by the disclosing party and which is proprietary to the disclosing party, and includes, without limitation, the disclosing party's trade secret or proprietary personnel, financial, marketing and business information, including strategic, operations and other business plans or forecasts, and confidential information provided by the disclosing party regarding its employees, customers, vendors, sponsors and other contractors. Confidential information shall not be disclosed to non-party personnel.

7. Term

The term of this MOU will commence on the Effective Date and shall continue until December 31, 2019.

8. Use of Grant Funds

The Grantee shall use the full amount of the grant for the purposes set forth in Section 1. Unless otherwise agreed in writing by the Grantor, the Grantee shall return any portion of the grant and the income earned thereon that is not expended for such purposes.

The Grantee agrees not to use any portion of the grant or any income derived from the grant for the following:

- A. To carry on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(d)(1) of the Code;
- B. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Section 4945(d)(2) of the Code;
- C. To provide a grant to an individual for travel, study, or similar purpose within the meaning of Section 4945(g) of the Code, without prior written approval of Grantor.



- D. Payments of salaries, other compensation, or expense reimbursement to employees of the Grantee within the scope of their employment do not constitute “grants” for these purposes and are not subject to these restrictions;
- E. Except as expressly may be authorized in the Grant Description, to provide a grant to any other organization without prior written approval of the Grantor; or
- F. To promote or engage in criminal acts of violence, terrorism, hate crimes, the destruction of any state, or discrimination on the basis of race, national origin, religion, military and veteran status, disability, sex, age, or sexual orientation, or support of any entity that engages in these activities.
- G. To travel to NRPA’s Annual Conference or any other conference travel.

All unspent or uncommitted grant funds shall be invested in highly liquid investments (such as an interest-bearing bank account) with the primary objective being preserving the grant funds availability for the project. Any interest or other income generated by the grant funds must be applied to the purposes described in the Grant Description.

9. Audit

NRPA has the right to audit the grantee’s financial records relating to this MOU. Grantee should maintain their financial receipts and must make the records available at any time as requested by NRPA. If as a result of an audit, NRPA determines that funds were not spent in accordance with the purposes of this grant, the grantee may be required to return any funds not substantiated. If NRPA determines that grant funds were used for fraudulent purposes, the grantee may be barred from participation in any further programs.

10. Termination

Either party may terminate this MOU at any time effective upon receipt of written notice by the other party of failure to perform. The non-performing party shall have sixty (60) days to cure its obligation. If the non-performing party fails to satisfactorily cure its obligation within this time this MOU will be terminated.

Neither party shall be liable to the other by reason of termination of this MOU for compensation, reimbursement or damages for any loss of prospective profits on anticipated sales or for expenditures, investments, leases or other commitments relating to the business or goodwill of any of the parties, notwithstanding any law to the contrary. No termination of this MOU shall release the obligation to pay any sums due to the terminating party which accrued prior to such termination.



These parties have caused this MOU to be signed by their duly authorized representatives as of the date set forth.

National Recreation and Park Association

City of Morgan Hill

By: Kellie May

By: _____

Printed Name: Kellie May

Printed Name: _____

Title: Vice President of Programs

Title: _____

Date: May 31, 2019

Date: _____

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2019-20 BUDGET TO APPROPRIATE \$30,000 AS GRANT REVENUE AND \$60,000 IN EXPENDITURES WITHIN THE PARK IMPACT FUND (301) FOR THE GALVIN PARK PAR COURSE PROJECT

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 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 "Accept and Approve Galvin Park Par Course Grant Memorandum of Understanding and Related Budget Amendment" submitted for City Council consideration at its meeting of June 26, 2019, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2019-20, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 26th day of June 2019 by the following vote.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, MAYOR

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 19-XXX adopted by the City Council at the Regular Meeting on June 26, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

038

FUND:

301 Park Impact Fund

DEPARTMENT:

8051 Park Development

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

06/26/19

AGENDA ITEM TITLE:

National Recreation and Park Association Grant

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,780,195	7,959,013	8,136,375	2,602,833
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	73,000	150,000	(77,000)
RECOMMENDED ACTION	-	30,000	60,000	(30,000)
RESULT OF RECOMMENDED ACTION	<u>2,780,195</u>	<u>8,062,013</u>	<u>8,346,375</u>	<u>2,495,833</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Yat Cho, Senior Project Manager

APPROVED BY: City Manager

ACCEPT PARKING STRUCTURE SAFETY ENHANCEMENT PROJECT

RECOMMENDATION(S)

1. Accept as complete, the Parking Structure Safety Enhancement Project in the amount of \$322,733;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

On September 6, 2017, the City Council adopted a resolution recommending safety improvements to be made to the parking garage. The proposed safety improvements included adding additional fencing along the top of the structure and metal screening around the perimeter.

Following the preparation of plans and specifications, the project was advertised for bid in November 2018. The bid opening was held on November 29, 2018; however, the City received no bids for the project. On December 19, 2018, the City Council directed staff to negotiate a contract for this work per Section 20166 of the Public Contract Code since no bids were received by the City for the project. Section 20166 reads in part, "If no bids are received, the legislative body may have the project done without further complying with this chapter."

Staff worked diligently to secure a contractor to perform the required work and was able to enter into a contract with S.O.S. Steel Co., Inc. in the amount of \$320,740 (with a 10% contingency of \$32,074). Work on the project began on March 18, 2019 and was substantially completed on May 21, 2019. Over the course of the project, one change order was authorized in the amount of \$1,993 for additional welding and fabrication work. The final contract price for the project was \$322,733

The project has been completed in accordance to plans and specifications.

COMMUNITY ENGAGEMENT: Inform

Staff provided notifications and weekly project updates through the City's website.

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

September 6, 2017 – City Council adopted a resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure (Project# 252017).

December 19, 2018 – City Council approved acknowledgement of no bids for the Parking Structure Safety Enhancement Project and direct staff to negotiate contract for construction and appropriated additional funding for this project.

FISCAL AND RESOURCE IMPACT:

S.O.S. Steel Co., Inc. was selected to complete this project for \$320,740 with a 10% contingency of \$32,074. One change order was authorized in the amount of \$1,993 against the contingency amount. The final contract amount for the Parking Garage Safety Enhancement Project is \$322,733.

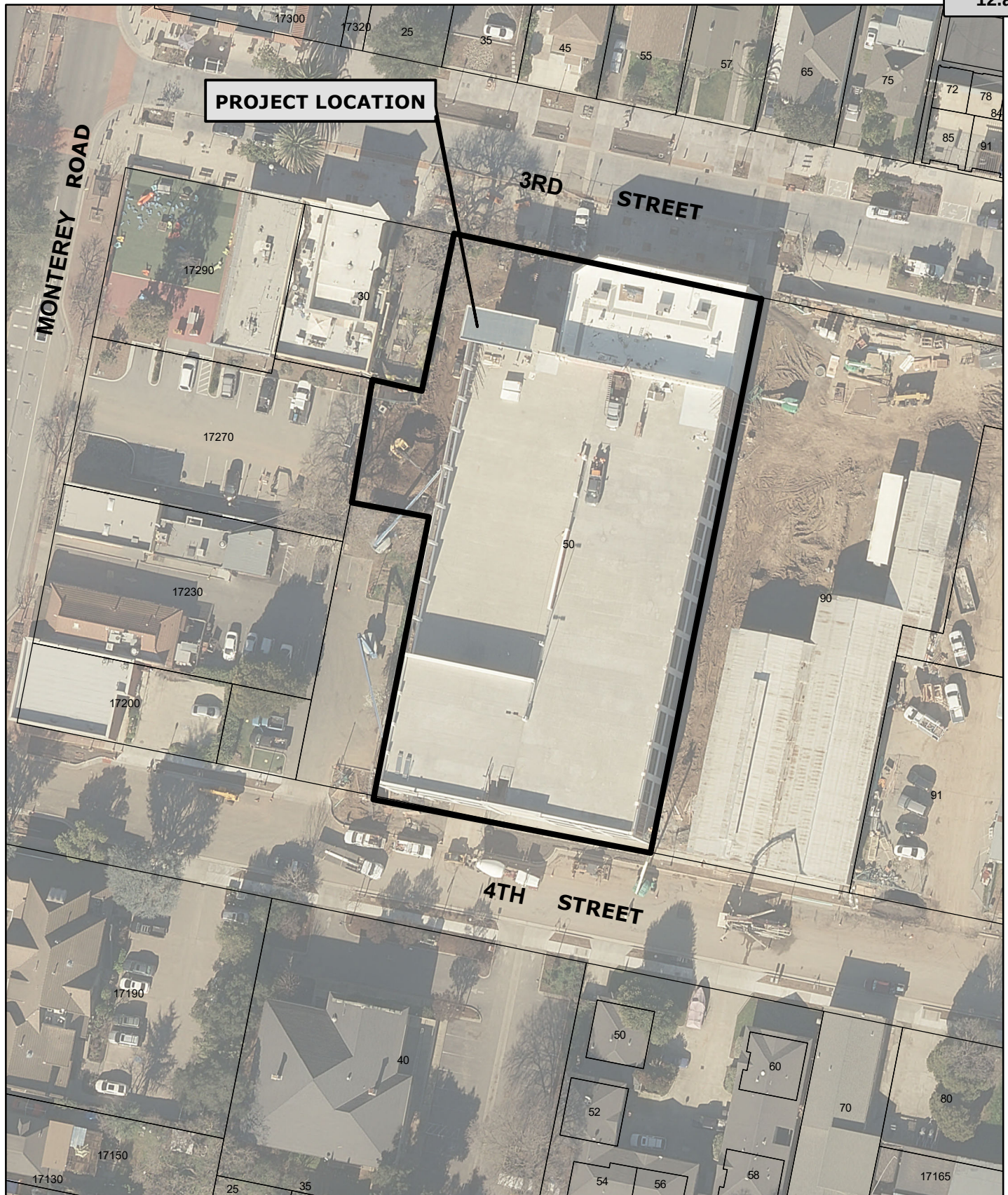
CEQA (California Environmental Quality Act):

Categorical Exemption

The improvements were limited in scope and considered part of the planned maintenance and management of city facilities, which falls within the CEQA categorical exemption of class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Vicinity Map 6-26-19
2. Parking Structure Safety Enhancement Project Change Order Closeout 6-26-19
3. Notice of Completion Parking Structure Safety Enhancement Project 6-26-19



Attachment: Vicinity Map 6-26-19 (2350 : Accept Parking Structure Safety Enhancement Project)



CITY OF MORGAN HILL
Engineering and Utilities Department
CIP Engineering Division

SITE MAP

Parking Garage Safety Enhancement Project



CIP Contract Acceptance Funding Closeout Statement

Project:	Parking Structure Safety Enhancement Project		
Project No:	252017		
Date of Project Award:	22-Feb-19	Project Award Amount:	\$320,740
Funding Source:		Contingency Authorized:	\$32,074
Date of Project Acceptance:	26-Jun-19	Total Authorized:	\$352,814
		Actual Base Contract Spent:	\$320,740

Change Orders			
	Description	Date	Council Approval Req'd? (Y/N)
C.O. #1:	Additional Welding and material at 4 locations	22-May-19	N
			\$1,993
Total C.O.:			\$1,993

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	\$30,081	Total Construction Amount (Base Contract plus CO's):	\$322,733
----------------------------	----------	--	-----------

Attachment: Parking Structure Safety Enhancement Project Change Order Closeout 6-26-19 (2350 : Accept Parking Structure Safety

Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On February 22, 2019, the City of Morgan Hill, a Municipal Corporation, entered to a contract with S.O.S. Steel Co., Inc. for the Parking Structure Safety Enhancement Project located in Morgan Hill, CA.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is S.O.S. Steel Co., Inc. located at 1160 Richard Avenue Santa Clara, CA 95050-2800.
- 4) The surety is "Endurance Assurance Corporation".
- 5) The project was completed on May 21, 2019 and accepted by the City Council of the City of Morgan Hill on June 26, 2019.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ACCEPT APRIL 2019 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

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, attached are the Financial and Investment Reports for the month ended April 30, 2019. The Revenue and Expense Summary for the month of April is included on the first page. Overall, General Fund revenues through April totaled \$34.5 million or 85% of the budget. Expenditures, including encumbrances, amounted to \$35.4 million through April.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on 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.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. April 2019 Financial Statement Analysis
2. April 2019 Financial and Investment Report



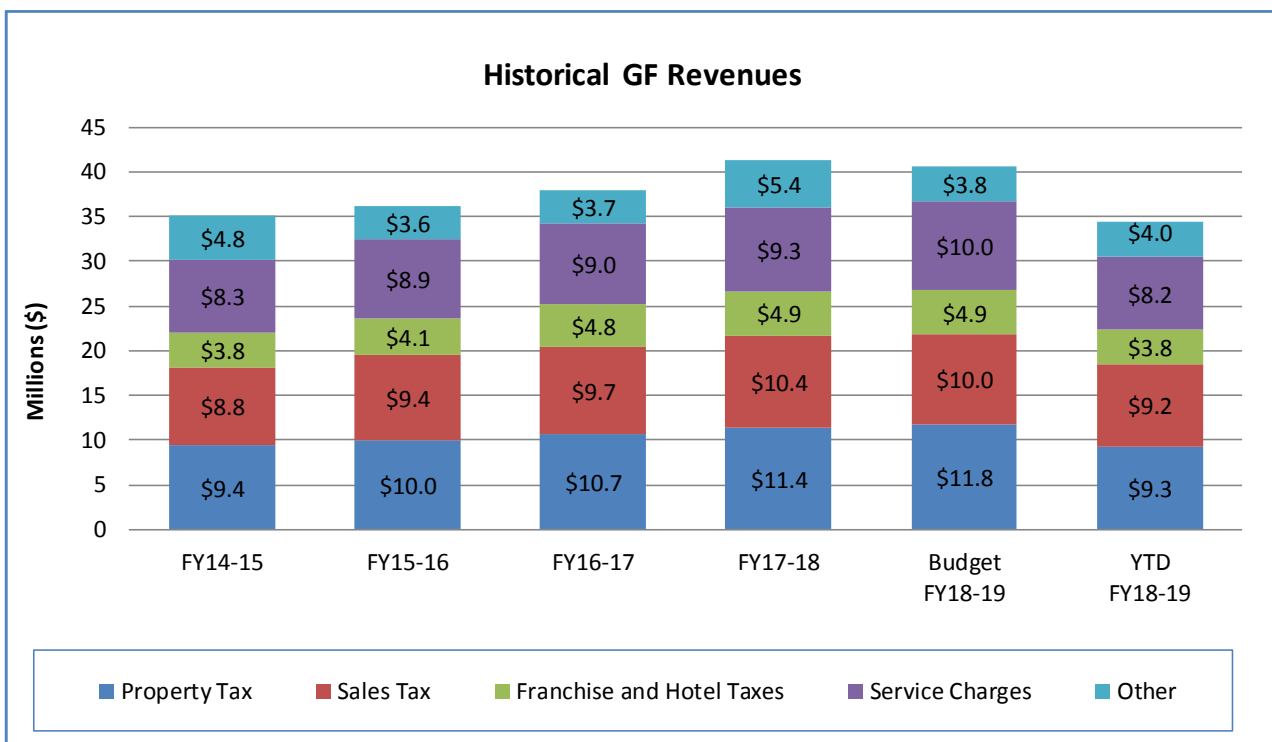
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED APRIL 2019 – 83% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of April totaled \$34.5 million, or 85% of the budgeted revenues. The amount received is 5% or \$1.5 million higher than a year ago at this time primarily due to higher tax collections, partially offset by a reduction in other revenues. Sales tax collections increased by 7% compared to prior year.

As for property tax, the fourth advances for the April 10, 2019 secured and unsecured property tax installment have been received, and is 9% or approximately \$769,000 higher than a year ago at this time. Property tax revenue, excluding the property transfer tax, is forecasted to end the year at \$12.6 million, which is approximately \$800,000 more than the adopted budget partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution of \$943,000 versus \$495,000 budgeted. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 29% of the approximately \$40.7 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses already came in slightly over the budgeted amount as annual business license renewal payments are usually received in the first few months of the fiscal year.

The chart below shows historical General Fund revenues by major revenue category from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of April 30, 2019.

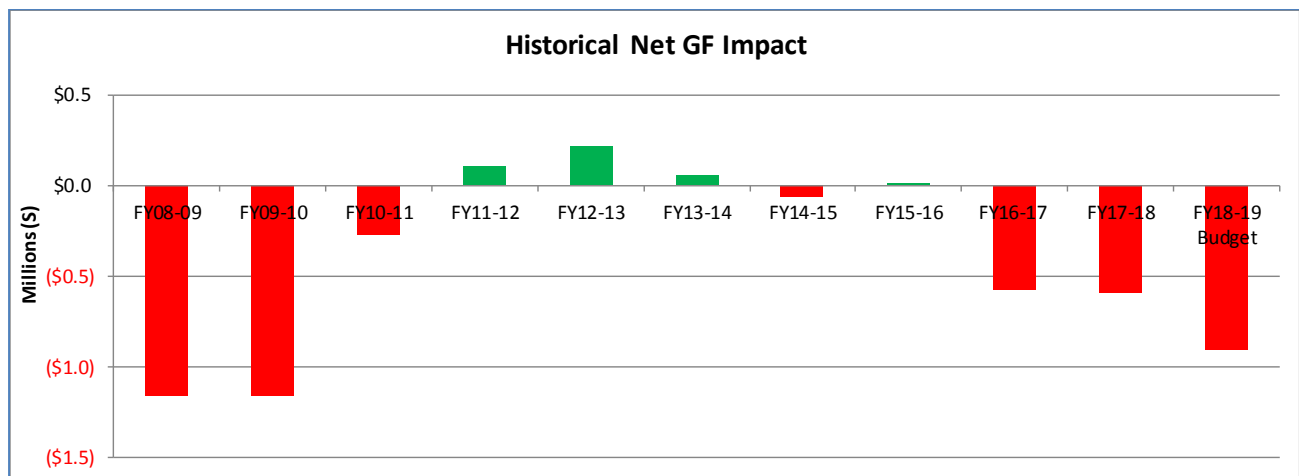




CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED APRIL 2019 – 83% OF YEAR COMPLETE

General Fund expenditures and encumbrances as of April 30, 2019 totaled \$35.4 million, of which approximately \$1.6 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$0.8 million through the month of April. Without the carry-over encumbrances, the year to date operations through the month of April resulted in a smaller negative net impact to the general fund of approximately \$246,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, 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 Federal government's 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 April totaled \$4.2 million, an increase of 14% or approximately \$0.5 million more than a year ago at this time partially due to the fee increases that went into effect January 1, 2018. Expenditures, including encumbrances, totaled \$5.6 million. Without the outstanding encumbrances, however, expenditures through the month of April amounted to \$4.4 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$1.4 million. This is primarily due to the timing of fee increases, services or new projects unsupported by fees, such as front counter services, responding to public inquiries, tree removal permits, use permits for non-profits or special projects, and continued implementation of Measure S. In addition, fees are based on average time for processing, the more complicated the case, the more time is spent assisting the applicant in the application process. This extra time is not incorporated into the cost recovery model. There is available fund reserve to support the fund's operating deficits in the two-year window, however, General Fund support may be required in future years due to the aforementioned reasons.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED APRIL 2019 – 83% OF YEAR COMPLETE

- **Debt Service Funds** – Expenditures through the month of April totaled approximately \$684,000. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.
- **Wastewater Operations** – Revenues from Wastewater or Sewer Operations through the month of April totaled \$9.5 million. Expenditures and outstanding encumbrances totaled \$8.3 million or 74% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of April 30, 2019.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	10.3	10.2	9.7	10.3	10.7	9.5
Expenditures	8.8	12.0	9.8	10.8	11.3	8.3
Operating Margin	1.5	(1.8)	(0.1)	(0.5)	(0.6)	1.2
Operating Margin without Encumbrances	1.5	(1.8)	(0.0)	(0.3)	(0.6)	1.4

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of April totaled \$11.7 million, approximately 11% more than a year ago partially due to rate adjustments. Water Operations expenditures, including outstanding encumbrances, totaled approximately \$10.8 million for the year. Without the encumbrances, however, the expenditures amounted to \$9.2 million. The table below shows Water Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of April 30, 2019.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	8.8	8.5	10.9	13.0	13.8	11.7
Expenditures	9.3	9.7	11.2	12.1	13.5	10.8
Operating Margin	(0.5)	(1.2)	(0.3)	0.9	0.3	0.9
Operating Margin without Encumbrances	(0.5)	(1.2)	(0.1)	1.4	0.3	2.5

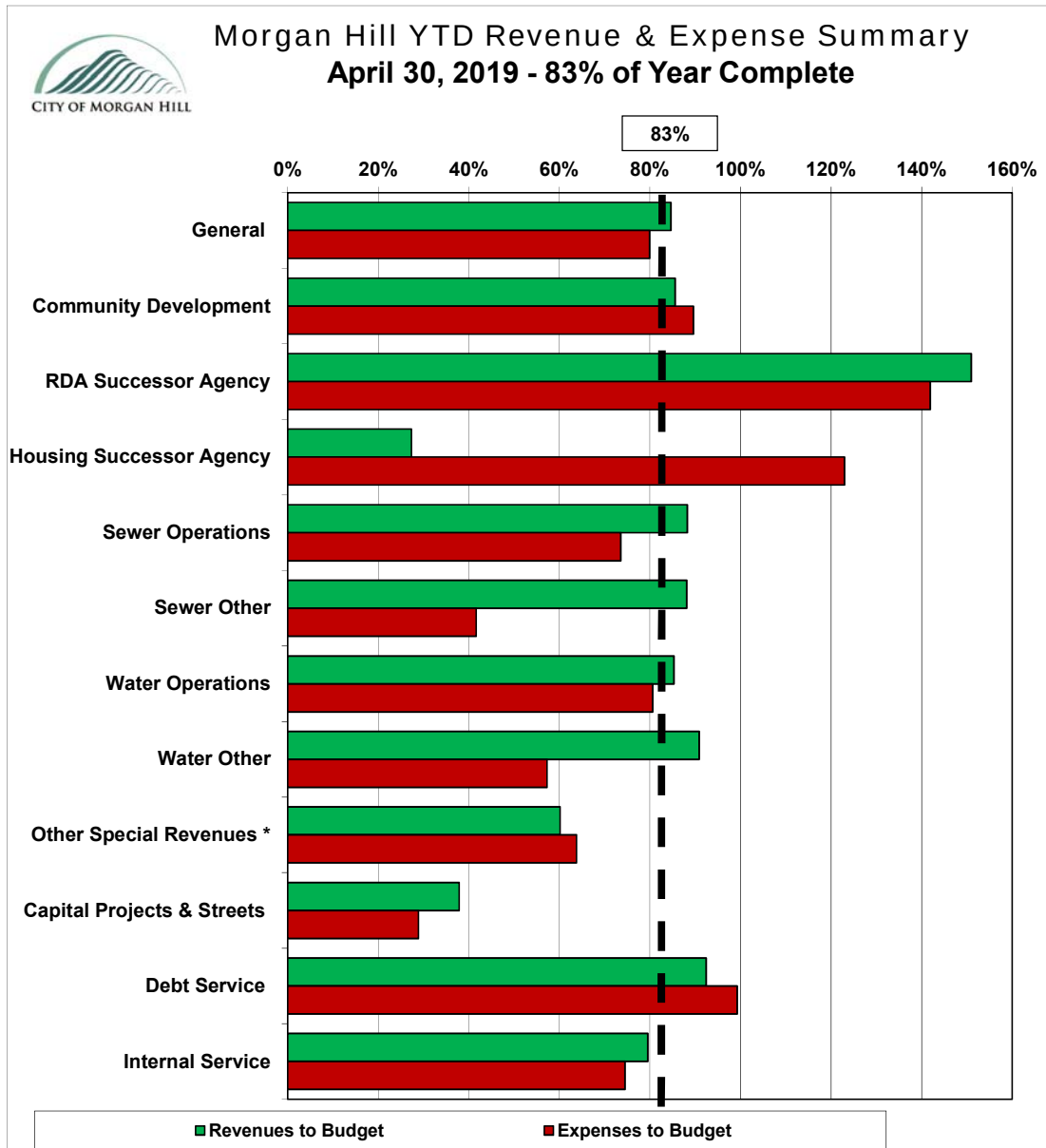
- **Investments** – One security was purchased and one security was called during the month of April 2019. Total interest earnings received on investments were \$270,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
April 30, 2019 - 83% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



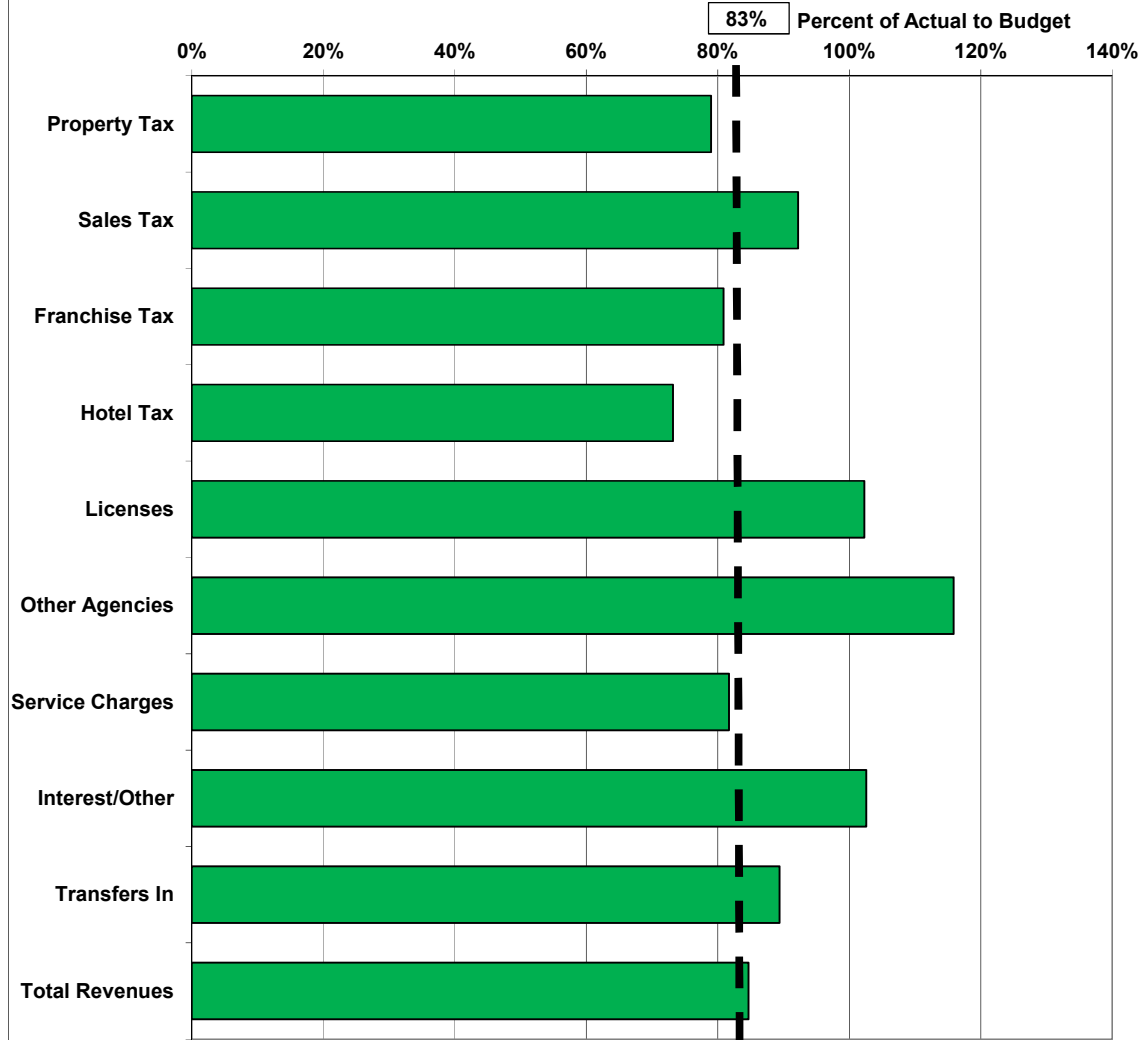
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 34,488,286	85%	\$ 35,409,628	80%
Community Development	4,176,442	86%	5,590,973	90%
RDA Successor Agency	11,998,608	151%	11,329,378	142%
Housing Successor Agency	652,269	27%	4,525,071	123%
Sewer Operations	9,485,179	88%	8,318,072	74%
Sewer Other	6,848,579	88%	6,433,646	42%
Water Operations	11,732,922	85%	10,849,843	81%
Water Other	3,423,788	91%	3,386,878	57%
Other Special Revenues *	2,482,605	60%	3,523,883	64%
Capital Projects & Streets	16,024,912	38%	17,476,209	29%
Debt Service	623,515	92%	683,778	99%
Internal Service	9,475,400	80%	8,630,412	74%
TOTAL FOR ALL FUNDS	\$ 111,412,506	74%	\$ 116,157,770	62%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

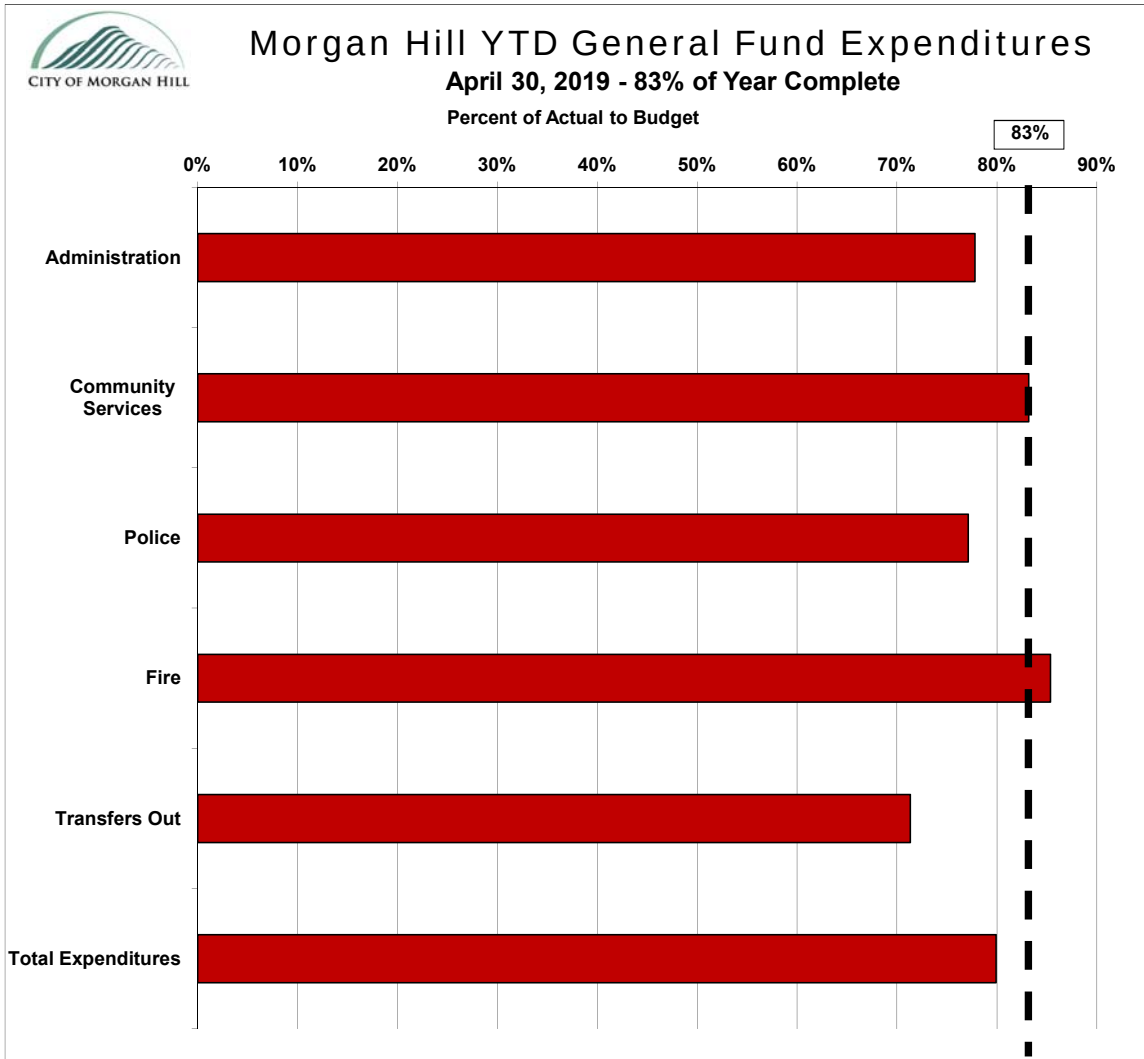


Morgan Hill YTD General Fund Revenues

April 30, 2019 - 83% of Year Complete



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 11,813,532	\$ 9,327,943	79%	\$ 8,559,380	9%
Sales Tax	9,981,124	9,200,015	92%	8,582,219	7%
Franchise Tax	2,164,190	1,751,190	81%	1,648,521	6%
Hotel Tax	2,754,000	2,016,976	73%	1,974,724	2%
Licenses	200,800	205,454	102%	194,448	6%
Other Agencies	775,656	898,792	116%	456,304	97%
Service Charges	9,993,089	8,168,230	82%	7,662,828	7%
Interest/Other	1,406,042	1,441,906	103%	2,558,488	-44%
Transfers In	1,653,560	1,477,780	89%	1,302,710	13%
TOTAL REVENUES	\$ 40,741,993	\$ 34,488,286	85%	\$ 32,939,622	5%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,043,269	\$ 3,923,835	78%	\$ 6,532,315	-40%
Community Services	12,540,603	10,429,786	83%	9,325,157	12%
Police	17,636,042	13,599,397	77%	13,543,269	0%
Fire	6,959,059	5,939,080	85%	4,986,966	19%
Transfers Out	2,127,498	1,517,530	71%	1,621,020	-6%
TOTAL EXPENDITURES	\$ 44,306,470	\$ 35,409,628	80%	\$ 36,008,728	-2%

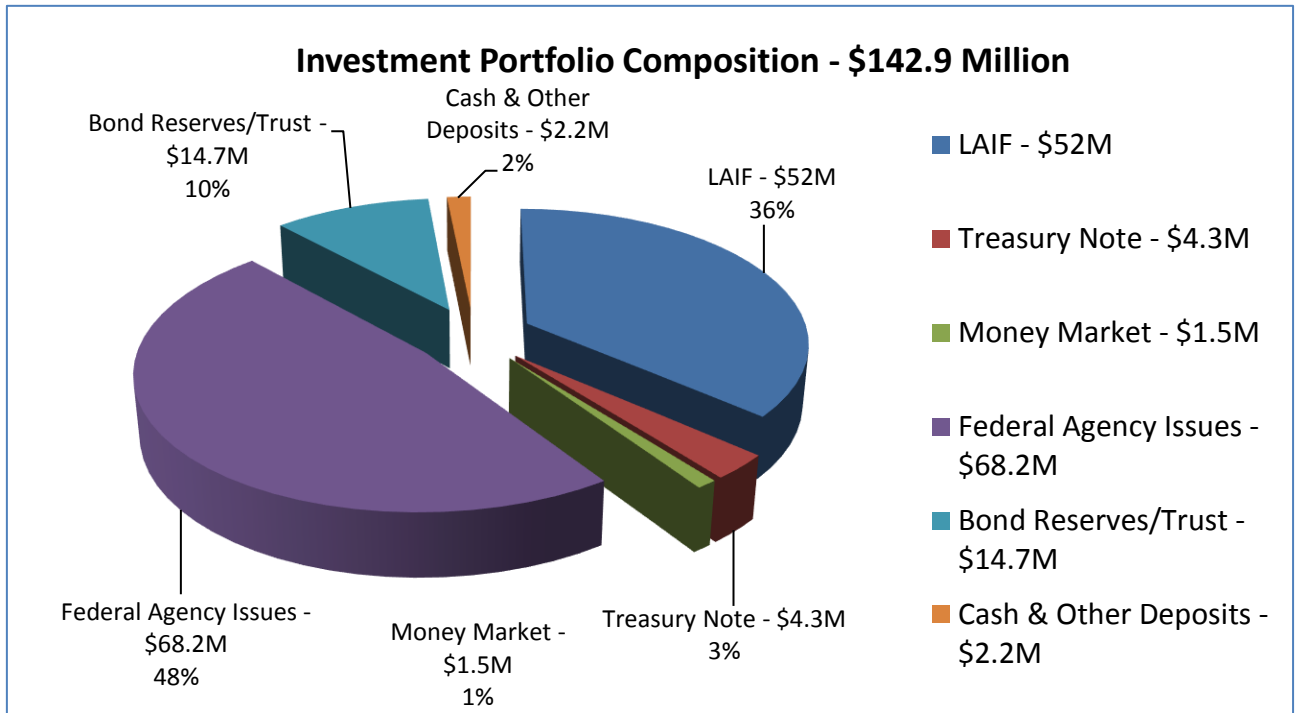


**City of Morgan Hill
Recreation Report - Fiscal Year 2018-19
For the Month and Ten Months Ended April 30, 2019
83% of Year Complete**

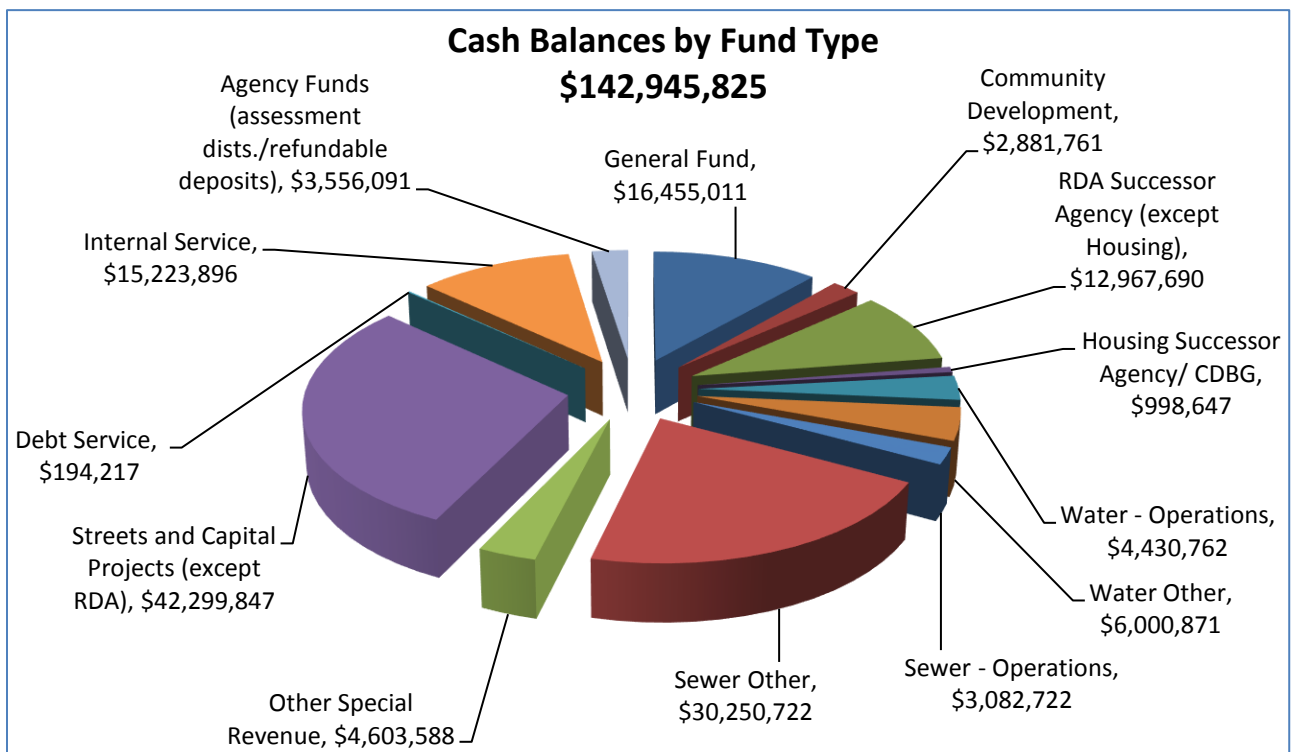
	<u>Budget</u>	<u>April 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,241,196	\$ 550,315	\$ 5,272,099	
Facility Rentals	898,700	89,921	812,658	
Community Services	147,840	7,132	88,724	
Transfers in	75,000	6,250	62,500	
Total Revenues	<u>\$ 7,362,736</u>	<u>\$ 653,619</u>	<u>\$ 6,235,981</u>	85%
Less: Expenditures				
Membership & Program Services	\$ 6,309,009	\$ 359,473	\$ 4,893,307	
Facility Rentals	1,355,732	109,294	1,103,172	
Community Services	653,307	39,444	485,510	
Total Expenditures	<u>\$ 8,318,049</u>	<u>\$ 508,210</u>	<u>\$ 6,481,988</u>	78%
Net Impact without encumbrances	<u>\$ (955,313)</u>	<u>\$ 145,409</u>	<u>\$ (246,008)</u>	
Encumbrances	-	-	577,206	
Net Impact with encumbrances	<u>\$ (955,313)</u>	<u>\$ 145,409</u>	<u>\$ (823,214)</u>	

City of Morgan Hill Monthly Investment Report - April 30, 2019

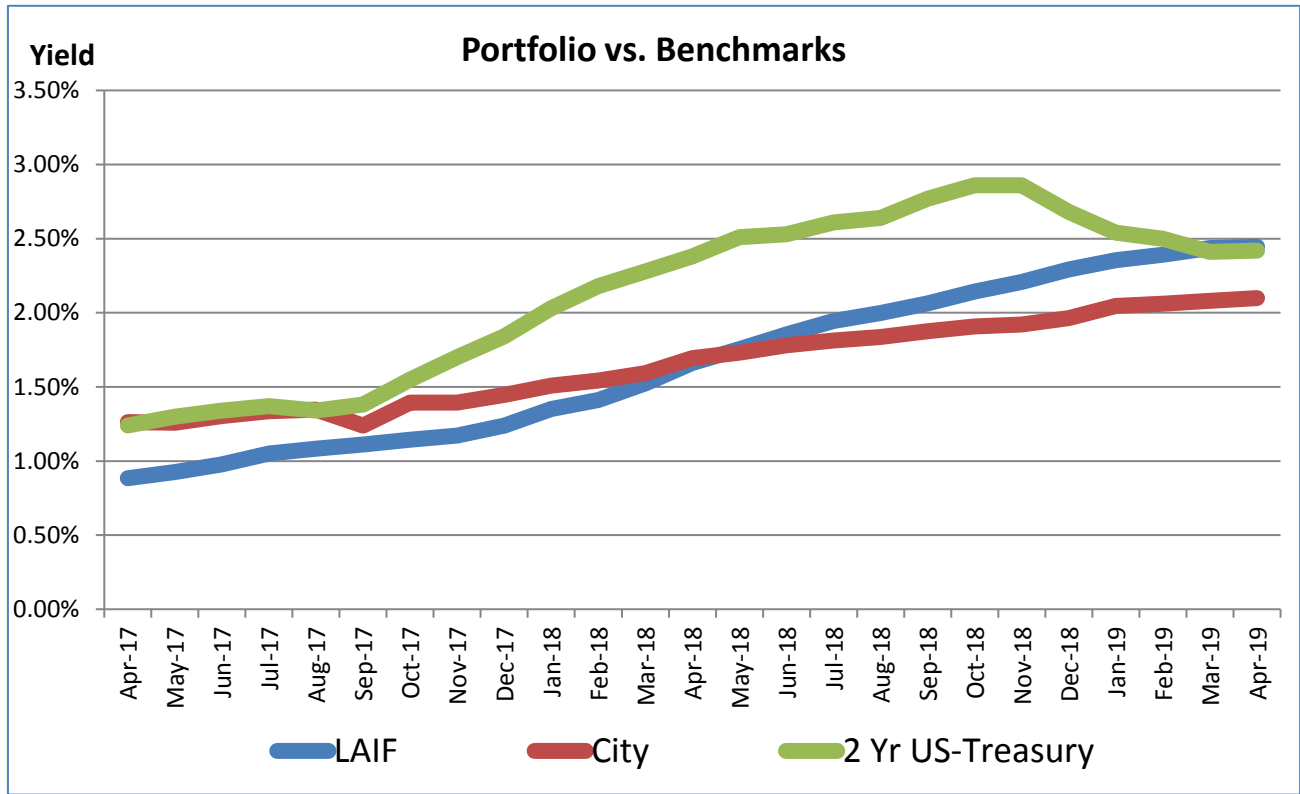
The following are the snapshots of City's investment portfolio as of April 30, 2019. The first chart shows the portfolio composition by investment type:



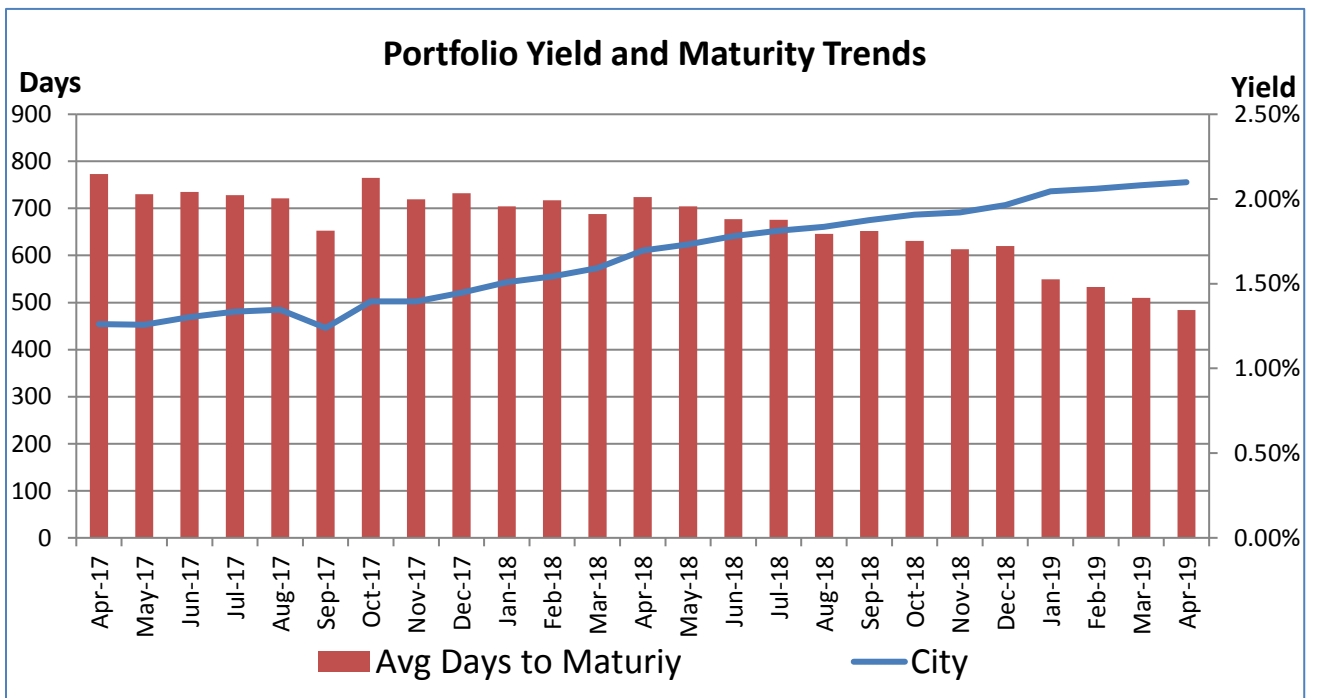
The chart below shows cash balances by fund type reconciled to City's financial system:



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 April 30, 2019

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 51,981,905	36.36%	\$ 51,989,544	2.45%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.80%	3,960,200	1.70%	7/19/2019	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.80%	3,930,440	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.80%	3,920,240	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.40%	1,966,640	1.65%	6/29/2019	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.80%	3,932,520	1.60%	6/29/2019	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.80%	3,927,320	1.60%	7/27/2019	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.80%	3,926,760	1.55%	7/28/2019	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.40%	1,965,820	1.65%	7/28/2019	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.80%	3,921,480	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.10%	2,947,500	1.65%	5/23/2019	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.80%	3,927,840	1.63%	5/23/2019	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.80%	3,951,120	1.88%	5/26/2019	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.91%	1,292,642	2.15%	9/29/2019	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.69%	3,819,624	2.15%	10/19/2022	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	2.90%	4,107,255	2.20%	7/26/2019	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.10%	2,998,890	2.50%	7/30/2019	1/30/2023
Treasury Note	4/30/2018	4,298,317	3.01%	4,371,660	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,598,317	41.69%	\$ 58,867,951	1.82%		
Money Market		\$ 1,501,814	1.05%	\$ 1,501,814	2.48%		
Total City Managed/Average		\$ 113,082,037	79.11%	\$ 112,359,308	2.25%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	749,950	0.52%	747,480	1.18%	7/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,992	0.52%	747,135	1.25%	5/23/2019	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.52%	747,300	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	10/7/2016	749,958	0.52%	746,595	1.29%	6/12/2019	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,993	0.52%	749,400	1.22%	5/23/2019	5/23/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,989	0.52%	746,288	1.25%	6/30/2019	9/30/2019
Fed Home Loan Mortgage	12/13/2016	1,000,329	0.70%	999,450	1.35%	5/30/2019	5/30/2019
Fed Natn'l Mortgage Assn	12/29/2016	740,363	0.52%	739,238	1.39%	6/20/2019	6/20/2019
Fed Home Loan Bank	6/19/2018	949,272	0.66%	949,288	2.38%	5/28/2019	5/28/2019
Fed Home Loan Mortgage	9/14/2018	822,315	0.58%	822,492	2.56%	8/1/2019	8/1/2019
Fed Home Loan Bank	9/26/2018	747,170	0.52%	749,955	2.80%	3/30/2020	3/30/2020
Fed Home Loan Bank	11/6/2018	739,054	0.52%	745,905	2.87%	11/15/2019	11/15/2019
Fed Home Loan Mortgage	1/18/2019	999,164	0.70%	1,000,940	2.59%	4/23/2020	4/23/2020
Fed Home Loan Bank	1/31/2019	1,499,208	1.05%	1,499,295	2.43%	5/8/2019	5/8/2019
Fed Farm Credit Sys Disc	4/30/2019	885,848	0.62%	886,554	2.39%	12/31/2019	12/31/2019
Money Market		5,858	0.00%	5,858	2.48%		
Sub Total/Average		\$ 12,888,463	9.02%	\$ 12,883,172	1.93%		
Bond Reserve Accounts - Held By Trustees		\$ 12,555,297	8.78%	\$ 12,592,984			
Cash/Deposits		\$ 2,232,623	1.56%	\$ 2,232,623			
PARS Trust		\$ 2,187,404	1.53%	\$ 2,524,251			
GRAND TOTAL/AVERAGE		\$ 142,945,825	100.00%	\$ 142,592,340			

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF APRIL 30, 2019
FOR THE FISCAL YEAR OF 2018-19

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	2.45%	\$ 47,949,203	33.54%	\$ 47,956,249
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.45%	4,032,702	2.82%	4,033,295
Federal Issues	All Funds Pooled	1.50%	68,182,605	47.70%	67,373,604
US Treasury Notes	All Funds Pooled	2.73%	4,298,317	3.01%	4,371,660
Dreyfus Treas Cash Management Acct	All Funds Pooled	2.48%	1,507,673	1.05%	1,507,673
	SUBTOTAL		\$ 125,970,500	88.12%	\$ 125,242,481
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	2.05%	246	0.00%	246
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	2.05%	313	0.00%	313
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.36%	6,358,989	4.45%	6,358,989
US Treasury Notes - Reserve Acct.	Successor Fund	1.26%	5,074,237	3.55%	5,111,924
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	2.05%	580,627	0.41%	580,627
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	2.05%	540,887	0.38%	540,887
	SUBTOTAL		12,555,297	8.78%	12,592,984
Other Cash/Deposits					
General Checking	All Funds		2,195,511	1.54%	2,195,511
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
PARS - OPEB Trust			1,387,404	0.97%	1,619,580
PARS - PENSION Trust			800,000	0.56%	904,671
	SUBTOTAL		4,420,027	3.09%	4,756,875
Total Cash and Investments			\$ 142,945,825	100.00%	\$ 142,592,340

CASH ACTIVITY SUMMARY
FY 2018-19

Fund Type	07/01/18 Balance	Change in Cash Balance	4/30/2019 Balance
General Fund	\$ 15,044,885	\$ 1,410,125	\$ 16,455,011
Community Development	3,419,872	(538,110)	2,881,761
RDA Successor Agency (except Housing)	12,277,198	690,492	12,967,690
Housing Successor Agency/ CDBG	4,150,303	(3,151,656)	998,647
Water - Operations	2,317,454	2,113,308	4,430,762
Water Other	4,954,819	1,046,051	6,000,871
Sewer - Operations	1,505,059	1,577,663	3,082,722
Sewer Other	29,212,866	1,037,855	30,250,722
Other Special Revenue	5,052,285	(448,697)	4,603,588
Streets and Capital Projects (except RDA)	42,155,711	144,136	42,299,847
Debt Service	253,454	(59,237)	194,217
Internal Service	12,991,987	2,231,908	15,223,896
Agency Funds (assessment dists./refundable deposits)	4,116,381	(560,290)	3,556,091
Total	\$ 137,452,276	\$ 5,493,548	\$ 142,945,825

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, Accountant I

Approved by:

Reviewed by: Dat Nguyen, Finance Director

David Clink, Treasurer

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Ten Months Ended April 30, 2019
83% 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	\$ 10,131,882	\$ 10,131,882	\$ 8,653,365	85%	\$ 8,091,982	\$ 561,383	7%
Property Tax - RPTTF Residual Distribution	1,405,500	1,405,500	451,634	32%	265,874	185,760	70%
Property Tax - Supplemental Roll	276,150	276,150	222,944	81%	201,524	21,420	11%
Sales Tax	9,601,124	9,601,124	8,916,328	93%	8,313,606	602,722	7%
Public Safety Sales Tax	380,000	380,000	283,687	75%	268,613	15,074	6%
Transient Occupancy Taxes	2,754,000	2,754,000	2,016,976	73%	1,974,724	42,252	2%
Franchise (Refuse, Cable, PG&E)	2,164,190	2,164,190	1,751,190	81%	1,648,521	102,670	6%
Property Transfer Tax	505,000	505,000	389,517	77%	391,696	(2,179)	-1%
TOTAL TAXES	27,217,846	27,217,846	22,685,641	83%	21,156,539	1,529,102	7%
LICENSES/PERMITS							
Business License	196,000	196,000	200,137	102%	191,055	9,082	5%
Other Permits	4,800	4,800	5,317	111%	3,393	1,924	57%
TOTAL LICENSES/PERMITS	200,800	200,800	205,454	102%	194,448	11,006	6%
FINES AND PENALTIES							
Parking Enforcement	8,250	8,250	7,316	89%	6,746	570	8%
Bails & Fines	71,500	71,500	72,415	101%	54,027	18,388	34%
Administrative Citations	9,500	9,500	49,362	520%	14,300	35,062	245%
TOTAL FINES AND PENALTIES	89,250	89,250	129,092	145%	75,073	54,019	72%
OTHER AGENCIES							
Motor Vehicle in-Lieu	23,934	23,934	21,366	89%	23,237	(1,871)	-8%
Other Revenue - Other Agencies	271,398	775,656	898,792	116%	456,304	442,487	97%
TOTAL OTHER AGENCIES	295,332	799,590	920,158	115%	479,542	440,616	92%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,000	33,000	28,367	86%	34,130	(5,763)	-17%
Business License Application Review	36,000	36,000	35,638	99%	31,089	4,549	15%
Membership Services & Rec Programs	6,241,196	6,241,196	5,272,099	84%	4,911,384	360,715	7%
Facility Rentals	898,700	898,700	812,658	90%	819,943	(7,285)	-1%
Community Services	147,840	147,840	88,724	60%	125,628	(36,905)	-29%
General Administration Overhead	1,709,712	1,709,712	1,421,760	83%	1,100,240	321,520	29%
Other Charges Current Services	926,641	926,641	508,984	55%	640,414	(131,430)	-21%
TOTAL CURRENT SERVICES	9,993,089	9,993,089	8,168,230	82%	7,662,828	505,402	7%
OTHER REVENUE							
Use of money/property	458,589	458,589	375,424	82%	324,897	50,527	16%
Other Revenues	254,014	329,269	526,507	160%	1,743,586	(1,217,078)	-70%
TOTAL OTHER REVENUE	712,603	787,858	901,931	114%	2,068,483	(1,166,552)	-56%
TRANSFERS IN							
Asset Seizure	-	15,840	-	0%	-	-	0%
Public Safety	100,000	100,000	100,000	100%	106,000	(6,000)	-6%
Streets	738,968	738,968	712,150	96%	535,000	177,150	33%
Police Impact	25,000	25,000	20,830	83%	20,830	-	n/a
Sewer Operations	349,376	349,376	291,150	83%	289,190	1,960	1%
Water Operations	349,376	349,376	291,150	83%	289,190	1,960	1%
Park Development	75,000	75,000	62,500	83%	62,500	-	n/a
TOTAL TRANSFERS IN	1,637,720	1,653,560	1,477,780	89%	1,302,710	175,070	13%
TOTAL GENERAL FUND	40,146,640	40,741,993	34,488,286	85%	32,939,622	1,548,663	5%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	751,089	751,089	579,068	77%	536,444	42,624	8%
Interest / Other Revenue/Other Charges	-	-	2,755	n/a	874	1,881	215%
202 STREET MAINTENANCE	751,089	751,089	581,823	77%	537,318	44,505	8%

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Ten Months Ended April 30, 2019
83% 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 PUBLIC SAFETY TRUST							
Interest Income	202	202	1,032	511%	223	810	363%
Police Grant/SLEF/JAG	100,000	100,000	107,080	107%	97,750	9,330	10%
205 PUBLIC SAFETY TRUST	100,202	100,202	108,112	108%	97,973	10,140	10%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,996,450	2,996,450	2,164,734	72%	2,108,981	55,753	3%
Planning Fees	1,396,529	1,396,529	1,575,120	113%	849,656	725,464	85%
Engineering Fees	462,524	462,524	386,991	84%	672,436	(285,445)	-42%
Other Revenue/Current Charges	24,265	24,265	49,597	204%	45,447	4,150	9%
206 COMMUNITY DEVELOPMENT	4,879,768	4,879,768	4,176,442	86%	3,676,520	499,921	14%
207 LONG RANGE PLANNING	741,894	741,894	587,576	79%	526,700	60,876	12%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	2,821	2,821	1,003	36%	197,691	(196,687)	-99%
215 and 216 HCD BLOCK GRANT	2,821	2,821	1,003	36%	197,691	(196,687)	-99%
225 ASSET SEIZURE	1,670	1,670	33,439	2002%	1,619	31,819	1965%
229 LIGHTING AND LANDSCAPE	188,591	188,591	99,959	53%	95,776	4,183	4%
230 COMMUNITY FACILITIES DISTRICT	44,198	44,198	34,527	78%	23,637	10,890	46%
232 ENVIRONMENTAL PROGRAMS	394,158	394,158	370,528	94%	395,814	(25,286)	-6%
234 MOBILE HOME PARK RENT STAB.	661	661	9,278	1404%	2,965	6,313	213%
235 SENIOR HOUSING	3,347	3,347	3,381	101%	2,476	905	37%
236 HOUSING MITIGATION	1,613,912	2,613,912	1,213,912	46%	2,042,390	(828,479)	-41%
240 EMPLOYEE ASSISTANCE	28,949	28,949	18,868	65%	24,186	(5,317)	-22%
247 ENVIRONMENT REMEDIATION	2,118	2,118	2,022	95%	1,572	450	29%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,946,430	7,946,430	11,998,608	151%	8,814,486	3,184,123	36%
255 HOUSING SUCCESSOR AGENCY	2,386,006	2,386,006	652,269	27%	446,244	206,025	46%
TOTAL SPECIAL REVENUE FUNDS	19,085,815	20,085,815	19,891,748	99%	16,887,367	3,004,381	18%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	7,959,013	8,032,013	1,923,779	24%	2,038,187	(114,408)	-6%
302 PARK MAINTENANCE	1,320,332	1,320,332	796,909	60%	1,257,843	(460,934)	-37%
303 LOCAL DRAINAGE	1,394,482	1,394,482	674,913	48%	1,981,720	(1,306,807)	-66%
304 LOCAL DRAINAGE/NON AB1600	80,981	80,981	149,348	184%	154,244	(4,895)	-3%
306 AGRICULTURE & OPEN SPACE PRESERVATION	2,652,538	2,652,538	2,130,371	80%	796,128	1,334,244	168%
308 STREET CIP	3,861,662	3,861,662	2,386,549	62%	2,423,301	(36,753)	-2%
309 TRAFFIC IMPACT	17,251,157	19,501,157	4,539,410	23%	575,633	3,963,777	689%
311 POLICE IMPACT	277,713	277,713	248,784	90%	227,367	21,417	9%
313 FIRE IMPACT	349,306	349,306	308,183	88%	78,600	229,584	292%
346 PUBLIC FACILITIES NON-AB1600	590,499	590,499	135,832	23%	107,356	28,476	27%
347 PUBLIC FACILITIES IMPACT	198,932	340,412	179,362	53%	156,053	23,309	15%
348 LIBRARY	909,565	909,565	859,491	94%	671,886	187,605	28%
350 UNDERGROUNDING	45,800	45,800	145,793	318%	203,491	(57,698)	-28%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	684,678	749,778	44,047	6%	107,005	(62,958)	-59%
360 COMMUNITY/REC IMPACT FUND	1,275,010	1,415,260	920,319	65%	868,104	52,215	6%
TOTAL CAPITAL PROJECTS FUNDS	38,851,668	41,521,498	15,443,089	37%	11,646,917	3,796,172	33%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	298,856	298,856	249,090	83%	246,328	2,763	1%
441 POLICE FACILITY BOND	375,764	375,764	374,425	100%	381,458	(7,033)	-2%
TOTAL DEBT SERVICE FUNDS	674,620	674,620	623,515	92%	627,786	(4,270)	-1%

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Ten Months Ended April 30, 2019
83% 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	10,391,000	10,391,000	8,666,695	83%	8,107,670	559,026	7%
Interest Income/Transfers	37,151	37,151	35,383	95%	24,837	10,547	42%
Other Revenue/Current Charges	318,700	318,700	783,100	246%	259,091	524,009	202%
640 SEWER OPERATION	10,746,851	10,746,851	9,485,179	88%	8,391,597	1,093,582	13%
641 SEWER EXPANSION							
Interest Income	215,856	215,856	270,668	125%	166,203	104,465	63%
Development Impact Fee	4,717,263	4,717,263	4,104,026	87%	3,221,982	882,044	27%
Transfers/Other	-	-	-	0%	-	-	0%
641 SEWER EXPANSION	4,933,119	4,933,119	4,374,694	89%	3,388,185	986,510	29%
642 SEWER RATE STABILIZATION	38,641	38,641	38,842	101%	336,003	(297,160)	-88%
643 SEWER-CAPITAL PROJECT	2,797,976	2,797,976	2,435,042	87%	2,090,364	344,678	16%
TOTAL SEWER FUNDS	18,516,587	18,516,587	16,333,758	88%	14,206,148	2,127,609	15%
650 WATER OPERATION							
Water Sales	12,435,000	12,435,000	10,468,141	84%	9,372,535	1,095,606	12%
Meter Install & Service	123,000	123,000	114,957	93%	238,868	(123,911)	-52%
Transfers-In / Interest Income	440,840	440,840	389,061	88%	370,451	18,611	5%
Other Revenue/Current Charges	752,660	752,660	760,763	101%	617,598	143,165	23%
650 WATER OPERATION	13,751,500	13,751,500	11,732,922	85%	10,599,451	1,133,471	11%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	47,561	47,561	43,556	92%	41,963	1,594	4%
Development Impact Fee	1,311,698	1,311,698	1,251,197	95%	881,178	370,019	42%
651 WATER EXPANSION	1,359,259	1,359,259	1,294,753	95%	923,140	371,613	40%
652 Water Rate Stabilization	8,223	8,223	8,309	101%	424,972	(416,662)	-98%
653 Water Capital Project	2,400,895	2,400,895	2,120,726	88%	1,138,922	981,804	86%
TOTAL WATER FUNDS	17,519,877	17,519,877	15,156,711	87%	13,086,486	2,070,225	16%
TOTAL ENTERPRISE FUNDS	36,036,464	36,036,464	31,490,468	87%	27,292,634	4,197,835	15%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,870,983	1,870,983	1,577,473	84%	1,340,501	236,972	18%
740 BUILDING MAINTENANCE	3,326,619	3,380,619	2,803,134	83%	2,587,119	216,016	8%
741 BUILDING REPLACEMENT	789,958	789,958	645,350	82%	416,996	228,354	55%
745 CIP ADMINISTRATION	1,780,750	1,780,750	1,221,474	69%	1,148,439	73,035	6%
760 UNEMPLOYMENT INSURANCE	2,324	2,324	2,320	100%	1,829	491	27%
770 WORKERS COMPENSATION	775,343	775,343	684,472	88%	841,888	(157,416)	-19%
790 EQUIPMENT REPLACEMENT	1,064,433	1,123,757	1,049,560	93%	887,141	162,419	18%
791 EMPLOYEE BENEFITS	1,171,099	1,171,099	633,747	54%	511,719	122,028	24%
793 CORPORATION YARD COMMISSION	-	-	3,236	0%	1,850	1,386	75%
795 GENERAL LIABILITY INSURANCE	1,020,581	1,020,581	854,633	84%	793,980	60,653	8%
TOTAL INTERNAL SERVICE FUNDS	11,802,090	11,915,414	9,475,400	80%	8,531,462	943,938	11%
TOTAL FOR ALL FUNDS	\$ 146,597,297	\$ 150,975,804	\$ 111,412,506	74%	\$ 97,925,787	\$ 13,486,719	14%

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Ten Months Ended April 30, 2019
 83% 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	\$ 17,312	\$ 337,607	\$ 272,731	\$ 25,000	\$ 297,731	88%	\$ 28,312
	CITY ATTORNEY	52,699	768,318	515,205	110,886	626,092	81%	59,585
	CITY MANAGER	28,030	433,799	329,879	4,737	334,616	77%	2,230
	HUMAN RESOURCES	57,694	846,813	661,270	31,945	693,215	82%	56,400
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	40,089	614,068	466,734	4,800	471,534	77%	48,889
	Elections	4,754	322,533	143,518	-	143,518	44%	6,521
	COUNCIL SVCS & RECORDS MGMT	44,843	936,601	610,252	4,800	615,052	66%	55,410
	FINANCE	120,922	1,720,130	1,328,054	29,076	1,357,130	79%	1,340
	TOTAL ADMINISTRATION	321,500	5,043,269	3,717,392	206,443	3,923,835	78%	5,571
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	359,473	6,309,009	4,893,307	519,167	5,412,474	86%	4,567
	Recreation Facility Rentals	109,294	1,355,732	1,103,172	25,049	1,128,221	83%	1,079
	Community Services	39,444	653,307	485,510	32,990	518,500	79%	57,444
	Environmental Services	17,890	303,894	178,964	-	178,964	59%	15,890
	Street Maintenance	171,838	2,362,851	1,914,667	111,234	2,025,901	86%	1,638
	Downtown Maintenance	22,278	354,644	263,390	12,358	275,748	78%	22,278
	Cable Television	1,690	21,581	17,624	-	17,624	82%	1,690
	COMMUNITY SERVICES	721,909	11,361,018	8,856,634	700,798	9,557,432	84%	8,251
	CODE COMPLIANCE	12,113	150,464	124,031	-	124,031	82%	10,113
	CONGESTION MANAGEMENT	1,304	81,861	41,430	-	41,430	51%	5,304
	ECONOMIC DEVELOPMENT PROGRAMS	68,583	947,260	599,895	106,999	706,894		
	TOTAL COMMUNITY SERVICES	803,908	12,540,603	9,621,989	807,797	10,429,786	83%	8,411
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	97,022	1,222,942	1,118,377	55,318	1,173,695	96%	99,022
	Field Operations	678,600	9,375,273	7,131,834	160,364	7,292,199	78%	6,380
	Support Services	173,238	2,288,547	1,815,098	22,813	1,837,911	80%	1,700
	Emergency Services/Haz Mat	14,539	188,507	142,598	-	142,598	76%	15,539
	Special Operations	182,825	2,886,370	1,817,702	-	1,817,702	63%	2,090
	Dispatch Services	130,258	1,674,402	1,330,263	5,029	1,335,292	80%	1,310
	POLICE	1,276,482	17,636,042	13,355,872	243,524	13,599,397	77%	12,650
	FIRE	621,101	6,959,059	5,644,020	295,060	5,939,080	85%	4,980
	TOTAL PUBLIC SAFETY	1,897,583	24,595,101	18,999,892	538,585	19,538,477	79%	17,630
IV. TRANSFERS								
	Other	151,753	2,127,498	1,517,530	-	1,517,530	71%	1,620
	TOTAL TRANSFERS	151,753	2,127,498	1,517,530	-	1,517,530	71%	1,620
	TOTAL GENERAL FUND	3,174,744	44,306,470	33,856,803	1,552,825	35,409,628	80%	33,250

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2018-19
For the Month and Ten Months Ended April 30, 2019
83% 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	3,416	742,877	718,499	-	718,499	97%	53%
205	PUBLIC SAFETY/SUPP.LAW	545	106,536	105,450	-	105,450	99%	10%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	191,389	2,597,350	1,814,069	459,009	2,273,078	88%	1,56%
	Building	158,599	1,976,108	1,516,790	169,183	1,685,973	85%	1,41%
	Engineering	55,295	1,668,062	1,115,431	516,491	1,631,922	98%	1,10%
206	COMMUNITY DEVELOPMENT FUND	405,283	6,241,520	4,446,290	1,144,684	5,590,973	90%	4,08%
207	LONG RANGE PLANNING	44,319	1,383,881	514,719	532,410	1,047,129	76%	49%
215/216	CDBG	413	4,961	4,466	-	4,466	90%	20%
225	ASSET SEIZURE	-	15,840	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	7,547	195,274	137,892	17,380	155,272	80%	14%
230	COMMUNITY FACILITIES DISTRICT	2,093	46,262	18,981	-	18,981	41%	1%
232	ENVIRONMENT PROGRAMS	32,016	406,727	320,854	-	320,854	79%	32%
234	MOBILE HOME PARK	34	405	340	-	340	84%	-
236	HOUSING MITIGATION	67,623	3,323,394	1,727,130	133,055	1,860,185	56%	59%
240	EMPLOYEE ASSISTANCE	78	28,430	6,338	-	6,338	22%	2%
247	ENVIRONMENTAL REMEDIATION	914	-	4,062	807	4,869	0%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	9,263	7,983,635	11,305,488	23,890	11,329,378	142%	7,03%
255	HOUSING SUCCESSOR AGENCY	75,829	3,679,973	3,814,524	710,546	4,525,071	123%	1,63%
TOTAL SPECIAL REVENUE FUNDS		649,374	24,159,715	23,125,031	2,562,772	25,687,804	106%	15,20%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	61,066	8,952,955	421,206	878,904	1,300,110	15%	4,24%
302	PARK MAINTENANCE	75,497	1,248,941	895,001	157,930	1,052,932	84%	2,29%
303	LOCAL DRAINAGE	8,258	2,773,416	2,340,013	8,226	2,348,239	85%	1%
304	LOCAL DRAIN. NON-AB1600	(3,895)	338,627	4,414	-	4,414	1%	5%
306	AGRICULTURE & OPEN SPACE PRESERVATION	175,766	8,483,054	3,035,223	62,379	3,097,603	37%	9%
308	STREET CIP	80,701	5,392,576	1,810,931	193,285	2,004,217	37%	2,11%
309	TRAFFIC IMPACT	83,277	22,743,433	5,117,205	129,885	5,247,090	23%	1,94%
311	POLICE IMPACT	2,334	228,096	223,295	314	223,609	98%	22%
313	FIRE IMPACT	409	172,227	31,402	40,045	71,448	41%	-
346	PUBLIC FAC.NON AB1600	294,080	1,041,119	432,004	74,939	506,942	49%	55%
347	PUBLIC FACILITIES IMPACT	183	207,439	3,938	314	4,253	2%	-
348	LIBRARY IMPACT	43,896	3,849,962	518,648	44,879	563,528	15%	40%
350	UNDERGROUNDING	85	56,024	850	-	850	2%	-
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	14,157	1,830,740	112,743	14,374	127,117	7%	25%
360	COMM/REC CENTER IMPACT	5,343	2,419,177	76,848	128,511	205,359	0%	3%
TOTAL CAPITAL PROJECTS FUNDS		841,156	59,737,787	15,023,722	1,733,987	16,757,710	28%	12,26%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	72,069	308,656	297,969	-	297,969	97%	28%
441	POLICE FACILITY BOND DEBT	90,279	380,313	385,809	-	385,809	101%	39%
TOTAL DEBT SERVICE FUNDS		162,348	688,969	683,778	-	683,778	99%	67%

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Ten Months Ended April 30, 2019
 83% 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	1,125,670	11,311,787	8,132,817	185,255	8,318,072	74%	8,181
641	SEWER CAPITAL EXPANSION	24,572	4,406,573	1,073,844	404,094	1,477,938	34%	1,161
642	SEWER RATE STABILIZATION	86	1,027	860	-	860	84%	-
643	SEWER-CAPITAL PROJECTS	57,697	11,033,664	4,308,867	645,982	4,954,848	45%	3,211
TOTAL SEWER FUND(S)		1,208,025	26,753,051	13,516,387	1,235,330	14,751,718	55%	12,561
WATER								
	Water Operations	920,252	12,440,123	8,553,680	1,505,418	10,059,097	81%	8,311
	Utility Billing	63,664	809,160	647,793	19,628	667,421	82%	601
	Water Conservation	6,688	210,082	75,325	48,000	123,325	59%	81
650	WATER OPERATIONS	990,604	13,459,365	9,276,798	1,573,046	10,849,843	81%	9,001
651	WATER CAPITAL EXPANSION	67,787	3,374,572	1,582,926	908,136	2,491,061	74%	341
652	WATER RATE STABILIZATION	28	335	280	-	280	84%	-
653	WATER-CAPITAL PROJECTS	15,088	2,535,148	754,878	140,659	895,537	35%	1,851
TOTAL WATER FUND(S)		1,073,507	19,369,421	11,614,881	2,621,841	14,236,722	74%	11,211
TOTAL ENTERPRISE FUNDS		2,281,532	46,122,472	25,131,268	3,857,171	28,988,439	63%	23,771
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	111,324	2,013,703	1,266,084	21,220	1,287,304	64%	1,361
740	BUILDING MAINTENANCE	334,332	3,430,986	2,584,363	234,000	2,818,363	82%	2,511
741	BUILDING REPLACEMENT	2,111	429,806	234,165	60,581	294,747	69%	351
745	CIP ADMINISTRATION	196,198	1,813,012	1,221,745	17,269	1,239,014	68%	1,141
760	UNEMPLOYMENT	-	10,000	7,442	-	7,442	74%	-
770	WORKERS COMPENSATION	23,520	947,795	535,459	-	535,459	56%	901
790	EQUIPMENT REPLACEMENT	319,401	1,332,012	565,024	580,956	1,145,979	86%	641
791	EMPLOYEE BENEFITS FUND	21,562	600,000	437,354	-	437,354	73%	581
793	CORP YARD COMMISSION	-	1,903	1,220	-	1,220	0%	-
795	GEN. LIABILITY INSURANCE	7,259	1,010,346	863,529	-	863,529	85%	811
TOTAL INTERNAL SERVICE FUNDS		1,015,706	11,589,562	7,716,385	914,027	8,630,412	74%	8,341
REPORT TOTAL		\$ 8,124,860	\$ 186,604,974	\$ 105,536,988	\$ 10,620,782	\$ 116,157,770	62%	\$ 93,521

Attachment: April 2019 Financial and Investment Report (2358 : Accept April 2019 Financial and Investment Report)

 City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Ten Months Ended April 30, 2019 83% of Year Complete									
Fund No.	Fund	Fund Balance 06-30-18	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	\$ 17,604,727	\$ 34,488,286	85%	\$ 33,856,803	76%	\$ 631,482	\$ 1,552,825	\$ 16,683,384
TOTAL GENERAL FUND		\$ 17,604,727	\$ 34,488,286	85%	\$ 33,856,803	76%	\$ 631,482	\$ 1,552,825	\$ 16,683,384
202	STREET MAINTENANCE	58,830	\$ 581,823	77%	\$ 718,499	77%	\$ (136,676)	\$ -	\$ (77,846)
205	PUBLIC SAFETY/SUPL. LAW	50,422	108,112	108%	105,450	67%	2,662	-	53,084
206	COMMUNITY DEVELOPMENT	2,001,953	4,176,442	86%	4,446,290	71%	(269,848)	1,144,684	587,421
207	LONG RANGE PLANNING	1,160,548	587,576	79%	514,719	37%	72,857	532,410	700,996
215 / 216	CDBG	59,981	1,003	36%	4,466	0%	(3,462)	-	56,519
225	ASSET SEIZURE	111,921	33,439	2002%	-	0%	33,439	-	145,360
229	LIGHTING AND LANDSCAPE	157,826	99,959	53%	137,892	71%	(37,933)	17,380	102,513
230	COMMUNITY FACILITIES DISTRICT	82,203	34,527	78%	18,981	0%	15,546	-	97,749
232	ENVIRONMENTAL PROGRAMS	243,732	370,528	94%	320,854	79%	49,674	-	293,406
234	MOBILE HOME PK RENT STAB.	43,345	9,278	1404%	340	84%	8,938	-	52,283
235	SENIOR HOUSING	224,078	3,381	101%	-	0%	3,381	-	227,459
236	HOUSING MITIGATION	2,714,194	1,213,912	46%	1,727,130	52%	(513,218)	133,055	2,067,921
240	EMPLOYEE ASSISTANCE	38,932	18,868	65%	6,338	22%	12,530	-	51,462
247	ENVIRONMENT REMEDIATION	135,819	2,022	95%	4,062	0%	(2,040)	807	132,972
250	COMH-SUCCESSOR AGENCY-MHRDA	(877,559)	11,998,608	151%	11,305,488	142%	693,121	11,444,757	(11,629,196)
255	HOUSING SUCCESSOR AGENCY	4,072,877	652,269	27%	3,814,524	104%	(3,162,255)	710,546	200,076
260	PUBLIC ART	111	-	n/a	-	-	-	-	111
TOTAL SPECIAL REVENUE FUNDS		\$ 10,279,213	\$ 19,891,748	99%	\$ 23,125,031	96%	\$ (3,233,283)	\$ 13,983,640	\$ (6,937,710)
301	PARK DEV. IMPACT FUND	\$ 2,787,306	\$ 1,923,779	24%	\$ 421,206	5%	\$ 1,502,573	\$ 878,904	\$ 3,410,975
302	PARK MAINTENANCE	4,265,806	796,909	60%	895,001	72%	(98,093)	157,930	4,009,783
303	LOCAL DRAINAGE	10,405,902	674,913	48%	2,340,013	84%	(1,665,100)	8,226	8,732,576
304	LOCAL DRAINAGE/NON-AB1600	1,409,474	149,348	184%	4,414	1%	144,934	-	1,554,408
306	AGRICULTURE AND OPEN SPACE PRESERV	7,017,877	2,130,371	80%	3,035,223	36%	(904,852)	62,379	6,050,646
308	STREET CIP	2,333,919	2,386,549	62%	1,810,931	34%	575,617	193,285	2,716,251
309	TRAFFIC IMPACT FUND	3,437,980	4,539,410	23%	5,117,205	22%	(577,795)	129,885	2,730,300
311	POLICE IMPACT FUND	(736,934)	248,784	90%	223,295	98%	25,489	314	(711,759)
313	FIRE IMPACT FUND	3,906,952	308,183	88%	31,402	18%	276,781	40,045	4,143,688
346	PUBLIC FACILITIES NON-AB1600	166,110	135,832	23%	432,004	41%	(296,172)	314	(130,376)
347	PUBLIC FACILITIES IMPACT FUND	520,300	179,362	53%	3,938	2%	175,423	44,879	650,844
348	LIBRARY IMPACT FUND	2,371,544	859,491	94%	518,648	13%	340,842	-	2,712,386
350	UNDERGROUNDING	707,205	145,793	318%	850	2%	144,943	14,374	837,773
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,502,442	44,047	6%	112,743	6%	(68,696)	128,511	1,305,235
360	COMM/REC CTR IMPACT FUND	1,113,663	920,319	65%	76,848	0%	843,471	-	1,957,134
TOTAL CAPITAL PROJECT FUNDS		\$ 41,209,546	\$ 15,443,089	37%	\$ 15,023,722	25%	\$ 419,367	\$ 1,659,048	\$ 39,969,864
420	CIVIC CENTER DEBT	\$ 171,658	\$ 249,090	83%	\$ 297,969	97%	\$ (48,878)	\$ 245	\$ 122,534
441	POLICE FACILITY BOND DEBT	82,263	374,425	100%	385,809	101%	(11,384)	312	70,567
TOTAL DEBT SERVICE FUNDS		\$ 253,921	\$ 623,515	92%	\$ 683,778	99%	\$ (60,262)	\$ 557	\$ 193,102

City of Morgan Hill
Fund Activity Summary - Fiscal Year 2018-19
For the Ten Months Ended April 30, 2019
83% of Year Complete

Fund No.	Fund	Fund Balance 06-30-18	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	\$ 2,901,439	\$ 9,485,179	88%	\$ 8,132,817	72%	\$ 1,352,362	185,255	4,068,546
641	SEWER IMPACT FUND*	15,556,702	4,374,694	89%	1,073,844	24%	3,300,850	404,094	18,453,458
642	SEWER RATE STABILIZATION	2,574,831	38,842	101%	860	84%	37,982	-	2,612,813
643	SEWER-CAPITAL PROJECTS	9,316,726	2,435,042	87%	4,308,867	39%	(1,873,824)	645,982	6,796,920
650	WATER OPERATIONS	3,409,384	11,732,922	85%	9,276,798	69%	2,456,125	1,573,046	4,292,463
651	WATER IMPACT FUND*	2,680,718	1,294,753	95%	1,582,926	47%	(288,172)	908,136	1,484,410
652	WATER RATE STABILIZATION	514,170	8,309	101%	280	84%	8,029	-	522,199
653	WATER -CAPITAL PROJECT	564,089	2,120,726	88%	754,878	30%	1,365,848	140,659	1,789,278
TOTAL ENTERPRISE FUNDS		\$ 37,518,059	\$ 31,490,468	87%	\$ 25,131,268	54%	\$ 6,359,200	\$ 3,857,171	\$ 40,020,088
730	INFORMATION SERVICES	\$ 591,635	\$ 1,577,473	84%	\$ 1,266,084	63%	\$ 311,389	\$ 21,220	\$ 881,804
740	BUILDING MAINTENANCE	(4,788)	2,803,134	83%	2,584,363	75%	218,772	234,000	(20,016)
741	BUILDING REPLACEMENT	2,081,486	645,350	82%	234,165	54%	411,185	60,581	2,432,090
745	CIP ENGINEERING	62,962	1,221,474	69%	1,221,745	67%	(271)	17,269	45,422
760	UNEMPLOYMENT	152,405	2,320	100%	7,442	74%	(5,122)	-	147,283
770	WORKERS COMPENSATION	1,763,179	684,472	88%	535,459	56%	149,013	30,000	1,882,192
790	EQUIPMENT REPLACEMENT	4,432,003	1,049,560	93%	565,024	42%	484,536	580,956	4,335,583
791	EMPLOYEE BENEFITS FUNDS	(364,078)	633,747	54%	437,354	73%	196,393	-	(167,685)
793	CORP YARD COMMISSION	-	3,236	0%	1,220	0%	2,016	-	2,016
795	GEN. LIABILITY INSURANCE	1,341,056	854,633	84%	863,529	85%	(8,896)	-	1,332,160
TOTAL INTERNAL SERVICE FUNDS		\$ 10,055,860	\$ 9,475,400	80%	\$ 7,716,385	67%	\$ 1,759,015	\$ 944,027	\$ 10,870,848
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 17,604,727	\$ 34,488,286	85%	\$ 33,856,803	76%	\$ 631,482	\$ 1,552,825	\$ 16,683,384
SPECIAL REVENUE GROUP		10,279,213	19,891,748	99%	23,125,031	96%	(3,233,283)	13,983,640	(6,937,710)
DEBT SERVICE GROUP		253,921	623,515	92%	683,778	99%	(60,262)	557	193,102
CAPITAL PROJECTS GROUP		41,209,546	15,443,089	37%	15,023,722	25%	419,367	1,659,048	39,969,864
ENTERPRISE GROUP		37,518,059	31,490,468	87%	25,131,268	54%	6,359,200	3,857,171	40,020,088
INTERNAL SERVICE GROUP		10,055,860	9,475,400	80%	7,716,385	67%	1,759,015	944,027	10,870,848
TOTAL ALL GROUPS		\$ 116,921,326	\$ 111,412,506	74%	\$ 105,536,988	57%	\$ 5,875,518	\$ 21,997,268	\$ 100,799,576

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.

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, June 5, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Present	
Yvonne Martinez Beltran	Council Member	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Absent	

DECLARATION OF POSTING AGENDA

Deputy City Clerk Michelle Bigelow declared the posting of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Constantine asked the audience, both in the chamber and those watching at home, to please talk to their elected officials in Sacramento regarding SB330 which is a housing bill geared towards cities like Morgan Hill, with the intent to eliminate their growth control measures. Many cities have used their growth control measures to avoid providing affordable housing, which is the opposite of what Morgan Hill has done with our growth control measure. If this bill passes, we would not be allowed to regulate how many homes are built per year. We would lose the ability, for example, to impose minimum parking requirements on a housing development. He again encouraged the community to let the State elected officials know that SB330 is not what Morgan Hill is about and does not solve the affordable housing issue for Morgan Hill. We have more affordable housing per capita than any city in the county. We use our growth control measure to help build affordable housing.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She congratulated the City of Morgan Hill and the programs and services that we provide. We were voted number one by the readers of the Morgan Hill Times in several different categories. The Morgan Hill Dennis Kennedy Aquatics Center was recognized, as well as the Centennial Recreation Center, the Dog Park, and the Railroad Park.

She mentioned that on Thursday, June 6th, the City will hold a joint press conference open house with the Yuhu Builders Corporation. They are a Morgan Hill based start-up company with a mission focused on saving homes, lives, and the environment. They have demonstrated their ability to make steel framed homes affordable which may change how homes are built in the future by incorporating new approaches to design and construction. The open house will take place at a prototype home located at 15390 Armsby Lane in Morgan Hill from 9:00 am to noon with a presentation at 10:30 am.

She shared that in regard to SB330, staff will be disseminating a template letter that community members can use to send to the State legislators that will embody some of the points that the Mayor mentioned, as well as other information about how SB330 might impact our city and other smaller communities.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that the current status of SB330 is that it has passed out of the Senate and is now with the Assembly awaiting assignment to committees. It is not clear which committees it will be assigned to, but one is almost certain to be the local government committee where our own representative serves. It has been slightly amended since we first took our opposed position which is on this agenda for ratification this evening. One of the most significant things he wanted to share is that some of the impact fee restrictions have been lifted. Although others still remain, we would be able to collect the safety impact fees and we would still be able to increase those fees as our costs increase. The other piece of legislation that is noteworthy is AB56, which is a bill that the City has also taken an opposed position on. That bill is now out of the Assembly and is currently making its way through the Senate.

He then provided an update regarding High Speed Rail (HSR). He shared that they are in the process of finalizing the alignments they plan to study in their Environmental Impact Report (EIR) for the portion coming through Morgan Hill. They will be holding a community meeting to discuss their preferred alignment on July 10th, and they will be presenting to the City Council on July 17th. They will not make the final decision on the alignment until September of this year.

OTHER REPORTS

Mayor Pro Tem Spring shared that on Saturday the City held a nice ceremony to raise the Pride Flag outside City Hall. For the third year in a row, the rainbow flag is flying in three different locations throughout the City. He thanked the City teammates and his colleagues on the Council for their support and efforts to make it happen. It is a wonderful way to honor and celebrate our LGBTQ+ community in Morgan Hill. He shared that last week, the City held a diversity and inclusivity training for all employees, commissioners, and elected officials where a lot of important topics like unconscious bias were addressed. He concluded by reading a quote from Verna Myers that was shared with the group at the training, "Diversity is being invited to the party; inclusion is being asked to dance".

RECOGNITIONS

Police Chief Ron Lawrence, current President of the California Police Chiefs Association, presented Morgan Hill Police Chief David Swing with a recognition for his service as the immediate Past President of the California Police Chiefs Association.

PUBLIC COMMENT

The public comment was opened at 7:22 p.m.

Joe Baranowski was called to speak.

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

The public comment was re-opened at 7:26 p.m.

Terry Williams was called to speak.

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

PUBLIC COMMENT RECEIVED

PUBLIC COMMENT RECEIVED 02

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr
ABSENT:	McKay

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 3 through 5, 7, and 9 through 11.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr
ABSENT:	McKay

1. DECLARE SURPLUS VEHICLE FOR AUCTION

Recommendation:

1. Declare a 2007 Chevrolet Silverado truck to be surplus; and
2. Authorize the purchasing officer to dispose of the vehicle in accordance with the City of Morgan Hill Municipal Code Section 3.04.400.

2. ITEM PULLED FOR DISCUSSION

3. APPROVE FOURTH AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

Recommendation:

Approve the fourth amendment to the maintenance service agreement with West Coast Arborist, Inc. for an additional year of services for \$250,000, for a total contract amount of \$1,115,000.

4. ADOPT RESOLUTION AUTHORIZING DEVELOPMENT SERVICES DEPARTMENT TO HAVE ACCESS TO CALIFORNIA STATE EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD) QUARTERLY CENSUS AND EMPLOYMENT WAGES (QCEW/ES202) INDUSTRY & EMPLOYMENT DATA

Recommendation:

Adopt resolution authorizing:

1. The City's Development Services Department to examine Quarterly Census and Employment Wages (QCEW) data for the City of Morgan Hill from the California State Employment Development Department (EDD) for economic development purposes related to the Economic Blueprint; and
2. The City Manager to negotiate, execute, and administer an agreement with the EDD for economic development purposes related to the Economic Blueprint.

5. APPROVE PAYMENT FOR PURCHASE OF EQUIPMENT FOR RESERVE FIRE ENGINE

Recommendation:

Authorize the City Manager to approve payment to L.N. Curtis, in a not to exceed amount of \$98,300, for the outfitting of a Fire Reserve engine.

6. ITEM PULLED FOR DISCUSSION

7. ACCEPT 2018 INFLOW AND INFILTRATION PROJECT

Recommendation:

1. Accept as complete, the 2018 Inflow and Infiltration Project in the amount of \$907,888.
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

8. ITEM PULLED FOR DISCUSSION

9. RATIFY CITY POSITION ON PENDING LEGISLATION SB 330: HOUSING CRISIS ACT OF 2019 AND AB 56: ELECTRICITY PROCUREMENT BY THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY

Recommendation:

1. Receive legislative correspondence in opposition of SB 330: Housing Crisis Act of 2019;
2. Receive legislative correspondence in opposition of AB 56: Electricity procurement by the California Alternative Energy and Advanced Transportation Financing Authority; and
3. Ratify City's position.

10. APPROVE THE MAY 15, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

11. APPROVE THE MAY 22, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION

2. APPROVE FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

Recommendation:

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

Program Administrator Anthony Eulo answered questions.

MOTION:

Approving the recommended action.

RESULT:	AUTHORIZED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr
ABSENT:	McKay

6. ACCEPT PUBLIC IMPROVEMENTS FOR BELLE NOCI, BELLE SALICI, AND BELLE ALLORI DEVELOPMENTS

Recommendation:

1. Accept the public improvements for Belle Noci, Belle Salici, and Belle Allori projects;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

The public comment was opened at 7:33 p.m.

Shreya Shah was called to speak.

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

MOTION:

Approving the recommended actions.

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Rene Spring, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr
ABSENT: McKay

8. ACCEPT UPDATE ON THE CITY'S PILOT RODENTICIDES USE REDUCTION PROJECT

Recommendation:

Accept Report.

Program Administrator Anthony Eulo provided the report and answered questions.

The public comment was opened at 7:38 p.m.

There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Rene Spring, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr
ABSENT: McKay

OTHER BUSINESS

12. APPROVE MEMORANDUM OF UNDERSTANDING WITH THE SANTA CLARA COUNTY OFFICE OF EDUCATION FOR THE MAGICAL BRIDGE INCLUSIVE PLAYGROUND FUNDING

Recommendation:

Authorize the City Manager to execute and administer a memorandum of understanding with the Santa Clara County Office of Education for \$200,000 in capital funding for the Morgan Hill Magical Bridge Playground.

Public Services Director Chris Ghione provided the report.

The public comment was opened at 7:39 p.m. The following people were called to speak:

Dr. Mary Ann Dewan

Claudia Rossi

Ron Locicero

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

MOTION:

Approving the recommended action.

RESULT: AUTHORIZED [UNANIMOUS]
MOVER: Rene Spring, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr
ABSENT: McKay

Mayor Rich Constantine presented Board Member Claudia Rossi and Superintendent Dr. Mary Ann Dewan with a certificate of recognition.

The meeting recessed at 7:53 p.m.

The meeting reconvened at 7:58 p.m.

13. ADOPT FISCAL YEAR 2019-20 MID-CYCLE BUDGET AMENDMENTS AND RESOLUTION AND THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION

Recommendation:

1. Adopt resolution to:
 - a. Authorize changes to the adopted Fiscal Year (FY) 2019-20 City of Morgan Hill Operating and Capital Improvement Budget;
 - b. Adopt the FY 2019-20 Appropriations Limit and Appropriations Limit Adjustment Factors;
2. Adopt the Management, Professional, and Confidential Employees Resolution and corresponding salary schedule effective June 30, 2019;
3. Approve the increase in customer water rates as a result of the increased wholesale groundwater production charge from Valley Water; and
4. Approve deposit of \$253,000 net proceeds received from the County by the sale of Successor Agency's jointly owned parking and transit facility, to the Housing Fund.

Budget Manager Monica Delgado, along with Finance Director Dat Nguyen, Accounting Manager Harjot Sangha, and Assistant City Manager Cindy Murphy, provided the report and presentation.

The public comment was opened at 8:13 p.m.

There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommend actions.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr
ABSENT:	McKay

PUBLIC HEARING

14. APPROVE RESOLUTION ORDERING ANNUAL ASSESSMENTS AND RELATED ACTIONS FOR CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1 (DISTRICT)

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2019-20 annual assessments and ordering the levy of assessments for the District.

Public Services Director Chris Ghione presented the report.

The public hearing was opened at 8:16 p.m.

There being no requests to speak, the public hearing was closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr
ABSENT:	McKay

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:17 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: June 26, 2019

PREPARED BY: Chris Ghione, Public Services Director
APPROVED BY: City Manager

APPROVE FISCAL YEAR 2019-20 WORK PLANS FOR PARKS AND RECREATION AND LIBRARY, CULTURE AND ARTS COMMISSIONS

RECOMMENDATION(S)

1. Approve the proposed Parks and Recreation Commission FY 2019-20 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2019-20 Work Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving Our Community History
Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development
Financial Stewardship
Regional Initiatives

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Economic Blueprint
Vision Zero

REPORT NARRATIVE:

Annually, the Library, Culture and Arts Commission (LCAC) and the Parks and Recreation Commission (PRC) submit Work Plans for approval by the City Council. After approval by the Council, the Commissions use these Work Plans to guide their work over the next year.

In development of this year's proposed Work Plans, both the LCAC and the PRC reviewed the Council priorities for 2019-2020 to align their work with the Council. Some of the key areas of alignment include supporting youth and inclusiveness by supporting special events and programs, planning efforts for City facilities, and cultivating partnerships.

City staff believe that the Work Plans can be achieved without significant impact on staff resources. Many Work Plan items are exploratory in nature and could require significant

staff resources if implemented, but until the items are explored in detail the impacts are unknown. Should increased staff resources be required, City staff and the associated Commission would return to Council with a request.

COMMUNITY ENGAGEMENT: Consult

The development of the Work Plans occurred at noticed public meetings of the PRC and the LCAC. Specific Work Plan items will include appropriate public engagement.

ALTERNATIVE ACTIONS:

The Council could alternatively modify a Commission's Work Plan to eliminate, add, or change specific items within a Work Plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The PRC approved their Work Plan for City Council review on June 18, 2019 and the LCAC approved their Work Plan for City Council review on June 4, 2019.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact associated with the approval of the Commission Work Plans. Each Work Plan identifies the estimated staff resources necessary to support the specific Work Plan items. Supporting the LCAC and PRC is an ongoing activity for the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

Development of Commission Work Plans is an administrative activity of government that will not result in direct or indirect physical changes in the environment. While some projects on the Work Plans may result in changes to the physical environment, those projects would undergo appropriate environmental review on a project by project basis to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. PRC FY2019-20 Workplan Draft
2. LCAC FY2019-20 Workplan Draft

Parks & Recreation Commission

FY 2019-20 Work Plan – Draft

Project	City Council Priority Supported	Staff Resources Required	Desired Outcome (Commissioner Responsible)
1. Get Youth More Active in Parks and Recreation	Supporting Our Youth, Seniors & Entire Community	Recreation Manager (Minimal)	Review program opportunities for new youth programming. (Locicero)
2. Support Bicycle and Trails Development Efforts	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal)	1. Support the VTA Bicycle and Pedestrian Advisory Committee. (Berman) 2. Work to coordinate with community members on bicycle and trails issues with volunteer Bicycle and Pedestrian Advocacy Group. (Seehaffer)
3. Support efforts to create an inclusive playground	Supporting Our Youth, Seniors & Entire Community	PS Director (Significant) CS Coordinator (Moderate)	Support the group that has formed for the creation of an inclusive playground in Morgan Hill. Support in the planning and fundraising efforts. (Locicero/Wendt/Scott)
4. Support planning for updated sports facilities and partnerships	Supporting Our Youth, Seniors & Entire Community Economic Development	PS Director (Moderate) CS Supervisor (Moderate)	1. Evaluate opportunities to construct sand volleyball facilities in partnership with a facility operator, including support for upcoming feasibility study. (Wendt/Berman) 2. Monitor Outdoor Sports Center transition to new operator. (van Keulen) 3. Monitor Centennial Recreation Center Expansion Project progress. (van Keulen)
5. Support City in Grant Opportunities	Supporting Our Youth, Seniors & Entire Community	PS Director (Significant) Mngt Analyst (Significant)	Support City staff in identifying and evaluating grant opportunities and associated projects. (Scott/Berman)
6. Increase volunteer Adopt a Park Program participation	Supporting Our Youth, Seniors & Entire Community Maintaining Fiscal Responsibility	PS Director (Minimal) CS Coordinator (Minimal)	As an exploratory committee, evaluate the opportunity to recreate ongoing volunteer groups to support park maintenance. (Scott/Grzan-Pieracci)

Attachment: PRC FY2019-20 Workplan Draft (2367 : Commission FY 19/20 Work Plans)

Project	City Council Priority Supported	Staff Resources Required	Desired Outcome (Commissioner Responsible)
7. Evaluate opportunities to increase Youth involvement in Park Planning	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal) Rec Coord (Minimal)	Work with City staff to review opportunities to more formally include youth in park planning projects. (Grzan-Pieracci)
8. Support City Park Planning Efforts	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal)	Evaluate future opportunities for parkland acquisition and development. (van Keulen)
Staff Resources Required: 0-50 hours = Minimal 51-100 hours = Moderate 100+ hours = Significant			

Library, Culture & Arts Commission
FY 2019-20 Work Plan
DRAFT

Overall Mission: To assist the City Council in accomplishing its goals by fostering an environment conducive to and supportive of the arts, culture, and life-long learning in Morgan Hill, working with existing community groups to promote resources, and facilitate partnerships.

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Community Outreach	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness Community Engagement and Messaging	PS Director (minimal) CS Supervisor (Moderate) Recreation Manager (minimal)	(1) Participate with other groups to support community outreach and support arts and culture in the community (including Valle del Sur, El Toro Arts, SV Creates, Poppy Jasper Film Festival, Morgan Hill Diwali Festival) (All) (2) Explore development of a calendar relating to library, culture and arts events (Khera/Thompson) (3) Review opportunities to fund local public access cable television (Benich) (4) Explore opportunities for art programming in conjunction with the new Morgan Hill Magical Bridge Playground. (Khera/Thompson/Chabra) (5) Review City Commission website for opportunities for improvement and explore use of social media for promotion of Commission initiatives (Khera/Ganapathy/Chabra) (6) Explore opportunities for youth engagement in the arts (Khera)
Permanent and Proposed Public Art	Supporting our Youth, Seniors and Entire Community Preserving Our Cultural Heritage	PS Director (minimal) CS Supervisor (minimal) CS Coordinator (minimal) Maintenance Coordinator (minimal)	(1) Partner with local Artists to display their work. Review the possibility of implementing a utility box art program or other programs (doors, walls, etc.) (Ganapathy/Thompson) (2) Form subcommittees as needed to support specific art requests that come forward (All) (3) Explore opportunities for developing a Commission Budget to fund arts and culture (Khera/Thompson) (4) Review art inventory and complete updates to historical items list (Benich) (5) Explore the options and feasibility of creating an artist registry (Ganapathy/Chabra)

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Art and Culture Events	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	PS Director (minimal) CS Coordinator (minimal) CS Supervisor (minimal)	(1) Facilitate the Art a la Carte event (Benich is the lead/all members will support) (2) Explore opportunity to partner with artists on a children's art show (Khera/Chabra) (3) Evaluate the opportunity to create an international festival utilizing entertainment and food from various cultures (Chabra/Ganapathy)
Library Outreach and Support	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	Library Staff (moderate) Senior Project Manager (moderate)	(1) Support Library outreach and advocacy as needed (All) (2) Coordinate Commissioner's Corner in Library to provide book recommendations (Khera) (3) Participate in annual Library Commissioners Forum (All) (4) Support incorporation of Children's art into the Library (Lake/Chabra) (5) Explore other opportunities for Library art contests in other media (examples: poetry, photography, literature) (Ganapathy)
Support of Historical Resources	Preserving our Cultural Heritage	PS Director (minimal) CS Supervisor (minimal)	(1) Explore opportunities for the Commission to support the Morgan Hill Historical Society partnership (Ganapathy/Crawford) (2) Support outreach and advocacy for the Historical Society as needed (All)

Staff Resources Required:

0-50 hours: Minimal; 51-100 hours: Moderate; 100+ hours: Significant

From: D. Muirhead
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: Morgan Hill City Council Meeting June 26, 2019 comment Item #5: GIS software
Date: Monday, June 24, 2019 12:02:56 PM

Warning: this message is from an external user and should be treated with caution.

Comments for the Public Record submitted for:

Morgan Hill City Council

Meeting June 26, 2019

Item #5: Agreement with Environmental Systems Research Institute, Inc.
(Esri) for GIS software

Dear Morgan Hill City Council,

I strongly support development of Geographic Information Systems (GIS) to benefit local and regional planning and operations as well as to inform the general public.

Unfortunately, this item has the "cart" before the "horse".

The FY 2018-2019 budget stated that

A GIS program vision for the City was developed.

This staff report says

GIS Service Project Status: The project began in January 2019.

To date, the strategic plan is in final review, the system assessment and design is complete, with system implementation scheduled for end of July of this year.

You are being asked to approve a system design and implementation without knowing the GIS program vision. Nor do we have the original assessment of what we had, where were the gaps, and what are the next steps in terms of priorities and needed resources from other departments.

There is no time for me to get a Public Records Request to see if any documentation exists to answer the above questions which are also identified in the staff report under "What is the GIS Services Project?"

... develop a GIS strategic plan to outline a road map that assesses existing GIS system infrastructure ... create the platform from which we can build out the City's GIS program with spatial data, maps, and applications. Currently, we are not able to support a City-wide Enterprise GIS system due to gaps in infrastructure and technology.

In terms of FY 2018-19 and 2019-20 Activity Goals,
it appears you have progressed on

- * Set standards for GIS maps and data that are shared outside the City

but I am eagerly waiting for

- * Make appropriate data available to the public

As I said in my budget comments last year:

I vote for a formal Open Data Portal. Join with VTA,

Water District, and multiple County departments.

My #1 interest is in a street intersection inventory of lane configurations and signal and sensor equipment.

The GIS Architecture Assessment and System Architecture Design (April 2019) describes Morgan Hill as a partially-decentralized and mixed-technology GIS environment. ... The primary GIS application, MHMaps, is an implementation of the open-source web mapping application Mapguide-Maestro.

[I strongly support open-source]

Under Network Suitability Analysis, it is claimed that

* The City's total GIS user base is 324 users;

[How do you get 180 City employees to be 324 users?]

Allow me to close with a complement to the GIS Manager for providing specific instances for how the Ongoing Priorities are supported.

Thank you for your consideration,
Doug Muirhead, Morgan Hill



Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, June 26, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

Assistant City Attorney Cynthia Hasson

OTHER REPORTS

PROCLAMATIONS

PROCLAIMING JULY 2019 AS PARKS AND RECREATION MONTH

PRESENTATIONS

YAC PRESENTATION - ASSET #15 - POSITIVE PEER INFLUENCE

PUBLIC COMMENT

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)

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. APPROVE PROPERTY EXCHANGE AGREEMENT AND MAINTENANCE AND OPERATIONS AGREEMENT WITH VALLEY WATER

Recommendation:

Authorize the City Manager to execute and administer a property exchange agreement and a maintenance and operations agreement with Valley Water.

2. APPROVE AGREEMENT WITH WOODARD AND CURRAN, INC. FOR DESIGN OF CITY IMPROVEMENTS ASSOCIATED WITH VALLEY WATER'S FLOOD CONTROL PROJECT

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Woodard and Curran, Inc. for a not to exceed amount of \$457,271 for the design of City improvements associated with Valley Water's upcoming flood protection project.

3. APPROVE AMENDMENT TO AGREEMENT WITH THE COUNTY OFFICE OF SUPPORTIVE HOUSING FOR THE RAPID REHOUSING AND HOMELESS PREVENTION PROGRAM

Recommendation:

1. Authorize the City Manager to execute and administer the first amendment to the agreement with the County Office of Supportive Housing for the Rapid Rehousing and Homeless Prevention Program; and
2. Adopt resolution amending the Fiscal Year (FY) 2019-20 adopted budget to appropriate \$50,000 from the Housing Mitigation Fund (236) for the related expenditures.

4. APPROVE SECOND AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Second Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation for 5 years and a not to exceed amount of \$172,220.

5. APPROVE SMALL GOVERNMENT ENTERPRISE AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI) FOR GIS SOFTWARE LICENSING

Recommendation:

Approve and authorize the City Manager to execute a three-year Small Government Enterprise Agreement with Environmental Systems Research Institute, Inc. (Esri) for GIS software licensing for a total amount of \$105,000.

6. APPROVE FINAL MAP OF EVERGREEN VILLAGE (BUTTERFIELD & COCHRANE DEVELOPMENT), SUBDIVISION IMPROVEMENT AGREEMENT, AND STORMWATER BEST-MANAGEMENT-PRACTICES (BMP) OPERATIONS AND MAINTENANCE AGREEMENT

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Evergreen–Butterfield & Cochrane, L.L.C., an Arizona limited liability company;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement.

7. AWARD ANNUAL ON-CALL ELECTRICAL MAINTENANCE SERVICES AGREEMENTS

Recommendation:

1. Award Maintenance Service Agreements to Morgan Hill JET Electric, Inc., JT Electric, Inc. and Bear Electrical Solutions, Inc. for up to \$100,000 each for on-call electrical maintenance and repair services; and
2. Authorize the City Manager to execute and administer the Agreements.

8. AWARD ANNUAL ON-CALL PLUMBING MAINTENANCE SERVICE AGREEMENTS

Recommendation:

1. Award Maintenance Service Agreements to Burr Plumbing and Pumping Co, Inc., Ernie's Plumbing, and Century Commercial Service for \$100,000 each for on-call plumbing maintenance and repair services; and
2. Authorize the City Manager to execute and administer the Agreements.

9. AWARD OF JOINT TRUNK PIPELINE CONDITION ASSESSMENT CONTRACT AND APPROVAL OF RELATED COST SHARING AGREEMENT WITH THE CITY OF GILROY

Recommendation:

1. Approve and authorize the City Manager to execute and administer a Cost Sharing Agreement with the City of Gilroy for the Condition Assessment Project. This authorization is conditioned on the City of Gilroy approving the Cost Sharing Agreement prior to execution; and
2. Approve and authorize the City Manager to execute and administer an agreement with Water Works Engineers, LLC in the amount of \$602,567 for a Joint Trunk Pipeline Condition Assessment. This authorization is conditioned on the City of Gilroy approving the Cost Share Agreement prior to execution.

10. AWARD 2019 PAVEMENT RESURFACING PROJECT TO GRANITE ROCK COMPANY

Recommendation:

1. Approve the 2019 Pavement Resurfacing Project plans and specifications;
2. Award contract to Granite Rock Company for the 2019 Pavement Resurfacing Project in the amount of \$3,943,226;
3. Authorize expenditure of construction contingency funds not to exceed \$394,323; and
4. Authorize the City Manager to execute and administer the construction contract with Granite Rock Company pending review and approval by the City Attorney.

11. ACCEPT AND APPROVE GALVIN PARK PAR COURSE GRANT MEMORANDUM OF UNDERSTANDING AND RELATED BUDGET AMENDMENT

Recommendation:

1. Accept the *Meet Me at the Park* grant from the National Recreation and Park Association (NRPA);
2. Approve and authorize the City Manager to execute the Memorandum of Understanding; and
3. Adopt resolution amending the City's Adopted FY 2019-20 Budget to appropriate \$30,000 as grant revenue and \$60,000 as expenditures in the Park Impact Fund (301) for the Galvin Park Inclusive Par Course project.

12. ACCEPT PARKING STRUCTURE SAFETY ENHANCEMENT PROJECT

Recommendation:

1. Accept as complete, the Parking Structure Safety Enhancement Project in the amount of \$322,733;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

13. ACCEPT APRIL 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

14. APPROVE THE JUNE 5, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

15. APPROVE FISCAL YEAR 2019-20 WORK PLANS FOR PARKS AND RECREATION AND LIBRARY, CULTURE AND ARTS COMMISSIONS

Recommendation:

1. Approve the proposed Parks and Recreation Commission FY 2019-20 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2019-20 Work Plan.

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 michelle.wilson@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 michelle.wilson@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
- Maintaining Fiscal Responsibility
- 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

2019-2020 Strategic Priorities

- Agricultural Preservation
- Cannabis Policy
- Community Engagement and Messaging
- Economic Development
- Financial Stewardship
- High Speed Rail
- Homelessness
- Housing
- Infrastructure
- Telecommunications
- Traffic/Transportation



What the world needs now is LOVE!

The tragic situation that unfolded in our community last night, brought shock, sadness and questions. What causes a person to lose all sense of right and wrong? To lose the basic respect for human life that is innate in most of us? To feel so ultimately powerless and angry over a situation that they find devastating acts of violence, up to and including murder and/or suicide their only choice.

Last night as an angry man, distraught at his life circumstances made a choice to bear arms and take the lives of two fellow human beings and then his own, I was stepping into a classroom, in Campbell, for the fourth segment of a training session on Crisis/Conflict resolution. In those three hours we role played a scenario of an rageful person lashing out and how to respond and watched a video of a real life situation with a person losing his patience, escalating to an extreme level of frustration and the violent choice he made, injuring himself and property. We then reviewed the steps in what to do in these types of situations and practiced through role playing how to act and intervene in these situations. I left feeling prepared to deal with these situations when they arise. As I left the class, I checked my phone and found a message from my father alerting me of the situation in town.

Nothing can be done to take back the actions of yesterday, the impact of this traumatic experience on those who both directly witnessed and responded to it nor the pain and devastation of

the families who have had their loved ones ripped from their lives in a senseless act of violence and the chilling effect on the community.

But, what we can do is #1: grieve. Mourn with those who mourn, comfort those who stand in need of comfort and be witnesses of love, compassion and sympathy. I have already witnessed the many statements posted online, by many of our elected officials and community members, to this effect.

The other thing we can do is talk, as we are able. Talk with our loved ones, friends and fellow community members about the many issues surrounding this situation. Discuss our feelings and reactions. Reflect on how fragile life is and recommit ourselves to our families, our community and each person who crosses our path.

And when the time is right, come back to this forum and brainstorm and discuss actionable measures we can take to do what we can to prevent another frustrated, hurt, angry person from unleashing mortal devastation on others, themselves and a community.

PUBLIC COMMENT

AGENDA DATE: 06/27/19

MEETING HANDOUT #2

June 25, 2019

City of Morgan Hill
Planning Department
Housing and Community Development
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Accessory Dwelling Units, Grannies, Casitas et al in relationship to BMR (Below Market Rate housing)

Dear Mayor Constantine and City Council,

Rocke Garcia, Doug Blackwell and Chris Blackwell acting as Managers for Blackrock LLC are requesting that the City Council revisit the City of Morgan Hill's Housing Element so that it is consistent with the State of California's acceptance of ADUs (et al) and JADUs as an affordable Below Market Rate unit. All these housing units including the BMRs are used by the City to meet their RHNA (Regional Housing Needs Allocation) numbers. This became a significant issue within the current RDCS competition where providing ADUs as BMRs did not qualify for points in the Affordable Housing Category (no matter how many ADUs were offered).

This request is based on our disqualification in this year's RDCS competition.

Our project, Quail Vineyards, applied in this year's competition as a "custom home" project totaling 13 lots. Under the criteria, we are required to have at least 50% of the homes built by builders other than ourselves. The General Plan for our site requires that each lot be a minimum of One Acre (43,560 square feet). A bonus reduction in lot size was not an option.

Staff recommended to the Planning Commission at the May 28 PC hearing that our project could not be awarded the 18 points (minimum score) we requested in the Affordable Housing Category. Quail Vineyards did not conform to the specific criteria; and, to acquire the 18 points we must build 2 BMR homes on two lots or pay almost One Million Dollars (\$1,000,000) in Housing fees.

The concept of including two 2800 square foot Below Market Rate custom homes, each on an acre lot; and one would have to be constructed by a custom builder. The two BMRs could not be smaller than the smallest open market home in our project: 2800 square feet. We believe that the "required" BMR homes would not be affordable in the future because of the higher costs related to installing significant landscaping, home maintenance, homeowner fees etc that would occur.

We believe that our proposal during the Preliminary Measure S submittal: that Accessory Dwelling Units (Deed Restricted) be counted as meeting the requirements of Measure S BMRs. Staff responded that this was a matter for City Council to resolve.

Neither Staff, nor Planning Commission, would award the 18 RDCS points since the City does not legally recognize ADUs (et al) as BMRs in the City's Affordable Housing Program or in the RDCS criteria.

The City, however, uses ADUs, BMRs, casitas, grannies et al units provided by homebuilders and developers in their RHNA numbers as per the State of California:

"...local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability."

"...as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category."

"A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall."

We are asking that the City Council agendaize our request to include ADUs, grannys, casitas et al to count as inclusionary (15%) BMR requirement (Deed Restricted, if necessary) and amend the Affordable Housing Category of Measure S to include these housing types as equal to the BMRs in the Measure S competition.

Thank you.



July is **PARKS AND RECREATION MONTH!**

Join us as we celebrate all month long with these FREE or discounted events!

Otter Pops and Downtown Splash Pad | Tuesday, July 2 | 12pm - 4pm | Morgan Hill Community and Cultural Center | Join us at the Splash Pad for free water play and otter pops!

4th of July Party | Wednesday, July 3 | 11:30am | Centennial Recreation Senior Center | Come join us for lunch as we celebrate our country's Independence Day.

Bike Party | Friday, July 5 | 7:30pm | Bike Therapy 17540 Depot Street | Join The Morgan Hill Bike Party for a themed "Freedom" ride. Decorate your bikes with red, white and blue and take a ride around town! Gathering starts at 7:30pm, ride at 8pm. All ages welcome must be able to ride safely. Music and lights encouraged.

Historical Tour | Saturday, July 13 | 10am to 12pm | Third Street Plaza 50 E. 3rd Street | Join the Historical Society for a FREE walking tour of Morgan Hill's Historic Downtown. For more information about this event and other upcoming events, please visit www.morganhillhistoricalsociety.org.

Resident Free Day at the Centennial Recreation Center | Friday, July 12 | 4:30am to 10pm | Centennial Recreation Center | Residents are welcome to spend the day using the fitness center, taking group exercise classes, swimming in our indoor pool and being a part of our CRC community for FREE with proof of residency. Visit www.mhcr.com for more details about this event.

Walk with your Pup | Tuesday, July 16 | 5:30pm | Morgan Hill Dog Park | Bring your dog and join other community members on this guided walk around Morgan Hill.

Free Family Movie Night at the Downtown Amphitheater | July 20 | 8pm | Morgan Hill Community and Cultural Center | The Poppy Jasper International Film Festival will be hosting a free viewing of Ella Enchanted! Bring your chairs and blankets and enjoy the show!

Resident Free Day at the Morgan Hill Aquatics Center | Friday, July 19 | 11:30am to 4:30pm | Morgan Hill Aquatics Center | Residents are welcome to spend the day splashing into fun at the Morgan Hill Aquatics Center for FREE with proof of residency. Visit www.mhaquaticscenter.com for more details about this event and for a complete list of pool and facility rules.

Summer Fun in the Park | Thursday, July 25 | 5:30pm to 8pm | Galvan Park | Join us at this FREE event as a part of the Summer Fun in the Park series. There will be entertainment, food, and resources for the entire family. We hope to see you there!

San Jose Earthquakes Game | Saturday, July 27 | 6:45pm | AVAYA Stadium in San Jose | Cheer on your San Jose Earthquakes as they take on the Colorado Rapids at Morgan Hill Neighborhood Night! Go to www.tinyurl.com/MHQuakes to purchase tickets and learn more about the special giveaway and on-field opportunities!

Outdoor Yoga Class | Tuesday, July 30 | 8:30am | Community Park-Stage Area | A free outdoor yoga class taught by one of the CRC fitness instructors. Bring a mat, water bottle and get ready for a little outdoor yoga class!

Questions? Contact Jennie Tucker at jennie.tucker@morganhill.ca.gov.

A presentation to the Morgan Hill City Council

June 26, 2019

Joe Baranowski

Re. Morgan Hill ~~Technology Park~~ & Mixed-Use Residential Project

Let's Really Look

PUBLIC COMMENT

AGENDA DATE: 06/26/19

SUPPLEMENTAL # 1

Tesla! Wow it must be a real Technology Center

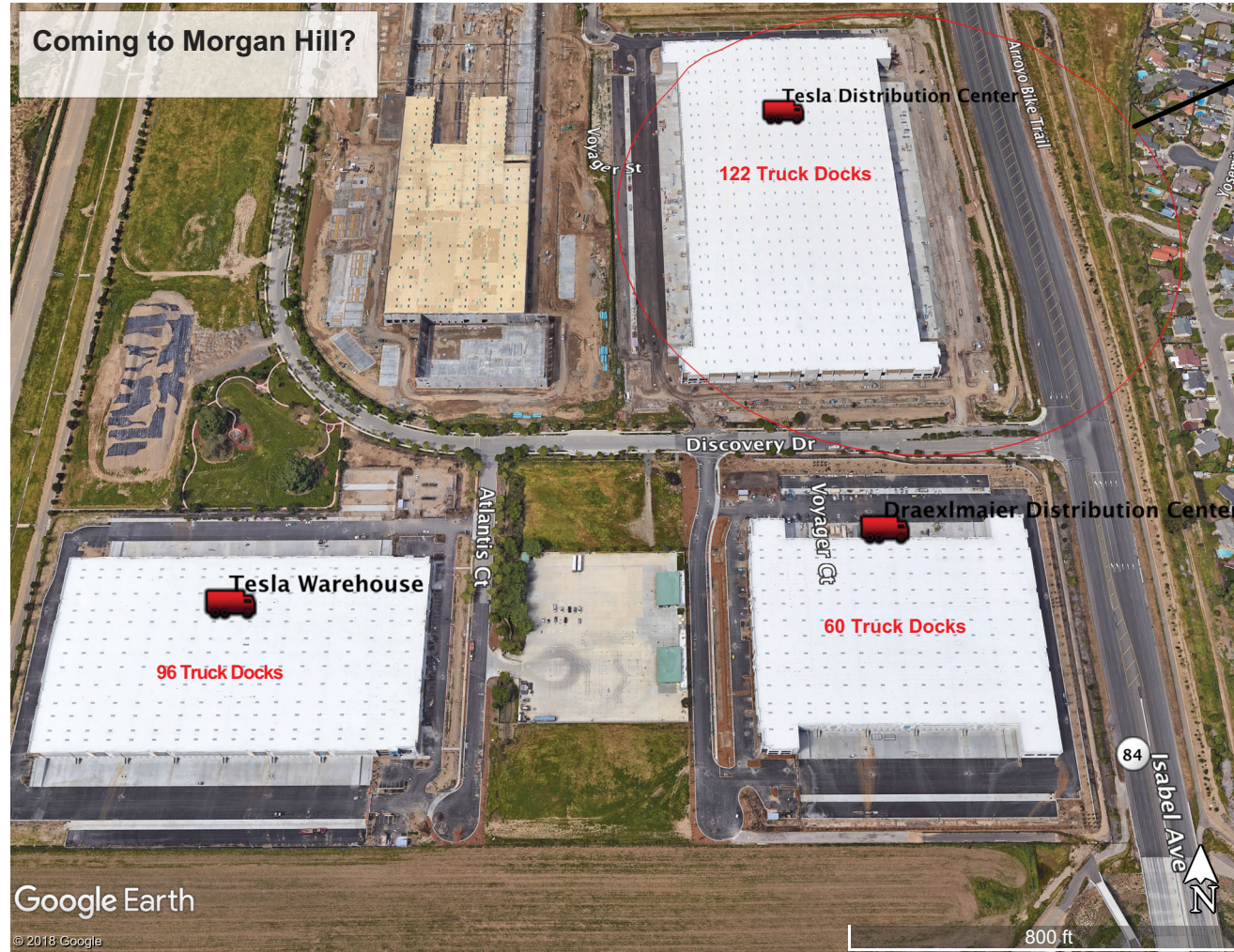
- John McKay - May 24th, two days after the Community Meeting
 - » If you ***really look*** at the proposed developer's portfolio you will see that they do have 3 other business parks regionally and you will also see that Tesla has over 1.1 million square feet with them and *Gillig Bus also has space. ***Please look for all information and not just selective information.***

*Note: Gillig Bus (600,000 sq ft. , 900 jobs) is NOT a trucking center and is a possible example of a job-generating manufacturer that with proper design constraint could be a good fit for the industrial zoned portion of the property. We SHOULD be focusing our efforts on bringing in such high quality companies instead of working with a developer who purchased the property expecting to get zoning changes to allow them to build a massive distribution center.

Wait even better than a Technology Center?

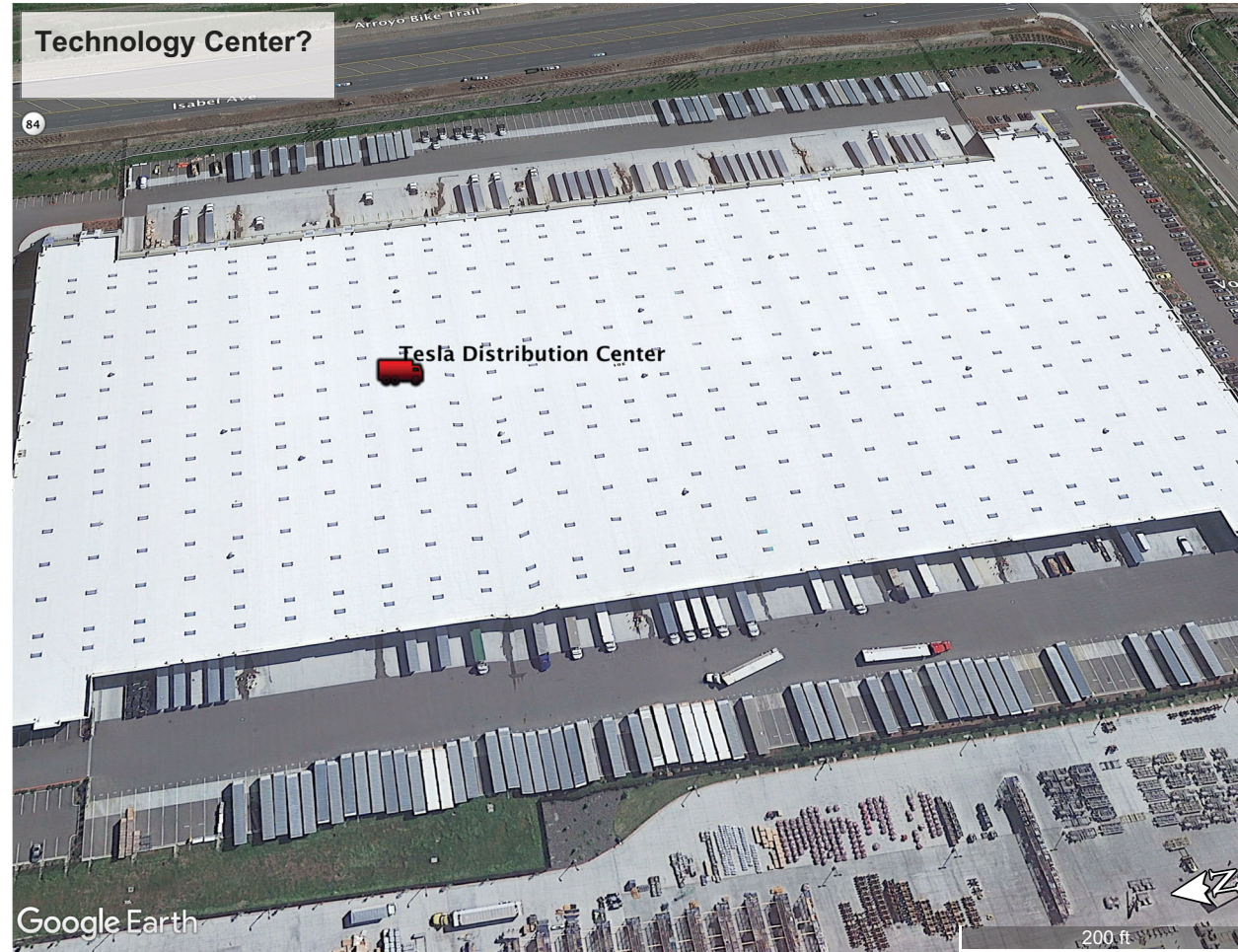
- Tesla ‘business park’ project description in Notice of Preparation (i.e. at EIR launch)
 - » “project is intended to provide an environment exclusively for, and conducive to, the development of modern professional and administrative facilities, offices, research institutions, and manufacturing operations”
- If you want \$\$ you have to go with market right? At Planning Commission approval just a tiny little change
 - » “The purpose of this Planned Development is to provide an environment for and conducive to the development and production of modern, professional, and administrative facilities, research institutions, manufacturing operations, and related uses, ***including distribution facilities, all of a non-nuisance type.***”
 - » ***Non-nuisance type*** distribution facilities with massive number of truck bays? I must be making this up right?
 - » But surely some ‘worse case’ EIR and all those fancy mitigation plans must have guaranteed ***non-nuisance?***

Two 'H' buildings and one rectangular one. Look familiar?



Distance from Truck Dock doors
to nearest residence: ~800 feet.

So it's Tesla parts being moved from A to B. Better?



How do you think that non-nuisance story worked out?

- Tesla's closest neighbors live in Summerset area with homes ~800 feet away from nearest truck bay doors
 - » Complaints about excessive noise have been described like this: "when the doors at Tesla open up, it sounds as loud as if big trash bins are slamming into the ground".
- Where is the Morgan Hill City Council 'really looking' ?
 - » Trammell Crow is "very thankful for the support and enthusiasm" they have received to date
 - » Residents of Westmont Senior Living who will be twice as close to truck doors didn't even know this misguided project was happening
 - » Why don't you go look in the faces of concerned Westmont residents and their families instead of lecturing the opposition to this project that we need to 'look at all the information and not just selective information'

What the world needs now is LOVE!

The tragic situation that unfolded in our community last night, brought shock, sadness and questions. What causes a person to lose all sense of right and wrong? To lose the basic respect for human life that is innate in most of us? To feel so ultimately powerless and angry over a situation that they find devastating acts of violence, up to and including murder and/or suicide their only choice.

Last night as an angry man, distraught at his life circumstances made a choice to bear arms and take the lives of two fellow human beings and then his own, I was stepping into a classroom, in Campbell, for the fourth segment of a training session on Crisis/Conflict resolution. In those three hours we role played a scenario of an rageful person lashing out and how to respond and watched a video of a real life situation with a person losing his patience, escalating to an extreme level of frustration and the violent choice he made, injuring himself and property. We then reviewed the steps in what to do in these types of situations and practiced through role playing how to act and intervene in these situations. I left feeling prepared to deal with these situations when they arise. As I left the class, I checked my phone and found a message from my father alerting me of the situation in town.

Nothing can be done to take back the actions of yesterday, the impact of this traumatic experience on those who both directly witnessed and responded to it nor the pain and devastation of

the families who have had their loved ones ripped from their lives in a senseless act of violence and the chilling effect on the community.

But, what we can do is #1: grieve. Mourn with those who mourn, comfort those who stand in need of comfort and be witnesses of love, compassion and sympathy. I have already witnessed the many statements posted online, by many of our elected officials and community members, to this effect.

The other thing we can do is talk, as we are able. Talk with our loved ones, friends and fellow community members about the many issues surrounding this situation. Discuss our feelings and reactions. Reflect on how fragile life is and recommit ourselves to our families, our community and each person who crosses our path.

And when the time is right, come back to this forum and brainstorm and discuss actionable measures we can take to do what we can to prevent another frustrated, hurt, angry person from unleashing mortal devastation on others, themselves and a community.

PUBLIC COMMENT

AGENDA DATE: 06/27/19

MEETING HANDOUT #2

June 25, 2019

City of Morgan Hill
Planning Department
Housing and Community Development
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Accessory Dwelling Units, Grannies, Casitas et al in relationship to BMR (Below Market Rate housing)

Dear Mayor Constantine and City Council,

Rocke Garcia, Doug Blackwell and Chris Blackwell acting as Managers for Blackrock LLC are requesting that the City Council revisit the City of Morgan Hill's Housing Element so that it is consistent with the State of California's acceptance of ADUs (et al) and JADUs as an affordable Below Market Rate unit. All these housing units including the BMRs are used by the City to meet their RHNA (Regional Housing Needs Allocation) numbers. This became a significant issue within the current RDCS competition where providing ADUs as BMRs did not qualify for points in the Affordable Housing Category (no matter how many ADUs were offered).

This request is based on our disqualification in this year's RDCS competition.

Our project, Quail Vineyards, applied in this year's competition as a "custom home" project totaling 13 lots. Under the criteria, we are required to have at least 50% of the homes built by builders other than ourselves. The General Plan for our site requires that each lot be a minimum of One Acre (43,560 square feet). A bonus reduction in lot size was not an option.

Staff recommended to the Planning Commission at the May 28 PC hearing that our project could not be awarded the 18 points (minimum score) we requested in the Affordable Housing Category. Quail Vineyards did not conform to the specific criteria; and, to acquire the 18 points we must build 2 BMR homes on two lots or pay almost One Million Dollars (\$1,000,000) in Housing fees.

The concept of including two 2800 square foot Below Market Rate custom homes, each on an acre lot; and one would have to be constructed by a custom builder. The two BMRs could not be smaller than the smallest open market home in our project: 2800 square feet. We believe that the "required" BMR homes would not be affordable in the future because of the higher costs related to installing significant landscaping, home maintenance, homeowner fees etc that would occur.

We believe that our proposal during the Preliminary Measure S submittal: that Accessory Dwelling Units (Deed Restricted) be counted as meeting the requirements of Measure S BMRs. Staff responded that this was a matter for City Council to resolve.

Neither Staff, nor Planning Commission, would award the 18 RDCS points since the City does not legally recognize ADUs (et al) as BMRs in the City's Affordable Housing Program or in the RDCS criteria.

The City, however, uses ADUs, BMRs, casitas, grannies et al units provided by homebuilders and developers in their RHNA numbers as per the State of California:

"...local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability."

"...as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category."

"A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall."

We are asking that the City Council agendaize our request to include ADUs, grannys, casitas et al to count as inclusionary (15%) BMR requirement (Deed Restricted, if necessary) and amend the Affordable Housing Category of Measure S to include these housing types as equal to the BMRs in the Measure S competition.

Thank you.



June

Developmental Asset

#15

Positive Peer Influence

Young person's best friends model responsible behavior.

Evaluating friendships.

- o Positive Characteristics
 - o Models responsible behavior
 - o Lives a healthy lifestyle
 - o Equal amounts of effort are put into the friendship
- o Third party views:
 - o A parent can offer an unbiased view of a friendship.
 - o Another trusted friend can give advice in a familiar way
 - o These insights can help one create a well rounded evaluation of a friendship



Benefits of a healthy friendship

- o Good friends will encourage and support you
- o They will console you when you are feeling down and congratulate you on your accomplishments.
- o It will increase self worth and belonging
- o Studies have shown that good friendships increase physical
- o and mental health





June Complementary Asset

#35

Resistance Skills

Young person can resist negative peer pressure
and dangerous situations

How resistance skills apply to friendships

- o Avoidance of peer pressure and standing up for oneself
- o Standing up for oneself in risky situations.
- o Knowing how to say NO to those who are close to you
- o These skills can make you a positive influence on your friends



**How did your close friendships
help you in life?**

