



Regular Meeting Agenda

City Council

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

Wednesday, September 23, 2020 7:00 p.m.

Virtual Meeting

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways:

Members of the public may NOT physically attend meetings at the Morgan Hill City Council Chamber.

The City Council Meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at:

<http://bit.ly/092320CityCouncilMtg> or by calling in to: (669) 900-9128, then enter the meeting id: 898 9931 3316.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

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

PROCLAMATIONS

Proclaiming September 30, 2020 as Lewy Body Dementia Awareness Day in honor of Susan and Charles Berghoff

Proclaiming the month of September 2020 as Childhood Cancer Awareness month and Honoring Jacob's Heart Children's Cancer Support Services

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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 IMPACT FEE FINANCING AGREEMENT WITH MORGAN HILL CAR WASH, INC.

Recommendation:

Adopt resolution authorizing the City Manager to execute a Sewer and Traffic Impact Fee Financing Agreement, consistent with the Sewer and Traffic Impact Fee Financing Program and Government Code section 53083, with Morgan Hill Car Wash, Inc. for the development of a new automated car wash facility on Caputo Drive.

2. APPROVE VALLEY WATER COST SHARING AGREEMENT FOR TRAIL AND FLOOD CONTROL

Recommendation:

Approve and authorize the City Manager to enter into a cost sharing agreement for \$748,600 with Valley Water for the construction of trails and other infrastructure.

3. APPROVE FIRST AMENDMENT TO CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC. AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute and administer the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc. for \$100,000, increasing the not to exceed amount to \$550,000 and allow for additional repair services to be performed on an as needed basis and pre-approved by the City maintenance staff.

4. APPROVE FIRST AMENDMENT TO AGREEMENT WITH WOODARD AND CURRAN INC. FOR DESIGN SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer the first amendment to service agreement for design professionals with Woodard and Curran, Inc. for additional scope of services for improvements associated with Valley Water's Flood Control Project for \$71,697, increasing the total not to exceed contract amount to \$528,968.

5. APPROVE THIRD AMENDMENT TO BRIGHTVIEW GROUPS 1, 3, AND 6 MAINTENANCE SERVICE AGREEMENT

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Approve and authorize the City Manager to execute and administer the third amendment to the maintenance service agreement with Brightview Landscape Services, Inc. extending the agreement for one additional year of service at \$134,183 and increasing the total contract amount to \$528,258; and

6. AWARD BUTTERFIELD BOULEVARD LINEAR PARK EXTENSION PROJECT

Recommendation:

1. Adopt resolution to appropriate an additional \$100,120 in the Park Impact Fund (301) for the Butterfield Boulevard Linear Park Extension Project;
2. Approve the Butterfield Boulevard Linear Park Extension Project Plans and Specifications;
3. Award contract to Terramark General Engineering Contractors, Inc. for the Butterfield Boulevard Linear Park Extension Project in the amount of \$1,439,226;
4. Authorize expenditure of construction contingency funds not to exceed \$143,923; and
5. Authorize the City Manager to execute and administer the construction contract with Terramark General Engineering Contractors, Inc.

7. AWARD SEWER PIPELINE INSPECTION AND CONDITION ASSESSMENT AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute an agreement with National Plant Services Inc. in the amount of \$1,174,686 for the development of the sewer pipeline inspection and condition assessment.

8. AWARD TREE MAINTENANCE SERVICES AGREEMENT

Recommendation:

1. Award a Maintenance Services Agreement to A Plus Tree, Inc. for up to \$600,000 (\$300,000 annually for a two-year period) subject to future annual budget appropriations by the City Council; and
2. Authorize the City Manager to execute and administer the said agreement.

OTHER BUSINESS

9. RESPONSE TO COVID-19, COUNTYWIDE ISOLATION AND QUARANTINE SUPPORT PROGRAM

Recommendation:

1. Receive report and consider funding \$154,917 for the continuation of an established Countywide "Isolation and Quarantine Support Program" by:
 - a. Adopting resolution to appropriate \$107,208 from the General Fund (010); and
 - b. Authorizing expenditure of \$47,709 from the Housing Fund (236);

OR

2. Provide feedback and direct staff to return with an alternative option.

Estimated Time: 45 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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





CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: John Lang, Economic Development Manager
APPROVED BY: City Manager

APPROVE IMPACT FEE FINANCING AGREEMENT WITH MORGAN HILL CAR WASH, INC.

RECOMMENDATION(S)

Adopt resolution authorizing the City Manager to execute a Sewer and Traffic Impact Fee Financing Agreement, consistent with the Sewer and Traffic Impact Fee Financing Program and Government Code section 53083, with Morgan Hill Car Wash, Inc. for the development of a new automated car wash facility on Caputo Drive.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

Morgan Hill Car Wash, Inc., also known as the Zip Thru Car Wash, is proposing a state of the Art, distinctive looking self-service exterior Express Car Wash. The Car Wash will be located at the corner of Caputo Drive and Tennant Avenue on approximately 1.45 acres. The business will be operational 7 days a week from 7 am to 9 pm with an estimated staff of 4.

The Zip Thru Car Wash has completed their site review (SR 2018-022) as well as a Conditional Use Permit (UP2017-0015) and is in the process of completing their building permits (BCOM2019-0097).

Morgan Hill Car Wash has been exploring potential methods to finance City impact fees. The Developer has chosen to participate in the City's Sewer and Traffic Impact Fee Deferral Program (hereinafter "Fee Deferral Program"). The Fee Deferral Program was approved by Council in 2006 to assist commercial development projects by allowing commercial tenants and commercial property owners to finance using installment payments for sewer, traffic, and utility undergrounding fees for a period of five years.

Program Guidelines for the Fee Deferral Program

To facilitate commercial and industrial development and assist with development impact fees, the City Council created the Impact Fee Deferral Program (Program) in 2006 and modified it in 2009 to support projects both inside as well as outside the former

Redevelopment Project Area. In 2015, the Program was extended to Micro Residential Units.

The Program helps eligible projects by allowing them to make installment payments for traffic, sewer, and utility undergrounding impact fees. The City Council has provided the City Manager authority to approve fee financing for up to \$99,999. Projects that request financing of \$100,000 or more require City Council approval. The Program requires a 20% down payment at the time of permit and allows the remaining 80% balance to be paid over five years in monthly installments.

The Impact Fee Deferral Program calculates interest at Local Agency Investment Fund (LAIF) + $\frac{1}{2}$ percent, allowing the City to recover the lost interest it would have earned if the payment was made all at one time, plus $\frac{1}{2}\%$. The City Manager has the authority to impose other conditions consistent with the Fee Deferral Program goals and requirements or to reject any Fee Deferral Program request if there is inadequate security or to minimize risk to the City. The August 28, 2020 LAIF quarter to date rate was 0.86% plus .50% = 1.36%, to be used for this agreement.

The Program has been used by commercial developments/businesses over the years including Madrone Village and several of the retail center's commercial tenants, Cochrane Animal Hospital, Granary, 76 Gas Station at Cochrane Commons, Shoe Palace, and most recently, the Program was used by Applied Motion Products to name a few.

Morgan Hill Car Wash Facility

The Morgan Hill Car Wash Facility is a new construction project that will build a 4,640 square foot automated car wash facility on Caputo Drive. The estimated impact and associated fees for the project have been calculated to be \$482,045 (Attachment No. 3). Included in this total are traffic impact fees of \$222,618. Pursuant to the Fee Deferral Program, 80%, or \$178,094, of this amount can be financed, and 20%, or \$44,524, is required as a down payment toward the sewer and traffic impact fees. The program does require the developer to pay 100% of the remaining impact and lateral fees of the project, estimated to be \$259,427, at the time a grading permit or building permit is pulled. The combined down payment to use the program is \$303,951 (this includes 20% down on the traffic impact fees and the full balance of all other impact and lateral fees).

With Council approval of the Deferral Agreement (Attachment No. 1 & 2), the Developer will then be able to pay the balance of the traffic impact fees of \$178,094 over the next five years at a rate of interest at 1.36%.

Approving a Fee Financing Agreement with Morgan Hill Car Wash, Inc. is consistent with the Sewer and Traffic Impact Fee Deferral Program, aligns with the Economic Blueprint Strategy #3 "Attract New Development", Action #5, "Explore Incentive Programs to Attract Industry Specific Development."

COMMUNITY ENGAGEMENT: Inform

The table below addresses the requirements set forth in the State of California AB 562 (Government Code 53083) for publication of information related to an economic development subsidy and public hearing.

Name/address of beneficiary of the subsidy:	Morgan Hill Car Wash, Inc 16015 Caputo Drive Morgan Hill, CA 95037
Start and end dates, schedule for the subsidy	The Sewer and Traffic Impact Fee Financing Agreement will start November 1, 2020. The financing agreement is for a term of five years for \$178,094, plus interest. The beneficiary will pay monthly payments of \$3,071.98 over the course of five years.
Describe the subsidy, estimated total amount of expenditure of public funds or revenue lost	The Sewer and Traffic Impact Fee Financing Agreement allows the beneficiary to make a 20% down payment on the Sewer and Traffic Impact fees and finance the balance over five years. The City charges the beneficiary an interest rate of the Local Agency Investment Fund (LAIF) + ½ percent. If the Sewer and Traffic Impact fees are not paid by the beneficiary, the City will collect pledged collateral to cover the balance of the sewer and traffic impact fees. In addition, a certificate of occupancy will not be issued until all impact fees are paid. No anticipated expenditure of public funds or revenue lost as interest will be collected over the term of the financing agreement.
Statement of public purpose	Expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, and continue to generate hereinafter defined property tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.
Projected Tax revenue	It is estimated that the investment into the property will increase property tax revenue received by the City by \$15,000 over 5 years.
Estimated number of jobs created by the subsidy	It is estimated the project will employ approximately 4 employees when fully operational.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve the Financing Agreement which would require the developer to pay the balance of \$178,094 in impact fees immediately.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In February 2006, the Council created the Fee Deferral Program to stimulate commercial/industrial development. The existing program was modified in July 2009 to provide additional enhancements to projects both inside as well as outside the former Redevelopment Project Area.

In October 2015, the City Council expanded the Fee Deferral program to include Micro Residential Rental units.

On June 26, 2018, Planning Commission approved a Conditional Use Permit for Morgan Hill Car Wash, Inc.

FISCAL AND RESOURCE IMPACT:

The project's total impact and other public works related fees are estimated to be \$482,045, of which \$303,951 will be paid up front by the initial payment date, projected to be November 1, 2020.

The proposed Financing Agreement will result in deferral of the remainder, \$178,094 of Traffic Impact fees, to be repaid via monthly installments of principal and interest, over five years.

CEQA (California Environmental Quality Act):

This financing agreement is exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The incentive agreement is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The financing agreement will not result in any direct impact upon the physical environment. Environmental review for the project was performed at the time the Conditional Use permit was approved.

LINKS/ATTACHMENTS:

1. Resolution
2. Sewer and Traffic Impact Fee Financing Agreement
3. Impact Fee Schedule
4. Loan Amortization

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SEWER AND TRAFFIC IMPACT FEE FINANCING AGREEMENT WITH MORGAN HILL CAR WASH, INC IN THE AMOUNT OF \$178,094 FOR THE DEVELOPMENT OF A 4,640 AUTOMATED CAR WASH FACILITY ON CAPUTO DRIVE, MORGAN HILL

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 submitted for the City Council meeting scheduled for September 23, 2020, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

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

WHEREAS, existing law generally allows local governments to make their own decisions regarding local economic development matters; and

WHEREAS, the loss of redevelopment has left the City, as well as all cities within the State, with a loss of local resources to encourage economic development; and

WHEREAS, the City Council has made findings consistent with Section 53083 of the California Government Code Assembly Bill 562 (“AB 562”). AB 562, titled “Economic Development Subsidies: Review by Local Agencies”, which was codified on October 13, 2013 and went into effect on January 1, 2014, require each local agency, as defined, to provide specified information to the public before approving an economic development subsidy or assistance of \$100,000 or more, as defined, within its jurisdiction, and to review, hold hearings, and provide reports at specified intervals. Based upon the decision to terminate redevelopment statewide, the

Governor and State Legislature recognized the necessity for local governments to encourage employment and retain jobs and businesses by giving economic assistance to businesses and the importance of facilitating public input; and

WHEREAS, encouraging and developing other businesses in the City that are, or can be, key sources of sales tax revenue would diversify and increase revenue sources for the City's general fund, which supports public services provided by the City to its residents and local businesses; and

WHEREAS, the City Council determines that the Sewer and Traffic Impact Fee Financing Agreement is consistent with the City's Sewer and Traffic Impact Fee Financing Program adopted in 2006 to stimulate commercial development and is necessary for the preservation and protection of the public health, safety or welfare of the community, and is in accord with the public purposes and provisions of applicable State and local laws and requirements.

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 FOWLLWS:

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 Sewer and Traffic Impact Fee Financing Agreement with Morgan Hill Car Wash, Inc., a California Corporation, for the development of a new 4,640 square foot automated car wash on Caputo Drive, substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the "Sewer and Traffic Impact Fee Financing Agreement"), is hereby approved.
- b. That the City Manager is hereby delegated authority to and is authorized and directed to do everything necessary and appropriate to execute the Agreement substantially in the form attached hereto as Exhibit A; provided, specifically, that the total amounts to be financed under the Sewer and Traffic Impact Fee Financing Agreement shall in no event exceed One Hundred Seventy Eight Thousand and Ninety Four Dollars (\$178,094).

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

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 23rd day of September 2020 by the following vote:

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

ATTEST:

IRMA TORREZ
City Clerk

RICH CONSTANTINE
Mayor

CERTIFICATION

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on September 23, 2020.

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

DATE

IRMA TORREZ
City Clerk

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

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

TO BE RECORDED WITHOUT FEE
PER GOVERNMENT CODE 27383 and 6103

(SPACE ABOVE LINE FOR RECORDER'S USE)

SEWER/TRAFFIC FEE FINANCING AGREEMENT AND SECURITY AGREEMENT

This Sewer/Traffic Fee Financing Agreement and Security Agreement (the "Agreement") is entered into as of _____, 2020, by and between Morgan Hill Car Wash, Inc., a California Corporation company (the "Borrower") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California, California, ("City") with reference to the following facts and purposes:

RECITALS

- A. The City has established a Sewer/Traffic Fee Financing Program (the "Program") to defer sewer and traffic fees for new and expanding industrial and commercial businesses.
- B. Borrower is a legal tenant of that certain real property in the City described in the attached Exhibit A (the "Property") upon which improvements are to be made for a new or expanding industrial or commercial business (the "Improvements").
- C. On _____ 2020, the City granted a request of the Borrower to be a Program participant with respect to Morgan Hill Car Wash, Inc. all Impact Fees in the aggregate amount of Four Hundred Eighty Two Thousand and Forty Five Dollars (\$482,045.00) (the "Fees") of which Two Hundred Twenty Two Thousand Six Hundred and Eighteen Dollars (\$222,618) are associated with Traffic and Sewer are payable by the Borrower in connection with Improvements on the Property.
- D. As a condition of participation in the Program and in consideration of the City's agreement to defer payment of the Fees as specified herein, the Borrower is required to execute this Agreement and the documents specified herein setting forth the terms and conditions for payment of the Fees by the Borrower to the City and establishing security for such payment.

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

1. **Financing of Fee.** Upon satisfaction of the conditions set forth in Section 3 below but not later than the date the Borrower is required to pay a minimum of twenty percent (20%) of the Sewer/Traffic Fees for the Improvements on the Property, by November 1, 2020 ("Initial Payment Date"), in accordance with applicable City ordinances and regulations, the Borrower shall be granted the right to pay the Fees pursuant to the Program in accordance with the payment terms set forth in Section 2 below. If the conditions set forth in Section 4 below are not satisfied in full, the Borrower shall pay the Fees in their entirety on the Initial Payment Date or

on such other date(s) as provided in the applicable City ordinances and regulations, and this Agreement shall terminate and be of no further force and effect.

2. Payment of Fees. The Fees shall be paid as follows:

- (a) Twenty percent (20%) of the Sewer and Traffic Impact Fees, Forty-Four Thousand Five Hundred Twenty-Four dollars (\$44,524), shall be paid to the City on the Initial Payment Date as the "Down Payment". Additionally, all other impact fees in the amount of Two Hundred Fifty-Nine Thousand Four Hundred Twenty Seven dollars (\$259,427) shall be paid by the Initial Payment Date, for a total of Three Hundred and Three Thousand Nine Hundred Fifty One dollars (\$303,951).
- (b) The remaining balance of the Fees (total fees minus the Down Payment) of One Hundred Seventy Eight Thousand and Ninety Four dollars (\$178,094) ("Financed Fees") shall be paid in sixty (60) equal monthly installments and shall bear interest at One and Thirty Six hundredth percent (1.36%) per annum compounded monthly. The monthly installment shall be \$3,071.98 per month which shall commence on November 1, 2020 continuing on the first day of each month thereafter until full principal amount and all interest thereon has been paid. Maturity date is October 1, 2025. Borrower may prepay the balance without penalty.

3. Security Agreement. In order to secure and perfect Borrowers' obligation to repay the Financed fees, Borrower agrees to execute a promissory note in the form provided by City (the "Note"), which shall be secured by an executed and recorded Uniform Commercial Code filing in the form provided by City (the "UCC-1 Filing"). This Agreement, the Note and the UCC-1 Filing shall be collectively referred to herein as the "Loan Documents." City and the Borrower agree that the Loan Documents shall create and perfect the City's security interest in the personal property set forth in Exhibit A as collateral ("Collateral") for the payment of the Financed Fees.

4. Conditions to Financing of Fees. As conditions to the Borrower's right to finance payment of the Fees in the manner set forth in Sections 1 and 2, the representations set forth in Section 7 must remain true and correct as of the Initial Payment Date, and the following actions must be completed by not later than the Initial Payment Date (unless waived in writing by the City):

- (a) Delivery to the City of the Down Payment;
- (b) Execution by the Borrower and delivery to the City of the appropriate Loan Documents;
- (c) Recordation in the official records of the California Secretary of State of the UCC-1 Filing as a lien against the Collateral;

5. Events of Default. Each of the following shall constitute a "Default" by the Borrower under the Agreement and the other Loan Documents:

- (a) Failure by the Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents (including, without limitation, the obligation to repay the Financed Fees as provided in Section 2(b) of this Agreement), if such failure remains uncured fifteen (15) days after written notice of such failure is mailed by the City to the Borrower; provided, however, that if a lesser period or notice requirement is allowed before a Default occurs under any of the following subsections or under any other Loan Document, such lesser requirement shall control in this Agreement.
- (b) Any representation or warranty contained in any Loan Document proves to have been incorrect in any material respect when made or on the Initial Payment Date.
- (c) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking

reorganization of the Borrower or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Borrower, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other lien on the Collateral, in which event such lesser time period will apply under this subsection (c) as well; or the Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(d) The Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other lien on the Collateral, in which event such lesser time period shall apply under this subsection (d) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note.

(e) The Borrower shall have voluntarily suspended its business or, if the Borrower is a partnership, the partnership shall have been dissolved or terminated.

(f) The condemnation, seizure, or appropriation of all or, in the opinion of the City, a substantial part of the Collateral, except for a condemnation initiated by the City.

(g) There shall not take place any default declared by any lender under any loan document related to any other loans secured by a deed of trust or lien on the Collateral. The occurrence of Default under this subsection (g) shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

6. **Remedies.** The occurrence of any Default will, either at the option of the City or automatically, where so specified, give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure upon the Collateral under the UCC Filing. The Borrower shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Financed Fees and the preservation, maintenance, protection, sale, or other disposition of the Collateral given for the Financed Fees.

(b) The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) The City shall have the right to cure any monetary default by the Borrower under a loan in connection with the Collateral; provided, however, that if the Borrower is in good faith contesting a claim of default under a loan and the City's interest under the Loan Documents are

not imminently threatened by such default, in the City's sole judgment, the City shall not have the right to cure such default. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the interest rate established for the Financed Fees in Section 2(b) above from the date of expenditure until the date of reimbursement.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against the Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

7. Representations and Warranties. The Borrower hereby represents and warrants to the City as follows:

(a) The Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) The Borrower and the Guarantor, as applicable, have full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower and the Guarantor, as applicable, and all actions required under the Borrower's and the Guarantor's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Borrower, as applicable, enforceable against them in accordance with their respective terms.

(e) The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially affect the Borrower's ability to meet its obligation or impair the security to be given to the City pursuant hereto.

(f) To the best knowledge of the Borrower:

(1) The Property is not and has not been a site for the use, generation, treatment, manufacture, storage, disposal or transportation of any hazardous materials and there are no hazardous materials located in, on or under the Property;

(2) The Property is presently in compliance with all hazardous materials laws, including, without limitation, those relating to soil and ground water conditions;

(3) no investigations, inquiries, notices, orders, hearings, actions, or other proceedings by or before any governmental agency are pending or threatened against the Borrower and/or the Property pertaining in any way to (A) the use, generation, treatment, manufacture, storage, presence, disposal or transportation of hazardous materials from, under, into or on the Property or any portion thereof and/or (B) the violation or alleged violation of, or the noncompliance or alleged noncompliance with, any hazardous materials law; and

(4) No underground storage tanks are presently located, or in the past have been located, in, on or under the Property.

8. General Provisions.

(a) Time is of the essence in the performance of all obligations under this Agreement and the Other Loan Documents.

(b) Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower: Morgan Hill Car Wash, Inc.
Attn: Paul Sagayaraj
5542 Monterey Road #217
San Jose, CA 95128

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

Copy to: City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Such addresses may be changed by notice to the other party given in the same manner as provided above.

(c) If either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the Loan Documents, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees which shall be fixed by the court.

(d) If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

(e) This Agreement and the Loan Documents and other instruments given pursuant to this Agreement shall be construed in accordance with and be governed by the laws of the State of California. Any action commenced about this Agreement or any of the Loan Documents shall be filed in the central branch of the Santa Clara County Superior Court.

(f) This Agreement may not be changed orally, but only by agreement in writing signed by the Borrower and the City.

(g) The Loan Documents together embody the agreement between the City and the Borrower for the payment of the Fee. No verbal agreements or conversations with any officer, agent or employee of the City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in the Loan Documents. Any such verbal agreement shall be considered unofficial information and in no way binding upon the City.

(h) This Agreement and its terms and conditions shall be binding on the successor in interest to Borrower's business or the Property.

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

(j) The Borrower covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry in any activity pursuant to this Agreement.

(k) The Borrower shall comply with all applicable laws ordinances, codes, and regulations of the federal, state, and local governments.

(l) The Borrower shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(m) Whenever any approval, notice, direction, consent, request, waiver of condition or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager or Finance Director, or by any person who shall have been designated in writing to the Borrower by the City Manager or Finance Director, without further approval by the City Council, and any such action shall be in writing.

(n) The following exhibits are attached to and incorporated by reference in this Agreement:

Exhibit A	Description of the Collateral
Exhibit B	Form of UCC-1 Filing
Exhibit C	Promissory Note

(o) If any term or provision of any Loan Document conflicts with any term or provision of this Agreement, the term or provision of this Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

BORROWER:

Morgan Hill Car Wash, Inc.
a California Corporation

Paul Sagayaraj, President

Date: _____

Date: _____

CITY:

CITY OF MORGAN HILL
a municipal corporation

Christina Turner, City Manager

Date: _____

Approved as to Form:

Donald A. Larkin, City Attorney

Date: _____

Attest:

Michelle Bigelow City Clerk

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 **California**)
County of Santa Clara)

On _____, 2020, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**)
County of Santa Clara)

On _____, 2020, before me, _____, personally appeared _____, who 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.

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State of **California**)
 County of Santa Clara)

On _____, 2020, before me, _____, personally appeared _____, who 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 DESCRIPTION OF COLLATERAL

This Exhibit A is attached to that certain UCC-1 Financing Statement identified as follows:

1. DEBTOR:

Morgan Hill Car Wash, Inc.

2. DESCRIPTION OF COLLATERAL:

A. All inventory, furnishings, fixtures, equipment, supplies, construction materials, goods and other article of personal property, which are now or hereafter owned by debtor and located at, placed upon or about, or affixed or attached to or install in or on the commercial premises ("Premises") commonly known as 16015 Caputo Drive, Morgan Hill, California containing approximately 1.45 acres undeveloped land to be further developed as an automated car wash facility as described in Section C, and used or to be used in the connection with or otherwise relating to the premise or the ownership, use, development, construction, maintenance, management, operation, marketing leasing or occupancy, therefor, and all accessories, attachments, parts or repairs of or to any of such property.

B. All accounts, general intangibles, chattel paper, letter of credit rights, deposit accounts, money, investment property, documents, certificate of title and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of many kind relating to or otherwise arising in connection with or derived from the Premises, (ii) refunds, rebates, reserves, deferred payments, deposits, costs savings and payments of any kind due from or payable by (A) any federal, state, municipal or other government or quasi-government agency, authority or district (individually, a "Government Agency"), or (B) any insurance or utility company, in either case relating to any or all of the Premise, (iii) refunds, rebates and payment of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Debtor with respect to or upon any or all of the Premises.

C. TENANT'S PARCEL LEGAL DESCRIPTION: The land referred to in this Commitment is situated in the City of Morgan Hill, County of Santa Clara, State of California and is described as follows:

Lot 10, as shown on that certain map entitled "tract No. 6219", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 16, 1980 in Book 463 of Maps at Page(s) 29 and 30.

APN: 81729027

**EXHIBIT B
FORM OF UCC FILING**

This will be the filed UCC

EXHIBIT C
Promissory Note

\$178,094

Morgan Hill, California
_____, 2020

FOR VALUE RECEIVED, the undersigned, Morgan Hill Car Wash, Inc. ("Maker"), hereby promises to pay to the order of the CITY OF MORGAN HILL, a municipal corporation ("Holder"), without deduction or offset, the sum of One Hundred Seventy Eight Thousand and Ninety Four dollars (\$178,094) or as much as may be disbursed thereof.

This Note is entered into and arises pursuant to that certain Sewer/Traffic Fee Financing Agreement and Security Agreement (the "Agreement") dated on or about the same date herewith by and between Maker and Holder, which is incorporated herein by this reference, and evidences the obligation to repay the Loan described therein. Payments shall be due under this Note as follows: Beginning November 1, 2020, Maker shall make sixty (60) equal monthly payments of Three Thousand and Seventy One Dollars and Ninety Eight/100 Dollars (\$3071.98) which shall bear simple interest at One and Thirty Six hundredth percent (1.36%). The monthly installment payments shall commence on the first of the month following the issuance of the Certificate of Occupancy and continuing on the first day of each month thereafter with the remaining balance of principal due and payable on the first day of the sixty first (61st) month following the date of the issuance of the Certificate of Occupancy, provided, however, that Maker's obligation to repay this Note may be accelerated in accordance with the Agreement or the terms of this Note. Monthly payments are due on the first day of the month and considered delinquent on the fifteenth day of the month.

All sums paid under this Note shall be applied against the balance of unpaid principal and interest, and no interest shall thereupon accrue upon principal paid to date.

Should any sum due hereunder not be paid by the fifteenth (15th) day after written notice of such default is given by the Holder to the Maker, then all sums of unpaid principal and accrued interest may immediately be deemed due and payable and shall thereafter bear interest at the rate of ten percent (10%) per annum, until paid.

Neither the failure of Holder to exercise its right to accelerate, nor reinstatement of this Note after such exercise, shall constitute a waiver of the right to exercise such rights at any other time.

This Note is to be construed so as to give effect to the intent of the parties to conform strictly to the law, and all interest payable on account of this Note shall be reduced, if necessary, to the highest amount allowable under the usury laws or other laws governing this transaction, should this transaction not be exempt from the same. This Note shall be governed by and construed in accordance with the laws of the State of California.

All parties who are obligated to pay any portion of the indebtedness represented by this Note, whether as principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor, and all other notices to which they might otherwise be entitled.

If any sum due under this Note is not paid when due, Maker hereby covenants and agrees to pay all costs and expenses of collection, whether by suit or otherwise, at any time and from time to time incurred, including, without limitation, attorney's fees.

Subject to the foregoing, the terms of this Note shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of Maker and Holder.

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

Holder: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Economic Development

Copy to: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: City Clerk

Maker: Morgan Hill Car Wash, Inc.
5542 Monterey Road #217
San Jose, CA 95128
Attn: Paul Sagayaraj

Time is of the essence with respect to each and every provision hereof. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the enforceability of the remaining provisions of this Note.

MAKER:

Morgan Hill Car Wash, Inc., a California Corporation

By: _____
Paul Sagayaraj
President



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408) 778-6480 Fax (408) 779-7236

FEE SCHEDULE: 01.15.2020

PROJECT INFO

TRACT # / APN: 817-29-027

ADDRESS / LOT: 16015 Caputo Drive, Lot 10

PROJECT DESC: Zip-Thru Carwash

APPLICANT INFO

APPLICANT NAME: Paul Sagayaraj

MAILING ADDRESS: 3401 El Camino Real

CITY, STATE, ZIP: Santa Clara, CA 95051

PHONE NUMBER: 510-468-2685

DATE PREPARED: 7/17/2020

EXPIRATION DATE: N/A

CALCULATED BY: Sam Cho

CHECKED BY: Charlie Ha

BUILDING PERMIT #: BCOM2019-0097

BLD PERMIT ISS. DATE: N/A

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 RDCS 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

☒ THIS FEE SCHEDULE IS ESTIMATE ONLY

IF BOX ABOVE CHECKED: FEE SCHEDULE IS ONLY FOR ESTIMATE PURPOSES. FEE
SCHEDULE CALCULATED BASED ON INFORMATION PROVIDED TO CITY BY APPLICANT.
FINAL FEE SCHEDULE MAY DIFFER BASED UPON CHANGE IN SCOPE OF PROJECT.

MULTI-FAMILY IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

1. METER DEPOSIT: 650-37672 Subtotal: \$2,320

1"	\$514	x	1	=	\$514
1 1/2"	\$1,600	x	0	=	\$0
2"	\$1,806	x	1	=	\$1,806
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS \$0 / x 0 / = \$0

2. BACKFLOW CONST. INSPECTION: 650-37859 Subtotal: \$204

\$68	x	3	Each	=	\$204
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3a. WATER FRONTAGE CHARGE: 650-37663 Subtotal: \$10,560

1 Side	\$73	x	0	LF	=	\$0
2 Sides	\$40	x	264	LF	=	\$10,560

3b. SEWER FRONTAGE CHARGE: 640-37663 Subtotal: \$0

1 Side	\$73	x	0	LF	=	\$0
2 Sides	\$40	x	0	LF	=	\$0

3c. STORM FRONTAGE CHARGE: 304-37663 Subtotal: \$15,576

1 Side	\$120	x	0	LF	=	\$0
2 Sides	\$59	x	264	LF	=	\$15,576

3d. UNDERGROUNDING UTILITIES: 350-37649 Subtotal: \$100,848

1 Side	\$757	x	0	LF	=	\$0
2 Sides	\$382	x	264	LF	=	\$100,848

4. WATER IMPACT FEE: **651-37648** Subtotal: **\$16,108**

Single Family	\$3,913	/DU	x	0	DU	=	\$0
Multi Family	\$3,531	/DU	x	0	DU	=	\$0
Senior/Downtown	\$3,531	/DU	x	0	DU	=	\$0
Commercial	\$11,109	/AC	x	1.45	AC	=	\$16,108
Industrial	\$11,109	/AC	x	0	AC	=	\$0
Office	\$11,109	/AC	x	0	AC	=	\$0
Auto Dealership	\$11,109	/AC	x	0	AC	=	\$0
Hotel	\$11,109	/AC	x	0	AC	=	\$0

WATER CREDITS \$0 / x 0 / = \$0

5. SEWER IMPACT FEE: **641-37648** Subtotal: **\$0**

Single Family	\$15,315	/DU	x	0	DU	=	\$0
Multi Family	\$12,962	/DU	x	0	DU	=	\$0
Senior/Downtown	\$12,962	/DU	x	0	DU	=	\$0
Commercial	\$52.44	/GPD	x	7898	GPD	=	\$414,171
Industrial	\$50.43	/GPD	x	0	GPD	=	\$0
Office	\$50.43	/GPD	x	0	GPD	=	\$0
Auto Dealership	\$50.43	/GPD	x	0	GPD	=	\$0
Hotel	\$50.43	/GPD	x	0	GPD	=	\$0

SEWER CREDITS \$0 / x 0 / = \$0

RDA SEWER CREDIT	Single Family	\$15,315	/DU	x	0	DU	=	\$0
	Multi Family	\$12,962	/DU	x	0	DU	=	\$0
	Commercial	\$52.44	/GPD	x	7898	GPD	=	-\$414,171
	Industrial	\$50.43	/GPD	x	0	GPD	=	\$0
	Office	\$50.43	/GPD	x	0	GPD	=	\$0
	Auto Dealership	\$50.43	/GPD	x	0	GPD	=	\$0
	Hotel	\$50.43	/GPD	x	0	GPD	=	\$0

6. STORM DRAIN IMPACT FEE: **303-37648** Subtotal: **\$30,476**

	Single Family	\$1,941	/DU	x	0	DU	=	\$0
>1,200 SF	Multi Family	\$1,105	/DU	x	0	DU	=	\$0
< 1,200 SF	Multi Family	\$514	/DU	x	0	DU	=	\$0
>1,200 SF	Senior/Downtown	\$1,105	/DU	x	0	DU	=	\$0
< 1,200 SF	Senior/Downtown	\$514	/DU	x	0	DU	=	\$0
	Commercial	\$21,018	/ACRE	x	1.45	AC	=	\$30,476
	Industrial	\$15,475	/ACRE	x	0	AC	=	\$0
	Office	\$21,018	/ACRE	x	0	AC	=	\$0
	Auto Dealership	\$12,018	/ACRE	x	0	AC	=	\$0
	Hotel	\$311	/ROOM	x	0	RM	=	\$0

STORM CREDITS \$0 / x 0 / = \$0

7. TRAFFIC IMPACT FEE: **309-37648** Subtotal: **\$222,618**

	Single Family	\$3,373	/DU	x	0	DU	=	\$0
>1,200 SF	Multi Family	\$2,090	/DU	x	0	DU	=	\$0
< 1,200 SF	Multi Family	\$1,316	/DU	x	0	DU	=	\$0
>1,200 SF	Senior/Downtown	\$2,090	/DU	x	0	DU	=	\$0
< 1,200 SF	Senior/Downtown	\$1,316	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0
	Commercial	\$3,373	/PHT	x	66	PHT	=	\$222,618
	Industrial	\$3,373	/PHT	x	0	PHT	=	\$0
	Office	\$3,373	/PHT	x	0	PHT	=	\$0
	Auto Dealership	\$3,373	/PHT	x	0	PHT	=	\$0
	Hotel	\$3,373	/PHT	x	0	PHT	=	\$0

TRAFFIC CREDITS \$0 /PHT x 0 PHT = \$0

8. PARK IMPACT FEE: **301-37648** Subtotal: **\$0**

Subdivision:	Single Family	\$5,807	/DU	x	0	DU	=	\$0
	Multi Family	\$5,595	/DU	x	0	DU	=	\$0
	Senior/Downtown	\$3,832	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0
No Subdivision	Single Family	\$4,222	/DU	x	0	DU	=	\$0
	Multi Family	\$4,072	/DU	x	0	DU	=	\$0
	Senior/Downtown	\$2,787	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0

PARK CREDITS \$0 / x 0 / = \$0

8a. PARK MAINTENANCE DEV. FEE:						302-37649	Subtotal:	<u>\$0</u>
	\$0	/	x	0	EACH	=		\$0
9. PUBLIC FACILITIES IMPACT FEE:						347-37648	Subtotal:	<u>\$1,766</u>
Single Family	\$553	/DU	x	0	DU	=		\$0
Multi Family	\$532	/DU	x	0	DU	=		\$0
Senior/Downtown	\$365	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
Commercial	\$1,218	/ACRE	x	1.45	AC	=		\$1,766
Industrial	\$1,705	/ACRE	x	0	AC	=		\$0
Office	\$1,447	/ACRE	x	0	AC	=		\$0
Auto Dealership	\$488	/ACRE	x	0	AC	=		\$0
Hotel	\$14	/ROOM	x	0	RM	=		\$0
PUBLIC FACILITIES CREDITS	\$0	/	x	0	/	=		\$0
10. LIBRARY IMPACT FEE:						348-37648	Subtotal:	<u>\$0</u>
Single Family	\$2,132	/DU	x	0	DU	=		\$0
Multi Family	\$2,054	/DU	x	0	DU	=		\$0
Senior/Downtown/SDU	\$1,406	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
LIBRARY CREDITS	\$0	/	x	0	/	=		\$0
11. COMMNTY/REC CNTRS IMPACT FEE:						360-37648	Subtotal:	<u>\$0</u>
Single Family	\$3,955	/DU	x	0	DU	=		\$0
Multi Family	\$3,470	/DU	x	0	DU	=		\$0
Senior/Downtown	\$2,619	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
COMMNTY/REC CNTRS CREDITS	\$0	/	x	0	/	=		\$0
12. PUBLIC SAFETY FACILITIES IMPACT FEE:						311-37648	Subtotal:	<u>\$15,727</u>
Single Family	\$1,941	/DU	x	0	DU	=		\$0
>1,200 SF Multi Family	\$1,716	/DU	x	0	DU	=		\$0
< 1,200 SF Multi Family	\$1,285	/DU	x	0	DU	=		\$0
>1,200 SF Senior/Downtown	\$1,716	/DU	x	0	DU	=		\$0
< 1,200 SF Senior/Downtown	\$1,285	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
Commercial	\$10,846	/ACRE	x	1.45	AC	=		\$15,727
Industrial	\$13,018	/ACRE	x	0	AC	=		\$0
Office	\$13,003	/ACRE	x	0	AC	=		\$0
Auto Dealership	\$5,202	/ACRE	x	0	AC	=		\$0
Hotel	\$60	/ROOM	x	0	RM	=		\$0
POLICE CREDITS	\$0	/	x	0	/	=		\$0
13. ENGINEERING & INSPECTION FEE:						206-38734	Subtotal:	<u>\$47,527</u>
ENGR ESTIMATE:	<u>\$417,743</u>	13.3%	\$1	to	\$100,000	=		\$13,300
ENGR EST. DATE:	<u>6/3/2020</u>	11.8%	\$100,001	to	\$200,000	=		\$11,800
		10.3%	\$200,001	to	\$500,000	=		\$22,427
		8.8%	OVER		\$500,000	=		\$0
DEPOSIT PAID						=		\$0
14. LONG RANGE PLANNING FEE:						207-37912	Subtotal:	<u>\$7,129</u>
LONG RANGE PLANNING FEE (15% of E&I)						=		\$7,129
15. GIS FEE:						206-37913	Subtotal:	<u>\$2,376</u>
GIS/TECHNOLOGY FEE (5% of E&I)						=		\$2,376
16. MAP CHECK FEE:						206-38716	Subtotal:	<u>\$0</u>
PARCEL MAP:						\$5,752	=	\$0
TRACT MAP:						\$9,184	=	\$0

17. BURROWING OWL MITIGATION:**232-38145**Subtotal: \$2,249

Single Family	\$222	/DU	x	0	DU	=	\$0
Multi Family	\$222	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
Commercial	\$1,551	/AC	x	1.45	AC	=	\$2,249
Industrial	\$1,551	/AC	x	0	AC	=	\$0

18. OTHER FEES:Subtotal: \$6,560

Certificate of Compliance	\$	3,734		206-38430	=	\$0
Lot Line Adjustment/Merger	\$	3,129		206-38712	=	\$0
Engineering Services	\$	202	/hr	206-38719	=	\$0
Public Easement Review	\$	2,523		206-38737	=	\$2,523
Street Vacation Review	\$	202	/hr	206-38737	=	\$0
Easement Abandonment	\$	4,440		206-38737	=	\$0
Plan Revision Review	\$	505	/hr	206-38737	=	\$0
Reimbursement Agreement	\$	2,187		206-38741	=	\$0
FEMA Compliance - Base Fee	\$	403		206-38725	=	\$0
FEMA Comp. w/ CLMOR/LOMR	\$	2,220		206-38725	=	\$0
FEMA Comp. w/ Pub. Outreach	\$	808		206-38725	=	\$0
Storm Water Runoff Mangnt Plan Review	\$	2,826		206-38734	=	\$2,826
SWPPP Document Review 1st	\$	1,211		232-37687	=	\$1,211
SWPPP Document Review 2nd	\$	751		232-37687	=	\$0
SWPPP Offsite Inspection - 6 month	\$	6,055		232-37688	=	\$0
SWPPP Offsite Inspection - 12 month	\$	12,110		232-37688	=	\$0
SWPPP Offsite Inspection - 24 month	\$	24,220		232-37688	=	\$0
RDCS School Pedestrian Safety	\$			355-37655	=	\$0
RDCS Public Facilities	\$			346-37649	=	\$0
RDCS Park Development	\$			302-37649	=	\$0
RDCS Public Facilities Circulation	\$			346-37649	=	\$0
RDCS LED Streetlight Fund	\$			010-37722	=	\$0

TOTAL FEES DUE: \$482,045**Notes & Comments:**

Proposed automated car wash = 4,646 sf

Site: 817-29-027, 1.45 AC, undeveloped lot

Frontages: Caputo Drive: 320.4 LF(water,sewer, 70lf storm) Tennant Ave: 264 LF(water,sewer,storm)

Tennant overhead utilities frontage: 264 LF

Sewer:

Carwash sewer coefficient = 1.7 gpd/sf

Proposed carwash = (4,646 sf) (1.7 gpd/sf) = 7,898 gpd

Traffic:

Automated carwash traffic coefficient = 14.20 PHT/1000 sf PM peak of adj street traffic. San Jose/Santa Clara rates

Proposed carwash = (4,646 sf) (14.20 PHT/1000sf) = 66 PHT

Loan Amortization Schedule

	Enter values
Loan amount	\$178,094.00
Annual interest rate	1.36 %
Loan period in years	5
Number of payments per year	12
Start date of loan	10/1/2020
Optional extra payments	\$ -

	Loan summary
Scheduled payment	\$ 3,071.98
Scheduled number of payments	60
Actual number of payments	60
Total early payments	\$ -
Total interest	\$ 6,224.68

Lender name: LAIF Source plus 1/2% , <https://www.laifsource.com>

Pmt. No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	11/1/2020	\$ 178,094.00	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,870.14	\$ 201.84	\$ 175,223.86	\$ 201.84
2	12/1/2020	\$ 175,223.86	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,873.39	\$ 198.59	\$ 172,350.47	\$ 400.43
3	1/1/2021	\$ 172,350.47	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,876.65	\$ 195.33	\$ 169,473.82	\$ 595.76
4	2/1/2021	\$ 169,473.82	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,879.91	\$ 192.07	\$ 166,593.92	\$ 787.83
5	3/1/2021	\$ 166,593.92	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,883.17	\$ 188.81	\$ 163,710.74	\$ 976.63
6	4/1/2021	\$ 163,710.74	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,886.44	\$ 185.54	\$ 160,824.31	\$ 1,162.17
7	5/1/2021	\$ 160,824.31	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,889.71	\$ 182.27	\$ 157,934.59	\$ 1,344.44
8	6/1/2021	\$ 157,934.59	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,892.99	\$ 178.99	\$ 155,041.61	\$ 1,523.43
9	7/1/2021	\$ 155,041.61	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,896.26	\$ 175.71	\$ 152,145.35	\$ 1,699.15
10	8/1/2021	\$ 152,145.35	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,899.55	\$ 172.43	\$ 149,245.80	\$ 1,871.58
11	9/1/2021	\$ 149,245.80	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,902.83	\$ 169.15	\$ 146,342.97	\$ 2,040.72
12	10/1/2021	\$ 146,342.97	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,906.12	\$ 165.86	\$ 143,436.84	\$ 2,206.58
13	11/1/2021	\$ 143,436.84	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,909.42	\$ 162.56	\$ 140,527.43	\$ 2,369.14
14	12/1/2021	\$ 140,527.43	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,912.71	\$ 159.26	\$ 137,614.71	\$ 2,528.41
15	1/1/2022	\$ 137,614.71	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,916.01	\$ 155.96	\$ 134,698.70	\$ 2,684.37
16	2/1/2022	\$ 134,698.70	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,919.32	\$ 152.66	\$ 131,779.38	\$ 2,837.03
17	3/1/2022	\$ 131,779.38	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,922.63	\$ 149.35	\$ 128,856.75	\$ 2,986.38
18	4/1/2022	\$ 128,856.75	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,925.94	\$ 146.04	\$ 125,930.81	\$ 3,132.41
19	5/1/2022	\$ 125,930.81	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,929.26	\$ 142.72	\$ 123,001.55	\$ 3,275.14
20	6/1/2022	\$ 123,001.55	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,932.58	\$ 139.40	\$ 120,068.98	\$ 3,414.54
21	7/1/2022	\$ 120,068.98	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,935.90	\$ 136.08	\$ 117,133.08	\$ 3,550.62
22	8/1/2022	\$ 117,133.08	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,939.23	\$ 132.75	\$ 114,193.85	\$ 3,683.37
23	9/1/2022	\$ 114,193.85	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,942.56	\$ 129.42	\$ 111,251.29	\$ 3,812.79
24	10/1/2022	\$ 111,251.29	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,945.89	\$ 126.08	\$ 108,305.40	\$ 3,938.87
25	11/1/2022	\$ 108,305.40	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,949.23	\$ 122.75	\$ 105,356.17	\$ 4,061.62
26	12/1/2022	\$ 105,356.17	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,952.57	\$ 119.40	\$ 102,403.59	\$ 4,181.02
27	1/1/2023	\$ 102,403.59	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,955.92	\$ 116.06	\$ 99,447.67	\$ 4,297.08
28	2/1/2023	\$ 99,447.67	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,959.27	\$ 112.71	\$ 96,488.40	\$ 4,409.79
29	3/1/2023	\$ 96,488.40	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,962.62	\$ 109.35	\$ 93,525.78	\$ 4,519.14
30	4/1/2023	\$ 93,525.78	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,965.98	\$ 106.00	\$ 90,559.80	\$ 4,625.14
31	5/1/2023	\$ 90,559.80	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,969.34	\$ 102.63	\$ 87,590.45	\$ 4,727.77
32	6/1/2023	\$ 87,590.45	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,972.71	\$ 99.27	\$ 84,617.74	\$ 4,827.04
33	7/1/2023	\$ 84,617.74	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,976.08	\$ 95.90	\$ 81,641.67	\$ 4,922.94
34	8/1/2023	\$ 81,641.67	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,979.45	\$ 92.53	\$ 78,662.22	\$ 5,015.47

Pmt. No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
35	9/1/2023	\$ 78,662.22	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,982.83	\$ 89.15	\$ 75,679.39	\$ 5,104.62
36	10/1/2023	\$ 75,679.39	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,986.21	\$ 85.77	\$ 72,693.18	\$ 5,190.39
37	11/1/2023	\$ 72,693.18	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,989.59	\$ 82.39	\$ 69,703.59	\$ 5,272.77
38	12/1/2023	\$ 69,703.59	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,992.98	\$ 79.00	\$ 66,710.61	\$ 5,351.77
39	1/1/2024	\$ 66,710.61	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,996.37	\$ 75.61	\$ 63,714.23	\$ 5,427.38
40	2/1/2024	\$ 63,714.23	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 2,999.77	\$ 72.21	\$ 60,714.47	\$ 5,499.58
41	3/1/2024	\$ 60,714.47	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,003.17	\$ 68.81	\$ 57,711.30	\$ 5,568.39
42	4/1/2024	\$ 57,711.30	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,006.57	\$ 65.41	\$ 54,704.73	\$ 5,633.80
43	5/1/2024	\$ 54,704.73	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,009.98	\$ 62.00	\$ 51,694.75	\$ 5,695.80
44	6/1/2024	\$ 51,694.75	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,013.39	\$ 58.59	\$ 48,681.36	\$ 5,754.39
45	7/1/2024	\$ 48,681.36	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,016.81	\$ 55.17	\$ 45,664.55	\$ 5,809.56
46	8/1/2024	\$ 45,664.55	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,020.22	\$ 51.75	\$ 42,644.33	\$ 5,861.31
47	9/1/2024	\$ 42,644.33	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,023.65	\$ 48.33	\$ 39,620.68	\$ 5,909.64
48	10/1/2024	\$ 39,620.68	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,027.07	\$ 44.90	\$ 36,593.60	\$ 5,954.55
49	11/1/2024	\$ 36,593.60	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,030.51	\$ 41.47	\$ 33,563.10	\$ 5,996.02
50	12/1/2024	\$ 33,563.10	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,033.94	\$ 38.04	\$ 30,529.16	\$ 6,034.06
51	1/1/2025	\$ 30,529.16	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,037.38	\$ 34.60	\$ 27,491.78	\$ 6,068.66
52	2/1/2025	\$ 27,491.78	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,040.82	\$ 31.16	\$ 24,450.96	\$ 6,099.81
53	3/1/2025	\$ 24,450.96	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,044.27	\$ 27.71	\$ 21,406.69	\$ 6,127.52
54	4/1/2025	\$ 21,406.69	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,047.72	\$ 24.26	\$ 18,358.98	\$ 6,151.79
55	5/1/2025	\$ 18,358.98	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,051.17	\$ 20.81	\$ 15,307.80	\$ 6,172.59
56	6/1/2025	\$ 15,307.80	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,054.63	\$ 17.35	\$ 12,253.17	\$ 6,189.94
57	7/1/2025	\$ 12,253.17	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,058.09	\$ 13.89	\$ 9,195.08	\$ 6,203.83
58	8/1/2025	\$ 9,195.08	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,061.56	\$ 10.42	\$ 6,133.53	\$ 6,214.25
59	9/1/2025	\$ 6,133.53	\$ 3,071.98	\$ -	\$ 3,071.98	\$ 3,065.03	\$ 6.95	\$ 3,068.50	\$ 6,221.20
60	10/1/2025	\$ 3,068.50	\$ 3,071.98	\$ -	\$ 3,068.50	\$ 3,065.02	\$ 3.48	\$ -	\$ 6,224.68



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

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

APPROVE VALLEY WATER COST SHARING AGREEMENT FOR TRAIL AND FLOOD CONTROL

RECOMMENDATION(S)

Approve and authorize the City Manager to enter into a cost sharing agreement for \$748,600 with Valley Water for the construction of trails and other infrastructure.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Morgan Hill 2035 General Plan
Storm Drain Master Plan

REPORT NARRATIVE:

For decades, the City has supported Valley Water in efforts to complete the Upper Llagas Creek Flood Protection Project. Completion of this project will provide flood control for the West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. Valley Water is nearing completion of construction of Phase 1 of the project, this includes construction south of Watsonville Road to Silveira Lake. Valley Water has worked with City staff and completed the design for Phase 2, which will include significant construction through the City. Due to financial constraints, Valley Water intends to bid a portion of Phase 2 (Phase 2A) in the coming months. Phase 2A primarily consists of the portion of the project running north from Ciolino Avenue to just north of Main Avenue and includes the tunnel under Nob Hill. Phase 2B would be constructed once funding is available. Both Valley Water and City representatives continue to work on funding opportunities with the federal government and through Valley Water's upcoming ballot measure.

Once complete, the Upper Llagas Creek Flood Protection Project will be interconnected with the City's infrastructure. 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. These elements include:

- Storm Drain System connections and improvements through the entire project
- Interconnections with the Hale Avenue Extension Project and existing sections of Hale Avenue north of Main Avenue.
- Improvements to City water and wastewater infrastructure integrated with the project.
- The addition of the trails extending the City's West Little Llagas Creek Trail (WLLCT) to the south.

With the completion of Phase 1 expected in the coming months, the City has been presented with a unique opportunity to partner with Valley Water on the installation of paved multipurpose trails along the project south from Watsonville Road to Silveira Lake. The opportunity would allow Valley Water's current project contractor to construct the trails through project area via a cost share agreement. Valley Water has received a cost of \$710,000 for construction of these trails.

The City has had the construction of the WLLCT in its plans for decades, with the existing trail currently extending from Watsonville Road north to Spring Avenue. The project is currently in the Bikeways, Trails, Parks and Recreation Master Plan and the current Capital Improvement Program. Additionally, the City has significant grant funding to support the project. The proposed trails would be added as part of the Valley Water project, but the improvements related to traffic/pedestrian crossings at Watsonville Road and at Middle Avenue would be bid and constructed separately by the City. The proposed trail alignment is included in Attachment 1. It should be noted that proposed trails currently stop north of Silveira Lake. The Bikeways, Trails, Parks and Recreation Master Plan calls for the trail to extend to the south side of the lake via a pedestrian bridge and to utilize the existing maintenance road to extend the trail along the south side of the lake. However, due to financial and environmental constraints, City staff is recommending moving forward with the trails that can be constructed now as there are grant funds available for a significant portion of the project.

In addition to the trail construction, City staff is proposing to cost share on two additional items. The first is to fund a maintenance road that provides improved access to a City sewer siphon. This investment would allow for faster and safer maintenance for City crews maintaining the siphon. The City's share of the cost would be \$21,240. The second item is to fund some utility work near Hale Avenue and Main Avenue. This work is intended to support the future Hale Avenue extension and Flood Control Project and would cost \$17,360.

It should be noted that another cost share agreement will be brought forward to the Council to support major construction relating to City desired enhancements to the Flood Control Project and for items relating to the Hale Avenue Extension near the Main

Avenue intersection. This agreement will be brought forward to the Council once detailed cost estimates for these items are available.

COMMUNITY ENGAGEMENT: Involve and Inform

The planning for the development of the WLLCT was reconfirmed through the 2017 Bikeways, Trails, Parks and Recreation Master Plan, which included significant community involvement. The City has discussed the development of the WLLCT at two community meetings held specifically for the trail with the most recent update on September 3. The City also was present to discuss the trail at Valley Water's public meeting on Phase 1 of the Flood Control Project.

Moving forward, opening of the trails would occur following the installation of the traffic/pedestrian safety improvements at Middle Avenue and Watsonville Road. City staff will keep residents up to date on the progress towards trail opening using various City media channels and continue to communicate directly with residents who have signed up to receive specific project updates.

ALTERNATIVE ACTIONS:

The City Council could choose to not enter into the cost-share agreement for the WLLCT improvements and instead bid the project. City staff does not recommend this option as it is not believed there will be cost savings on construction based on the pricing provided through the Valley Water contractor. Additionally, should the City bid the project separately it will increase construction management costs, permit fees, and City administrative costs.

The City Council may also wish to consider not moving forward with the WLLCT Project due to increased operating costs associated with managing the trail. The City estimates these costs at approximately \$3,500 annually. Costs are primarily related to trash can emptying and repaving of the trail every 7 years. The City will rely on volunteers to help with litter pickup on the trail. Staff recommends moving forward with the project as the importance of park and trail facilities continues to grow through the Covid-19 pandemic. As a Class 1 Multiuse Trail, the new trail will be highly accessible and available to all residents regardless of income level.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has taken numerous actions impacting the Upper Llagas Creek Flood Protection Project and WLLCT in the past, including recent actions:

- March 2018 – Accepted an easement for the Silveira Lake property for recreational amenities.
- June 2019 - Approved a Property Exchange Agreement and Maintenance and Operations Agreement with Valley Water for the project.
- Various Dates – Approved grant applications to Valley Water (October 2017), the Santa Clara Valley Open Space Authority (December 2017) and the State of California (September 2017) for the WLLCT.

The Parks and Recreation Commission reviewed the proposed updated trail plans and alignment at their meeting on September 15, 2020.

FISCAL AND RESOURCE IMPACT:

The portion of the cost share agreement for the WLLCT improvements (\$710,000) would be funded through the West Little Llagas Creek Trail Project (No. 117001) via the Park Impact Fund (301). There is currently \$863,888 appropriated for this project and it is estimated the City will be reimbursed for approximately \$525,000 through grant funds. To complete the project, the City still intends to construct the additional improvements for traffic/pedestrian safety enhancements at the roadway crossings and grant required public art, which are estimated at an additional cost of approximately \$200,000 and will likely require an additional appropriation from the Park Impact Fund. These improvements will return for Council approval at a later time.

The other improvements would be funded through Llagas Flood Control Project (No. 417099), funded through the Storm Drain Impact Fund (303).

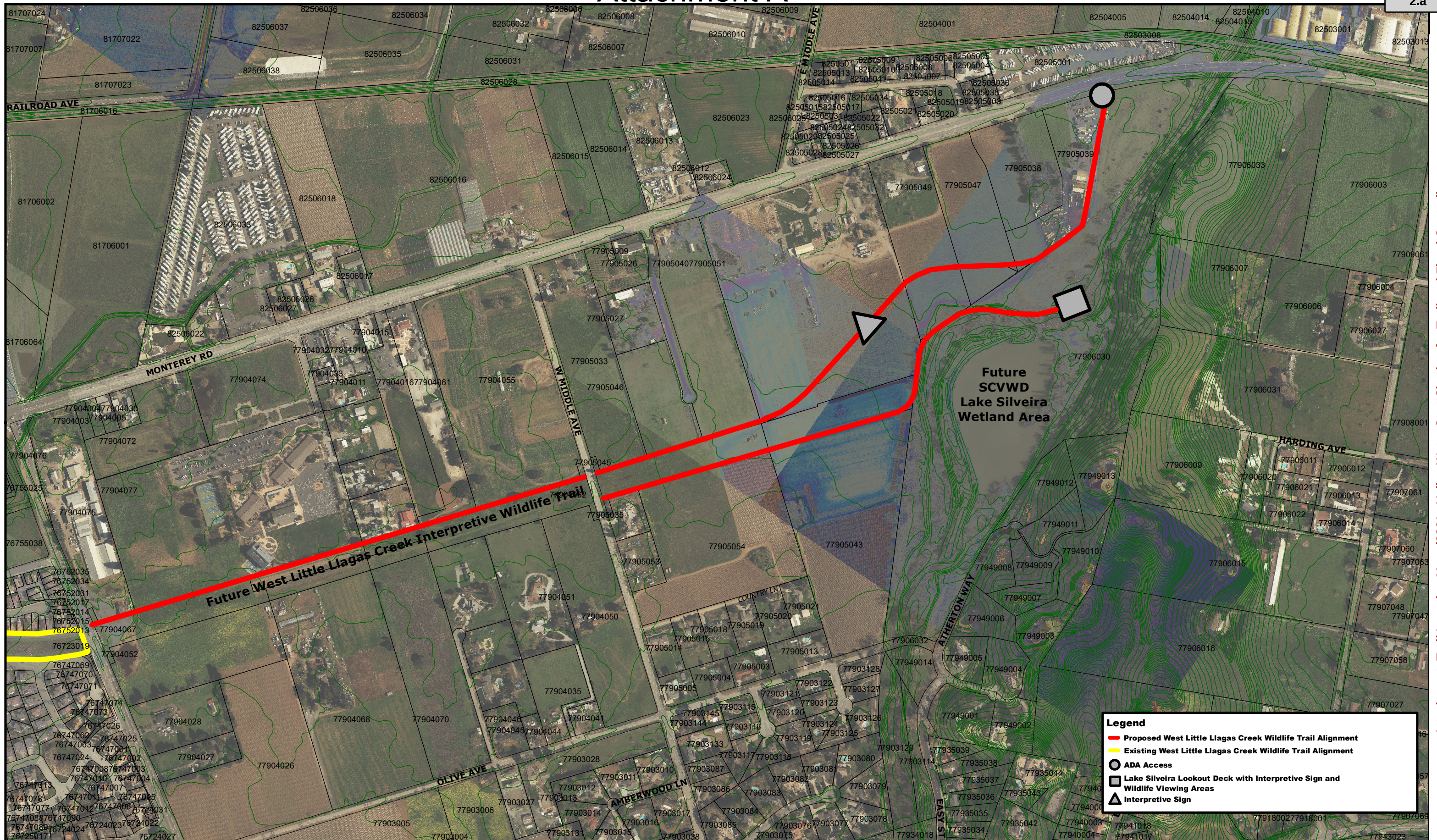
Operations of the new section of trail is anticipated to cost approximately \$3,500 annually, which would be funded through the City's General Fund (010).

CEQA (California Environmental Quality Act): Categorical Exemption

The installation of the West Little Llagas Creek Interpretive Wildlife Trail is categorically exempt from CEQA under Section 15304, Minor Alterations to Land, which covers minor public or private alterations to the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees for forestry or agricultural purposes, including the creation of bicycle lanes on existing rights-of-way.

LINKS/ATTACHMENTS:

1. Trail Location Map
2. Cost Share Agreement
3. Exhibit A to Cost Sharing Agreement



Attachment: Trail Location Map (2861 : Valley Water Cost Sharing for Trail and Flood Control)

7.0 and 8.0 Site Plan and Topographic Map
for the West Little Llagas Creek Interpretive Wildlife Trail Project



**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

This agreement (AGREEMENT) is made and entered into as of the date it is fully executed, by and between the CITY OF MORGAN HILL (CITY), a municipal corporation of the State of California and the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a special DISTRICT of the State of California. CITY and DISTRICT may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS, DISTRICT is currently proceeding with the design and construction phases of its Upper Llagas Creek Flood Protection Project (DISTRICT PROJECT), for which a Final Environmental Impact Report was certified by the DISTRICT'S Board of Directors and the DISTRICT PROJECT was approved on June 10, 2014. The DISTRICT is currently constructing the Phase 1 of the DISTRICT PROJECT and in the process of completing limited construction work in advance of Phase 2A; and

WHEREAS, CITY has proposed improvements (CITY IMPROVEMENTS) be included in the DISTRICT PROJECT; and

WHEREAS, CITY and DISTRICT have an active joint use agreement for use of the DISTRICT PROJECT's maintenance roads for recreation purposes.

WHEREAS, CITY has an easement for maintenance of its sewer system adjacent to Silveira Lake;

WHEREAS, it is in the public's best interests to achieve the economic benefits and efficiencies resulting from combining the construction of the Parties' public improvement projects; and

WHEREAS, the DISTRICT is willing to include CITY IMPROVEMENTS in DISTRICT PROJECT, at CITY'S expense and in accordance with the terms and conditions set forth in this AGREEMENT.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties hereto agree as follows:

AGREEMENT

1. PROJECT DESCRIPTION

1.1. The DISTRICT PROJECT scope of work:

1.1.1. Prepare complete design and construction documents for the DISTRICT PROJECT;

1.1.2. Deepen and widen Llagas Creek, West Little Llagas Creek, and East Little Llagas Creek to provide 100-year level of flood protection to urban areas

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

of the City of Morgan Hill within Reaches 7 and 8, ten-year level of flood protection for Reach 14, and no induced flooding due to creek modifications within Reaches 4, 5, and 6;

- 1.1.3. Create the Lake Silveira compensatory mitigation wetlands;
- 1.1.4. Install approximately 114 acres of native vegetation mitigation plantings;
- 1.1.5. Invasive plant removal; and
- 1.1.6. Creation of plant, fish, and wildlife habitat.

1.2. The CITY'S IMPROVEMENTS scope of work:

- 1.2.1. Independently hire the DISTRICT'S PROJECT consultant and other CITY Design consultants to prepare a complete design of the proposed CITY IMPROVEMENTS and incorporate the CITY IMPROVEMENTS into DISTRICT PROJECT; and
- 1.2.2. a. West Little Llagas Creek Trail asphalt and concrete work from Watsonville Road to Silveira Lake;
- b. CITY contribution to upgraded access roads for sewer system manholes and sewer siphon; and
- c. Minor Hale Avenue utility work south of Main Avenue.

2. PROJECT LOCATION

- 2.1. The DISTRICT PROJECT is located from Buena Vista Avenue within the City of Gilroy, upstream and northwesterly to Llagas Road within the northern portion of the City of Morgan Hill, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.
- 2.2. The proposed CITY IMPROVEMENTS are located along the DISTRICT PROJECT between West Main Avenue to the south side of Silveira Lake, all within a portion of Reaches 7 and 8 of the DISTRICT PROJECT, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.

3. SCOPE OF WORK

- 3.1. DISTRICT will perform the following:
 - 3.1.1. Administer, design, and contract the construction of the DISTRICT PROJECT, including incorporating the CITY IMPROVEMENTS, and coordination with appropriate local, state, federal, and regulatory agencies.
 - 3.1.2. DISTRICT, as Lead Agency for DISTRICT PROJECT, pursuant to the requirements of the California Environmental Quality Act (CEQA), will proceed with construction of DISTRICT PROJECT and the CITY IMPROVEMENTS in accordance with the DISTRICT's Final Environmental Impact Report certified on June 10, 2014, and permits, as authorized by appropriate regulatory agencies.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 3.1.3. Ensure its obligations were met as Lead Agency under CEQA.
- 3.1.4. Construction of the proposed CITY IMPROVEMENTS will be completed as part of the DISTRICT's PROJECT. The DISTRICT will officially transfer the operations and maintenance responsibilities for the CITY IMPROVEMENTS to the CITY upon the construction completion of said CITY IMPROVEMENTS and after written acceptance by both the CITY and the DISTRICT. The CITY will own the CITY IMPROVEMENTS and is responsible for their sustained operations and maintenance responsibilities in perpetuity.
- 3.2. CITY will perform the following:
 - 3.2.1. Provide DISTRICT with all documentation and information regarding its proposed CITY IMPROVEMENTS, so the DISTRICT PROJECT team preparing the DISTRICT PROJECT design, construction documents and change orders, can include the design of these CITY IMPROVEMENTS in its DISTRICT PROJECT per CITY'S requirements.
 - 3.2.2. Promptly review the DISTRICT'S design team's documents prepared for CITY IMPROVEMENTS, and provide input to DISTRICT confirming acceptance of the change order and/or contract documents.
- 3.3. Designees:
 - 3.3.1. The designated project manager for DISTRICT for the duration of the DISTRICT PROJECT is Mr. Stephen M. Ferranti. DISTRICT's project manager has all the necessary authority to direct technical and professional work within the scope of the AGREEMENT and will serve as the principal point of contact with CITY.
 - 3.3.2. The designated project manager for CITY for the duration of the DISTRICT PROJECT is Mr. Chris Ghione. Except as superseded by existing CITY law, rule or practice, CITY's project manager has all the necessary authority to review, approve, and accept technical and professional work within the scope of the AGREEMENT and serves as the principal point of contact with DISTRICT.

4. COST-SHARING OF PROJECT

- 4.1. DISTRICT has requested change orders and/or bids for the DISTRICT PROJECT that include the CITY IMPROVEMENTS in order to ascertain the prices for this work.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 4.2. CITY has determined the costs for the CITY IMPROVEMENTS are \$748,600 and shall remit payment in full to the DISTRICT for the CITY IMPROVEMENTS within 90 calendar days after execution of this agreement.
- 4.3. Modifications to DISTRICT'S contract with its CONTRACTOR
 - 4.3.1. DISTRICT agrees to provide CITY with written notice and documentation regarding any modifications, revisions, change orders, and/or extra work required in association with the CITY IMPROVEMENTS to CITY within seven (7) calendar days of DISTRICT becoming aware of or initiating such matter, so CITY can provide direction to DISTRICT, if necessary and appropriate.
 - 4.3.2. CITY will respond to DISTRICT regarding such matters within seven (7) calendar days of receipt of such information and provide written direction to DISTRICT, if necessary and appropriate.
 - 4.3.3. If CITY's approval(s) results in an expense above the supplemental bid items amounts for which it already remitted payment to DISTRICT, CITY agrees to remit payment in full to DISTRICT within 60 calendar days of receipt of DISTRICT invoice, along with any supporting documentation for said additional costs associated with the CITY IMPROVEMENTS.

5. INSURANCE AND INDEMNIFICATION

- 5.1. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, DISTRICT and CITY agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this AGREEMENT. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this AGREEMENT.
- 5.2. DISTRICT and CITY are self-insured. DISTRICT, as lead agency for DISTRICT PROJECT, shall require all contractors performing work to carry appropriate insurance covering all work, including CITY IMPROVEMENTS.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 5.3. The rights, duties, and obligations of the Parties as set forth above in this Section 5 of this AGREEMENT will survive termination, suspension, completion, and expiration of this AGREEMENT.

6. ADDITIONAL PROVISIONS

- 6.1. A Party's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach of any other term, condition, or covenant.
- 6.2. This AGREEMENT contains the entire AGREEMENT between DISTRICT and CITY relating to the DISTRICT PROJECT and CITY'S IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
- 6.3. If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on DISTRICT and CITY.
- 6.4. This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.
- 6.5. This AGREEMENT may be executed in counterparts and will be binding as executed.
- 6.6. The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both Parties and terminate upon DISTRICT PROJECT completion notification by DISTRICT and receipt by DISTRICT of payment in full by CITY.
- 6.7. All changes or extensions to this AGREEMENT must be in writing in the form of an amendment approved by both Parties.
- 6.8. Claims related to the design of DISTRICT'S PROJECT will be administered by DISTRICT and Claims related to the design of CITY'S IMPROVEMENTS will be administered by the CITY. The obligations of both Parties, as stated in this paragraph, will survive termination, completion, suspension, and expiration of this AGREEMENT.
- 6.9. This AGREEMENT is entered into only for the benefit of the Parties executing this AGREEMENT and not for the benefit of any other individual, entity, or person.

7. TERMINATION

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 7.1. This AGREEMENT will terminate upon DISTRICT PROJECT completion notification by DISTRICT and receipt by DISTRICT of payment in full by CITY, or by mutual written consent and terms acceptable to both Parties.

8. NOTICES

- 8.1 All correspondence relating to the DISTRICT PROJECT, including all written notices required by the terms of this AGREEMENT may be delivered by first class mail addressed to the appropriate Party at the following addresses:

DISTRICT:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Mr. Stephen M. Ferranti, P.E., Engineering Unit Manager
Phone: (408) 630-2677
E-mail: sferranti@valleywater.org

CITY:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Mr. Chris Ghione, Public Services Director
Phone: (408) 782-9154
E-mail: chris.ghione@morganhill.ca.gov

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**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

IN WITNESS WHEREOF, this AGREEMENT becomes effective upon full execution by the Parties as set forth below.

"CITY"**CITY OF MORGAN HILL**

A Municipal corporation of the County of Santa Clara

By: _____

Christina Turner
City Manager

Date: _____

ATTEST:

Michelle Bigelow
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: _____

Rick Callender
Chief Executive Officer

Date: _____

ATTEST:

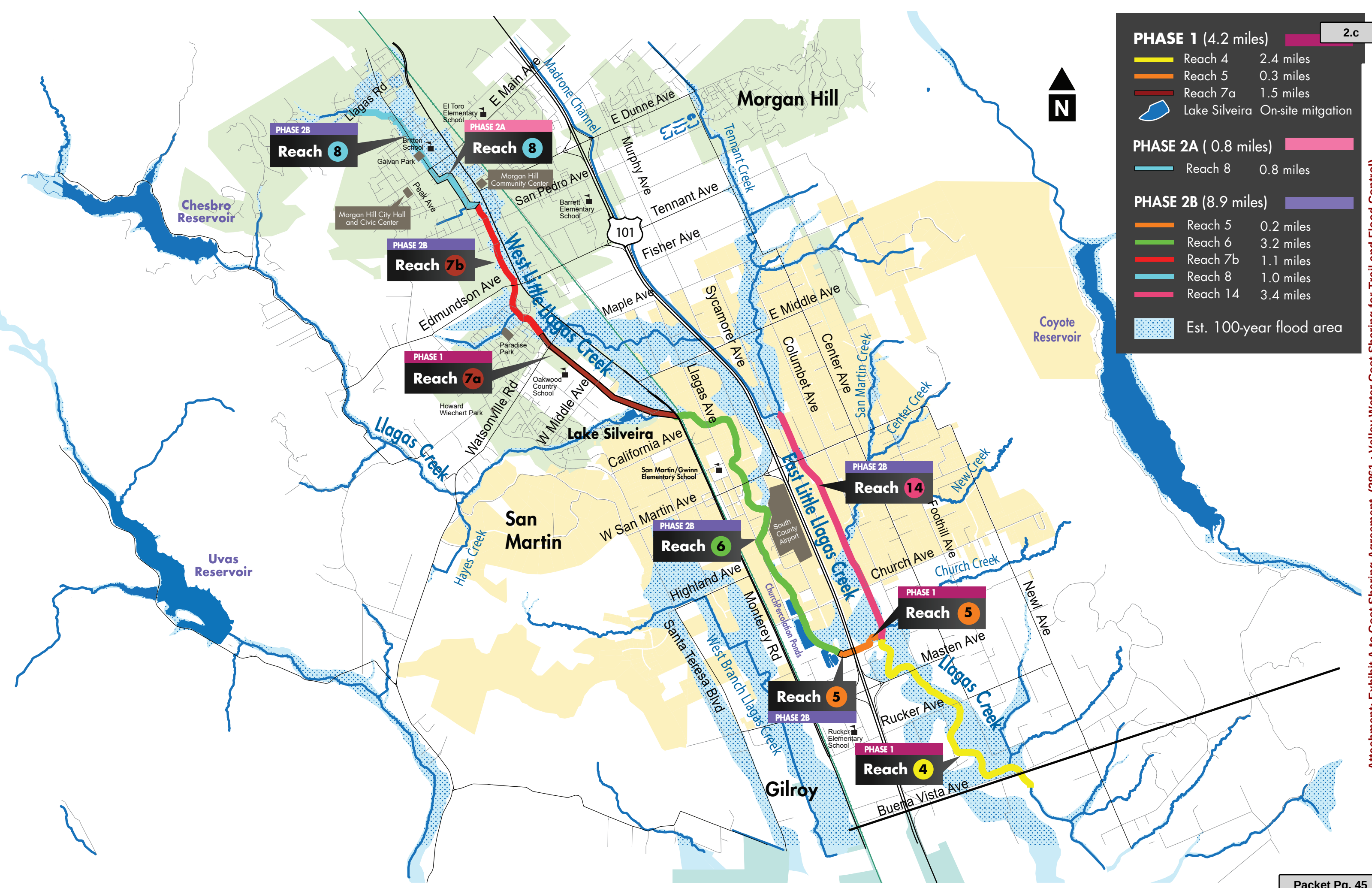
Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:

Brian Hopper
Senior Assistant District Counsel

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Attachment: Cost Share Agreement [Revision 2] (2861 : Valley Water Cost Sharing for Trail and Flood Control)



PHASE 1 (4.2 miles) 2.c

- Reach 4 2.4 miles
- Reach 5 0.3 miles
- Reach 7a 1.5 miles
- Lake Silveira On-site mitigation

PHASE 2A (0.8 miles)

- Reach 8 0.8 miles

PHASE 2B (8.9 miles)

- Reach 5 0.2 miles
- Reach 6 3.2 miles
- Reach 7b 1.1 miles
- Reach 8 1.0 miles
- Reach 14 3.4 miles

Est. 100-year flood area



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC. AGREEMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc. for \$100,000, increasing the not to exceed amount to \$550,000 and allow for additional repair services to be performed on an as needed basis and pre-approved by the City maintenance staff.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider an amendment to the City's contract for traffic signal and lighting services with Cal-West Lighting and Signal Maintenance, Inc. If approved the amendment will increase the amount of the contract by \$100,000 to \$550,000 and allow the maintenance team to pre-approve additional repair services on an as needed basis.

Recently, temporary repairs were made to a streetlight and other equipment damaged during a very significant car accident. Although the temporary repairs ensure a safe intersection, staff has been unable to authorize permanent repairs of the damaged infrastructure because the balance remaining in the contract's as needed repairs budget is not sufficient to cover the cost of those repairs. By authorizing the maintenance team to pre-approve additional repair services on an as needed basis, staff will be able to address streetlight, traffic signal, and other equipment repairs without delay in order to maintain services. After repairs are completed, City staff pursue insurance reimbursement from vehicle accidents that damage City infrastructure.

The City has contracted for traffic signal and lighting services for many years and does not have the staffing resources or the equipment to perform the work internally. Services provided include streetlight, parking lot light, and traffic signal bulb replacements, equipment troubleshooting, emergency response services, and consultation services. The City's current contract expires on June 30, 2021. The original amount of the agreement was \$450,000 for three years.

Staff has been highly satisfied with the services performed by Cal-West Lighting and Signal Maintenance, Inc. and recommends that the Council authorize the City Manager to execute the attached Agreement Amendment.

COMMUNITY ENGAGEMENT: N/A

As traffic signal and lighting services are a regular and expected City service, no efforts were made to inform the community about this proposed contract amendment.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to terminate the agreement and proceed with a request for proposals (RFP) for traffic signal and lighting services. This alternative is not recommended as it would delay critical repairs necessary for City infrastructure.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the contract to Cal-West Lighting and Signal Maintenance on June 20, 2018.

FISCAL AND RESOURCE IMPACT:

Funding for the traffic signal and streetlighting services are accounted for in the Streets Maintenance and Downtown Maintenance Programs within the General Fund (010).

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. First Amendment Cal West Lighting and Signal

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and Cal-West Lighting and Signal Maintenance, Inc., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 28, 2018, for services for a maximum compensation of Four Hundred Fifty Thousand and no/100 ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed Five Hundred Fifty Thousand Dollars and no/100 (\$550,000.00) for preventative maintenance services plus additional repair costs (labor and materials) to be performed on an as needed basis and preapproved by the City maintenance staff and shall be billed based on the rate and basis set forth in **Exhibit B**. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Four hundred fifty 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 SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement."

B. Exhibit B, attached hereto and incorporated herein by this reference, is revised to reflect the increased not-to-exceed amount of the Agreement.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk

Date: _____

 Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

CAL-WEST LIGHTING AND SIGNAL
 MAINTENANCE, INC.

 Donald A. Larkin, City Attorney

Date: _____

 By: Title: Craig H. Geis, Jr. - President

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: September 10, 2020

 By: Title: Frank A. Garcia - Treasurer

Print Name and Title of Signer.

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

Date: September 10, 2020

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

**Revised EXHIBIT B for Amendment 1
SCHEDULE OF COMPENSATION RATES**

Compensation shall be based on the attached Bid Schedule (Annual Routine Maintenance and Time and Materials-Service Repairs) submitted in the proposal dated May 21, 2018 by Cal-West Lighting and Signal Maintenance, Inc.

Annual Routine Maintenance:

1. Monthly Maintenance: \$70 per month X 12 months X 42 intersections=	\$35,280.00
2. Emtrac System Quarterly Maintenance	Included Above
3. Flashing Beacons: \$35 per month X 12 months X 16 beacons=	\$ 6,720.00
4. Lighted Crosswalk: \$35 per month X 12 months X 1 lighted crosswalk=	\$ 420.00
Total Annual Routine Maintenance Amount	\$42,420.00

Three Year Annual Routine Maintenance Amount is \$127,260.00

Time and Materials-Service Repairs:

Please see the attached Bid Schedule for the Time and Materials - Service Repairs

1. Labor and Equipment Rates for Maintenance
2. Loop Repair
3. New Signal Turn-On
4. Street Light Maintenance
5. Mark-Up on Parts and Maintenance

Total Not to Exceed Contract Amount is \$550,000 which includes \$127,260 for routine maintenance plus additional maintenance and repair costs to be performed on an as-needed basis and pre-approved by City Maintenance Staff.

Pricing as described in this Exhibit B and the attached Bid Schedule applies to the period of July 1, 2018 to June 30, 2020. For services beginning on July 1, 2020, the Contractor may request a percentage adjustment to the pricing for all services equal to the Consumer Price Index (CPI) for the San Francisco Bay Area Counties. This request must be in writing ninety (90) days prior to the end of July 1, 2020.

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

Attachment 1 : Bid Schedule

**City of Morgan Hill Traffic Signal and Street Lighting Maintenance
Annual Routine Maintenance
(Task Rate Schedule A)**

	Annual Amount			
1. Monthly Maintenance Fee Per Intersection*				
\$ <u>70.00</u> /month x 12 months = x 42 intersections =				\$ <u>35,280.00</u>
2. Emtrac System Maintenance Quarterly*				
\$ <u>0.00</u> /quarter x 4 quarters =				\$ <u>included</u>
3. Flashing Beacons*				
\$ <u>35.00</u> /month x 12 months = x 16 flashing beacons =				\$ <u>6720.00</u>
4. Lighted Crosswalk				
<u>35.00</u> /month x 12 months = x 1 lighted crosswalk =				\$ <u>420.00</u>
TOTAL (annual)				\$ <u>42,420.00</u>

* Based on attached Intersection List (Attachment A)

**Time and Materials - Service Repairs
(Task Rate Schedule B)**

1. LABOR AND EQUIPMENT RATES FOR MAINTENANCE				
		STRAIGHT TIME	OVERTIME	
LABOR SCHEDULE				
Signal Maintenance Supervisor	\$	<u>110.00</u>	\$	<u>190.00</u>
Signal Maintenance Technician	\$	<u>110.00</u>	\$	<u>190.00</u>
Traffic Signal Staff	\$	<u>75.00</u>	\$	<u>105.00</u>
Laborer	\$	<u>75.00</u>	\$	<u>105.00</u>
		HOURLY RATE	DAY RATE	JOB TRIP RATE
EQUIPMENT				
Utility Vehicle	\$	<u>0.00</u>	\$	<u>0.00</u>
Service Vehicle	\$	<u>25.00</u>	\$	<u>100.00</u>
Boom Truck	\$	<u>30.00</u>	\$	<u>120.00</u>
Hydraulic Lift	\$	<u>30.00</u>	\$	<u>120.00</u>
Air Compressor		<u>0.00</u>		<u>0.00</u>
A. Total for 2 Hour Emergency Service Call for Pole Knockdown	\$			<u>280.00</u>
B. Timing Input Call	\$			<u>140.00</u>
2. LOOP REPAIR				
As it is deemed necessary to replace damaged detection loops, contractor (Includes all labor, material, and equipment)				
Cost for 1 each forward loop (Attachment B)	\$			<u>650.00</u>
All others (1 each) (CalTrans Standard Plan ES-5B / Attachment C)	\$			<u>650.00</u>
3. NEW SIGNAL TURN-ON				
1 each occurrence	\$			<u>500.00</u>
4. STREET LIGHT MAINTENANCE				
1 each occurrence	\$			<u>70.00</u>
5. MARK-UP ON PARTS AND MATERIALS (% PERCENTAGE MARK-UP)				<u>10 %</u>

Name of Company: Cal-West Lighting and Signal Maintenance, Inc.

Signature

Date

5/21/18

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

**ATTACHMENT A:
BID SCHEDULE-TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE**

4/20/2018

CITY OF MORGAN HILL SIGNALIZED INTERSECTIONS TO BE SERVICED BY THIS CONTRACT

- 1 Monterey/Tilton
- 2 Monterey/Burnett
- 3 Monterey/Peebles
- 4 Monterey/Madrone Parkway
- 5 Monterey/Cochrane
- 6 Cochrane/Cochrane Circle
- 7 Cochrane/Butterfield
- 8 Cochrane/Sutter Boulevard
- 9 Cochrane/Cochrane Plaza/Madrone
- 10 Cochrane/DePaul
- 11 Monterey/Old Monterey
- 12 Monterey/Wright
- 13 Monterey/Main
- 14 Main/Butterfield
- 15 Main/Calle Mazatan
- 16 Monterey / 2nd Street
- 17 Monterey/Dunne
- 18 Dunne/Church
- 19 Dunne/Butterfield
- 20 Dunne/Walnut Grove
- 21 Dunne/Condit
- 22 Dunne/Murphy
- 23 Dunne/Peppertree
- 24 Dunne/Hill
- 25 Monterey/Spring
- 26 Monterey/Cosmo
- 27 Monterey/Tennant-Edmundson
- 28 Tennant/Church
- 29 Tennant/Vineyard
- 30 Tennant/Butterfield
- 31 Tennant/Juan Hernandez
- 32 Monterey/Vineyard
- 33 Monterey/Watsonville-Butterfield
- 34 Monterey/John Wilson Way
- 35 Butterfield/Sutter
- 36 Butterfield/Diana
- 37 Butterfield/San Pedro
- 38 Butterfield/Barrett
- 39 Butterfield/Central Ave
- 40 Cochrane/Mission View (To be activated)
- 41 Monterey/4th
- 42 Butterfield/Digital

RAPID FLASHING BEACONS:

ADVANCE SIGNAL FLASHING BEACONS:

- 1 Monterey / Tilton
- 2 Monterey / Old Monterey
- 3 Monterey/John Wilson Way

FLASHING BEACONS:

- 1 Tilton / Dougherty
- 2 17660 Monterey
- 3 Monterey / Central
- 4 17775 Monterey
- 5 Nordstrom on Dunne
- 6 Dunne / Saddleback
- 7 Main/Del Monte
- 8 W Dunne/Del Monte
- 9 W Edmundson/Trail Crossing
- 10 W Edmundson/Community Park Drive
- 11 Edes Ct/Trail Crossing
- 12 Cosmo/Trail Crossing
- 13 Burnett Ave. at Sobrato High School

LIGHTED CROSS WALKS:

- 1 Monterey/Third Street

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

12604-B-083

MAINTENANCE SERVICE AGREEMENT
Cal-West Lighting and Signal Maintenance, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/28/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Cal-West Lighting and Signal Maintenance, 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 action of the Morgan Hill City Council taken on June, 20, 2018.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The 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 SERVICE PROVIDER shall be traffic signal and street lighting maintenance as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$450,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four hundred fifty thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

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 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 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:

Cal-West Lighting and Signal Maintenance, Inc.
P.O. Box 612035
San Jose, CA 95161-2035

Address of CITY is as follows:

Dale Dapp, Maintenance Manager	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. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 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.

16.2. **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.

16.3. **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.

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

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

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

20. **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.** 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").

21.2. **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.

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 SERVICE PROVIDER.

21.4. **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 (21) 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.

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

22. **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.

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 SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

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 Clerk/Deputy City Clerk

 Michelle Wilson
 Print Name

Date:

7/6/18

APPROVED AS TO FORM:


 City Attorney

 Donald A. Larkin
 Print Name

Date:

6-22-18

C-10 847901

Contractor's License Number(s) (if applicable)

Expiration Date(s) 10/31/2018

Seal:

CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

Date:

6/28/18

CAL-WEST LIGHTING AND SIGNAL
 MAINTENANCE, INC.

By:


 Craig H. Geis Jr. - President

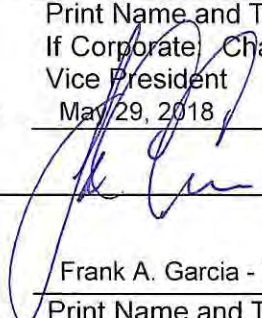
Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date:

May 29, 2018

By:


 Frank A. Garcia - Treasurer

Print Name and Title of Signer.

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

Date:

May 29, 2018

1000023113

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

Expiration Date(s) 6/30/2018

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

EXHIBIT A SCOPE OF SERVICES

The Contractor will furnish all tools, equipment, apparatus, facilities, labor, service and materials to perform all work necessary to maintain traffic signal facilities and street lights in good and workmanlike manner. All labor, services, materials and equipment shall be furnished and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of the Community Services Director of the City of Morgan Hill, or his representative.

The City operates and maintains 42 traffic signals with a variety of signal controllers and 16 flashing beacons. The City also has an EMTRAC Signal-Priority System that must be maintained on a quarterly basis.

Preventative Maintenance:

The Contractor shall provide a routine, comprehensive preventative maintenance program designed to minimize the incidence of outages and malfunction; reduce complaints; and extend the useful life of the traffic signal equipment. The Contractor is required to furnish and use a preventative maintenance checklist form approved by the City. The Contractor shall provide one electronic copy of the maintenance checklist to the City following each inspection, maintain a copy of the checklist in the traffic signal controller cabinet, and maintain a copy of the maintenance checklist at the Contractor's office. The program shall include monthly inspections of each signalized intersection.

Each controller unit shall be inspected, cleaned, and adjusted during a routine inspection one time per month. This includes all accessory items such as the EMTRAC system and signal interconnect systems. Each controller conflict monitor shall be tested once yearly during the month of July.

All traffic signal detection loops shall be maintained and repaired as needed.

All incandescent lamps in all signals shall be replaced based on an eighty percent (80%) depletion period. Contractor shall use only standard traffic signal lamps as manufactured by General Electric Company or Sylvania Company.

All light emitting diode (LED) modules in all signals shall be replaced when more than two percent (2%) of the LEDs have failed. Contractor shall only use standard LED traffic signal modules approved by the California Department of Transportation (Caltrans).

The Contractor shall replace or repair any and all defective parts of the controller mechanism as needed. All lenses and reflectors shall be cleaned and polished once a year. At this time, all broken parts shall be replaced.

Contractor shall maintain the appearance of all traffic signals monthly including graffiti removal, and removal of stickers, etc.

All fixed time, semi-actuated and fully actuated signal which are installed from time to time shall be added to those already maintained by the Contractor as City notifies the Contractor of the installation thereof. These signals shall be maintained at the same rate and in the same manner as those covered by the maintenance agreement. In the event notification is made at other than the beginning of the monthly contract period, payment for that month shall be prorated from the day the Contractor is notified. The Contractor is to be at all new installation turn-on to provide technical assistance and guidance.

Contractor is to maintain by quarterly testing all EMTRAC systems throughout the city at locations.

School/PED flashing beacons are to be adjusted regarding Daylight Savings Time and Pacific Standard Time as needed twice a year.

The total amount of work available will be a function of routine traffic signal maintenance plus the amount of work that is required due to normal "wear and tear," collision damage, vandalism, and other factors that may result in the need for emergency response maintenance services. The City expects traffic signal technicians to be regularly assigned to the City as necessary to provide preventative maintenance and to respond to unscheduled/emergency work.

Scheduled Repair:

The Contractor shall investigate and determine the corrective requirements for each reported malfunction, failure or outage of the traffic signal system. The Contractor shall repair or replace equipment and components that have failed, deteriorated or malfunctioned from the normal operation of the traffic signal system. Replacement of controllers and battery backup systems require approval of City staff prior to replacement.

Based on a Street Light Repair list sent weekly, repairs must be made within fourteen (14) calendar days. The price is for the electrician, bucket truck, and lamp. Additional items are extra cost. Lights needing a quicker response will be billed based on labor and material.

No permanent change shall be done without prior approval of the City. Whenever equipment is removed, the City representative shall be notified by phone and e-mail within twenty-four (24) hours, except weekends and holidays (where the Contractor shall wait until the next calendar day to notify the City Representative).

The Contractor may be requested to input timing changes provided by the City.

Emergency Response Work:

The Contractor may be called upon from time to time by the City to repair, replace, or refurbish equipment which has been damaged by vehicle accidents, acts of God, malicious damage, natural causes, or need to install new appurtenances. In this case Contractor shall make emergency service calls when necessary to make temporary or permanent repairs or installation to signal equipment and appurtenances such as: safety lighting, traffic signs, pedestrian signals, flashing beacons, street lights, detector devices external to the cabinet or failure of the controller.

The City's street lights are maintained by the City. The Contractor shall, upon request, make emergency calls to remove street lights that have been knocked down, and deliver same to the City corporation yard. The Contractor may be requested to replace and install a new street light and possibly, depending upon extent of damage, repair or replace the street light pole pedestal.

Contractor shall maintain a 24 hour per day emergency service for the replacement of burned-out lamps or controller malfunctions. A maximum response time of two (2) hours will be required of the Contractor. In the course of traveling to and from the locations of the equipment to be serviced, Contractor's representative shall observe traffic signals at other designated intersections for possible malfunctions.

Work Hours:

The work hours for any, and all traffic signal and street light preventative maintenance and repairs will be scheduled with City Maintenance Staff during regular business hours (7:00 a.m. to 5:00 p.m. Monday through Friday). As authorized by the City, the Contractor may perform Unscheduled and Emergency Response Work on the traffic signal system not covered by preventative maintenance and scheduled repairs.

Deviation from the above will not be permitted except by written permission of the City Maintenance Coordinator or designated representative from the facility.

From time to time, the City may take on improvement projects or other construction. The Contractor shall cooperate with the City or its agents while said work is underway.

Workmanship and Quality Level:

All work shall be performed by staff directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to provide the specified traffic signal and street light maintenance. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

The Contractor shall cooperate with the representative authorized by the City to enable them to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall give personal supervision to the work and will meet with the Maintenance Manager or designated City representative, a minimum of once per month, at a schedule mutually agreed upon.

Monthly Activity Report:

The Contractor shall provide a computerized monthly activity report to the City by the fifteenth (15) working day of each month for the previous month. A monthly report shall be sent via e-mail to the City with the monthly invoice. No payment will be made without submittal of the report. The report shall include:

- i. Unscheduled and Emergency Response Work: Time the service calls were received, names of City staff who made the service call, time arrived at intersection, response time, nature of problem, the number of hours spent for each repair, materials used, whether the activity related to accident or vandalism, and a special listing of intersections with three or more calls in one month.
- ii. Scheduled Repairs: A complete record of all work that was performed on the traffic signal equipment during the previous month including the date and time, make model, and serial number of any major components or other equipment that was newly installed at each intersection.
- iii. Preventative Maintenance: Time and date the preventative maintenance work was performed.
- iv. Pending Repair List: Provide a monthly report of all pending repair work needed at each intersection. The intersection name shall be listed along with a description of the repair required, problem that created the repair and level of severity (high priority repair, medium priority repair, low priority repair).

Signal Shut Down and Signal On Flash:

The Contractor shall immediately notify the City's Community Services Department and Police Department of any signal turn-offs or signal-on-flash necessitated by their operation. Signal shut down of any duration and sign-on-flash operation in excess of fifteen (15) minutes must be first authorized by the Community Services Dept.-Maintenance Division.

Spare Equipment

The Contractor shall maintain adequate storage and shop facilities and sufficient stock of spare parts and signal equipment to effectively maintain the traffic signals. The Contractor shall maintain at least one fully tested standby controller that is compatible with the City's system. The Contractor will own and maintain all spare parts until installation in the City.

Salvaged Equipment:

The Contractor shall store any designated equipment, as designated by the City, at the Contractor's storage yard at no additional cost to the City. Components such as mast arms and luminaires that are undamaged may be re-used at the direction of the City. Any material or equipment declared as non-salvageable by the Community Services Department shall be taken from the City and disposed of properly by the Contractor at Contractor's cost.

Safety:

The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way.

EXHIBIT B

SCHEDULE OF COMPENSATION RATES

Compensation shall be based on the attached Bid Schedule (Annual Routine Maintenance and Time and Materials-Service Repairs) submitted in the proposal dated May 21, 2018 by Cal-West Lighting and Signal Maintenance, Inc.

Annual Routine Maintenance:

1. Monthly Maintenance: \$70 per month X 12 months X 42 intersections=	\$35,280.00
2. Emtrac System Quarterly Maintenance	Included Above
3. Flashing Beacons: \$35 per month X 12 months X 16 beacons=	\$ 6,720.00
4. Lighted Crosswalk: \$35 per month X 12 months X 1 lighted crosswalk=	\$ 420.00
Total Annual Routine Maintenance Amount	\$42,420.00

Three Year Annual Routine Maintenance Amount is \$127,260.00

Time and Materials-Service Repairs:

Please see the attached Bid Schedule for the Time and Materials - Service Repairs

1. Labor and Equipment Rates for Maintenance
2. Loop Repair
3. New Signal Turn-On
4. Street Light Maintenance
5. Mark-Up on Parts and Maintenance

Total Not to Exceed Contract Amount is \$450,000 which includes \$127,260 for routine maintenance plus \$322,740 in additional maintenance and repair costs to be performed on an as-needed basis and pre-approved by City Maintenance Staff.

Pricing as described in this Exhibit B and the attached Bid Schedule applies to the period of July 1, 2018 to June 30, 2020. For services beginning on July 1, 2020, the Contractor may request a percentage adjustment to the pricing for all services equal to the Consumer Price Index (CPI) for the San Francisco Bay Area Counties. This request must be in writing ninety (90) days prior to the end of July 1, 2020.

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

Attachment 1 : Bid Schedule

**City of Morgan Hill Traffic Signal and Street Lighting Maintenance
Annual Routine Maintenance
(Task Rate Schedule A)**

	Annual Amount			
1. Monthly Maintenance Fee Per Intersection*				
\$ <u>70.00</u> /month x 12 months = x 42 intersections =				\$ <u>35,280.00</u>
2. Emtrac System Maintenance Quarterly*				
\$ <u>0.00</u> /quarter x 4 quarters =				\$ <u>included</u>
3. Flashing Beacons*				
\$ <u>35.00</u> /month x 12 months = x 16 flashing beacons =				\$ <u>6720.00</u>
4. Lighted Crosswalk				
<u>35.00</u> /month x 12 months = x 1 lighted crosswalk =				\$ <u>420.00</u>
TOTAL (annual)				\$ <u>42,420.00</u>

* Based on attached Intersection List (Attachment A)

**Time and Materials - Service Repairs
(Task Rate Schedule B)**

1. LABOR AND EQUIPMENT RATES FOR MAINTENANCE				
		STRAIGHT TIME	OVERTIME	
LABOR SCHEDULE				
Signal Maintenance Supervisor	\$	<u>110.00</u>	\$	<u>190.00</u>
Signal Maintenance Technician	\$	<u>110.00</u>	\$	<u>190.00</u>
Traffic Signal Staff	\$	<u>75.00</u>	\$	<u>105.00</u>
Laborer	\$	<u>75.00</u>	\$	<u>105.00</u>
		HOURLY RATE	DAY RATE	JOB TRIP RATE
EQUIPMENT				
Utility Vehicle	\$	<u>0.00</u>	\$	<u>0.00</u>
Service Vehicle	\$	<u>25.00</u>	\$	<u>100.00</u>
Boom Truck	\$	<u>30.00</u>	\$	<u>120.00</u>
Hydraulic Lift	\$	<u>30.00</u>	\$	<u>120.00</u>
Air Compressor		<u>0.00</u>		<u>0.00</u>
A. Total for 2 Hour Emergency Service Call for Pole Knockdown	\$			<u>280.00</u>
B. Timing Input Call	\$			<u>140.00</u>
2. LOOP REPAIR				
As it is deemed necessary to replace damaged detection loops, contractor (Includes all labor, material, and equipment)				
Cost for 1 each forward loop (Attachment B)	\$			<u>650.00</u>
All others (1 each) (CalTrans Standard Plan ES-5B / Attachment C)	\$			<u>650.00</u>
3. NEW SIGNAL TURN-ON				
1 each occurrence	\$			<u>500.00</u>
4. STREET LIGHT MAINTENANCE				
1 each occurrence	\$			<u>70.00</u>
5. MARK-UP ON PARTS AND MATERIALS (% PERCENTAGE MARK-UP)				<u>10 %</u>

Name of Company: Cal-West Lighting and Signal Maintenance, Inc.

Signature

Date

5/21/18

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

**ATTACHMENT A:
 BID SCHEDULE-TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE**

4/20/2018

CITY OF MORGAN HILL SIGNALIZED INTERSECTIONS TO BE SERVICED BY THIS CONTRACT

- 1 Monterey/Tilton
- 2 Monterey/Burnett
- 3 Monterey/Peebles
- 4 Monterey/Madrone Parkway
- 5 Monterey/Cochrane
- 6 Cochrane/Cochrane Circle
- 7 Cochrane/Butterfield
- 8 Cochrane/Sutter Boulevard
- 9 Cochrane/Cochrane Plaza/Madrone
- 10 Cochrane/DePaul
- 11 Monterey/Old Monterey
- 12 Monterey/Wright
- 13 Monterey/Main
- 14 Main/Butterfield
- 15 Main/Calle Mazatan
- 16 Monterey / 2nd Street
- 17 Monterey/Dunne
- 18 Dunne/Church
- 19 Dunne/Butterfield
- 20 Dunne/Walnut Grove
- 21 Dunne/Condit
- 22 Dunne/Murphy
- 23 Dunne/Peppertree
- 24 Dunne/Hill
- 25 Monterey/Spring
- 26 Monterey/Cosmo
- 27 Monterey/Tennant-Edmundson
- 28 Tennant/Church
- 29 Tennant/Vineyard
- 30 Tennant/Butterfield
- 31 Tennant/Juan Hernandez
- 32 Monterey/Vineyard
- 33 Monterey/Watsonville-Butterfield
- 34 Monterey/John Wilson Way
- 35 Butterfield/Sutter
- 36 Butterfield/Diana
- 37 Butterfield/San Pedro
- 38 Butterfield/Barrett
- 39 Butterfield/Central Ave
- 40 Cochrane/Mission View (To be activated)
- 41 Monterey/4th
- 42 Butterfield/Digital

RAPID FLASHING BEACONS:

ADVANCE SIGNAL FLASHING BEACONS:

- 1 Monterey / Tilton
- 2 Monterey / Old Monterey
- 3 Monterey/John Wilson Way

FLASHING BEACONS:

- 1 Tilton / Dougherty
- 2 17660 Monterey
- 3 Monterey / Central
- 4 17775 Monterey
- 5 Nordstrom on Dunne
- 6 Dunne / Saddleback
- 7 Main/Del Monte
- 8 W Dunne/Del Monte
- 9 W Edmundson/Trail Crossing
- 10 W Edmundson/Community Park Drive
- 11 Edes Ct/Trail Crossing
- 12 Cosmo/Trail Crossing
- 13 Burnett Ave. at Sobrato High School

LIGHTED CROSS WALKS:

- 1 Monterey/Third Street

Attachment: First Amendment Cal West Lighting and Signal (2860 : Cal-West Lighting First Amendment)

EXHIBIT C SCHEDULE OF PERFORMANCE

RESPONSE AND SERVICE

i. The Contractor shall provide response and service on a twenty-four (24) hour, seven (7) day per week basis. Immediate action shall be taken to safeguard the public any time a signal installation becomes partly or totally inoperative from any cause whatsoever. The maximum response times shall be as follows:

- a. Emergency and accident maintenance – one (1) hour
- b. Replacement of burned out signal faces
 - 1. Red faces on mast arms – two (2) hours
 - 2. Red faces on poles – two (2) hours
 - 3. Green and yellow faces – two (2) hours
- c. All other signal maintenance – twenty-four hours
- d. Safety Lighting – forty-eight (48) hours

ii. Signal on-flash, signal blackout not caused by a power outage, and any malfunction of pedestrian signals shall constitute an emergency. The City may extend the maximum response time for maintenance on a case by case basis if the signal remains operational in a satisfactory manner and the condition poses no immediate hazard to the public.

iii. Permanent work shall be completed as soon as possible and in all cases no less than fourteen (14) calendar days, unless extended in writing by the City and as agreed upon by City and Contractor.

iv. Failure to meet the response time requirements by the Contractor shall be sufficient cause for the City to authorize maintenance to be completed by others and deduct the costs of said maintenance from payments due the Contractor. Repetitive failure shall be deemed sufficient cause for the City to terminate the contract.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO AGREEMENT WITH WOODARD AND CURRAN INC. FOR DESIGN SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the first amendment to service agreement for design professionals with Woodard and Curran, Inc. for additional scope of services for improvements associated with Valley Water's Flood Control Project for \$71,697, increasing the total not to exceed contract amount to \$528,968.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land
Supporting Our Youth
Seniors
and Entire Community
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Transportation

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On June 26, 2019, the City Council authorized 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. The location of the improvements is Hale Avenue between Main Avenue and Wright Avenue (Attachment 1). The improvements will include roadway widening, sidewalks, storm drain system, and overhead utilities associated with the flood control project. Once complete, the improvements will be interconnected with the City's storm drain system.

Due to the timing of the Hale Avenue Extension Project and Valley Water's Phase II Upper Llagas Creek Flood Control Project, it will be necessary to coordinate the final Main/Hale connection improvements with the District's work in the area. The Hale Avenue Extension Project work that will be coordinated includes: 600 feet of roadway, six street lights, traffic signal and final curb/gutter/sidewalk placement at and just south of Main Avenue. Thus, this work will be removed from the Hale Extension Project and

incorporated into Valley Water's Phase II project for constructability, efficiency and cost saving purposes. Also, additional right of way must be acquired at three locations in order to generate more space for turn lanes at the Hale/Main intersection.

Thus, the First Amendment (Attachment 2) for additional scope of work with Woodard and Curran would include revising the Hale Avenue North plans to include the Hale Avenue Extension portion, preparing three legal descriptions and plats for right of way acquisition, provide additional coordination with utility companies, additional data collection, and increased construction support and project management. The First Amendment will increase the Woodard and Curran contract amount by \$71,697.

When the design is completed, the City would plan to construct the improvements in partnership with Valley Water through a cost sharing agreement, in 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 Avenue between Wright Avenue and Main Avenue 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

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 2A of the project and intends to have that completed by this Fall. Once the schedule for Phase 2A 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 approve the first amendment, however, this is not recommended as the City will be left with a project that will not meet the storm drainage needs of the future infrastructure associated with the Hale Avenue Extension Project.

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.
- City Council approved a consultant agreement with Woodard and Curran, Inc. for \$457,271 for the design of City improvements associated with Valley Water's Flood Protection Project on June 26, 2019.

FISCAL AND RESOURCE IMPACT:

Adequate funds are available for this additional scope of work within the 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](#) (Attachment 3). As a responsible agency, the City Council is required to consider the findings from the EIR before approval of this item.

LINKS/ATTACHMENTS:

1. First Amendment - Woodard Curran
2. Project Location Map
3. Final EIR (weblink)

FIRST AMENDMENT TO AGREEMENT WOODARD & CURRAN, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and WOODARD & CURRAN, INC., a Maine corporation, duly authorized to do business in California and will remain so during the term of this Agreement ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of July 9, 2019, for consultant services for a maximum compensation of FOUR HUNDRED FIFTY SEVEN THOUSAND TWO HUNDRED SEVENTY-ONE AND NO/00 DOLLARS (\$457,271.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS"). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, 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:

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the additional scope of services set forth in Exhibit "A" dated August 25, 2020."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed FIVE HUNDRED TWENTY-EIGHT THOUSAND NINE HUNDRED SIXTY-EIGHT AND NO/100 DOLLARS (\$528,968.00) and shall be billed based on the rate and basis set forth in **Exhibit B**. As of the Effective Date of this First Amendment, CONSULTANT'S billing rates have increased and are set forth in the attached revised Exhibit "B" dated August 25, 2020, attached hereto and incorporated herein by this reference. 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."

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 SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, the terms of this FIRST Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

 Michelle Bigelow, Deputy City Clerk

Date: _____

 Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

WOODARD & CURRAN, INC.

 Donald A. Larkin, City Attorney

Date: _____

By: _____

Title: _____
 Andy Neal, Senior Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: September 2, 2020

By: _____

Title: _____
 Bruce Nicholson, Corporate Secretary

Print Name and Title of Signer.

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

Date: September 10, 2020

Attachment: First Amendment - Woodard Curran (2851 : First Amendment with Woodard and Curran)

128-04-19-083

EXHIBIT 1

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS

THIS AGREEMENT is entered into and becomes effective on 7/9/19 (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 June, 26, 2019.
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

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: First Amendment - Woodward Curran (2851 : First Amendment with Woodward and Curran)

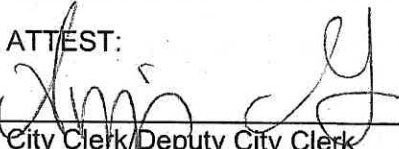
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

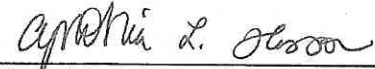
ATTEST:


City Clerk/Deputy City Clerk

for Michelle Bigelow
Print Name

Date: 7/19/19

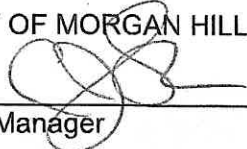
APPROVED AS TO FORM:


City Attorney

for Donald A. Larkin
Print Name

Date: 7-1-19

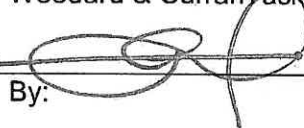
CITY OF MORGAN HILL


City Manager

Christina J. Turner
Print Name

Date: 7/5/19

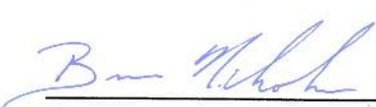
Woodard & Curran Task

By: 

Andy Neal, Senior Vice President
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: June 26, 2019

By: 

Bruce Nicholson, Corporate Secretary

Print Name and Title of Signer.

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

Date: June 26, 2019

Attachment: First Amendment - Woodard Curran (2851 : First Amendment 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

Michelle Bigelow
Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin
Print Name

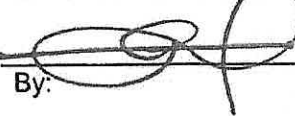
Date: _____

City Manager

Christina J. Turner
Print Name

Date: _____

Woodard & Curran Task

By: 

Andy Neal, Senior Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: June 26, 2019

By: 

Bruce Nicholson, Secretary

Print Name and Title of Signer.

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

Date: June 26, 2019

Attachment: First Amendment - Woodard Curran (2851 : First Amendment 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	Chi To	Desiree Huhart	Total Hours	Total Labor Costs (1)	Outside Services Mark Thomas & Co. Road Design, Undergrounding	Sub Consultant Total Cost (2)	Other Direct Costs (3)	Total
	Senior Technical Practice Leader	Senior Project Manager	Engineer 2	CAD	Project Assistant						
	\$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	\$10,320	\$50,557	\$55,813	\$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	\$0	\$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	\$21,006	\$12,777	\$14,054	\$440	\$35,502
Total without Contingency	80	22	124	50	24	300	\$65,062	\$266,853	\$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



City of Morgan Hill

Fee Estimate

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

Tasks	Glenn Hermanson Senior Technical Practice Leader	QA/QC Senior Project Manager	Nathan Hansen Engineer 2	Labor		Desiree Hugbarr Project Assistant	Total Hours	Total Labor Costs (1)	Outside Services & Mark Holmes & Co.		Sub Consultant Total Cost (2)	Total ODCs (3)	Total Fee
				Chg To					Road Design, Undergrounding				
Task 1: Surveying and Data Collection													
Task 1.1: Surveying and Data Collection													
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	\$9,818	\$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	\$0	\$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	\$9,604	\$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

- The individual hourly rates include salary, overhead and profit.
- 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%.
- 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

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

Exhibit A

Additional Scope of Services

August 25, 2020

The scope of various tasks is amended as described below.

Task 1 Data Collection

In addition to the existing scope: Provide one set of survey stakes for two new Temporary Utility poles required by PG&E near the western terminus of Warren Avenue.

Any existing paint marks from USA will be surveyed to provide evidence of utilities but utility locating is excluded from this scope of work. This base mapping effort is not to be considered a replacement for potholing.

Task 2 Plans, Specifications and Estimates

Task 2.2 90% PSE's

Provide additional coordination with utility companies and revise Hale Avenue Extension and Hale Avenue North Utility Undergrounding Plans to accommodate the construction of the Valley Water facilities as in Phase 2A.

Task 2.3 Prepare Final Plans, Specifications and Estimates

- a. Revise 23 plan sheets of the Hale Avenue Extension 100% complete plans and 19 sheets of the Hale North 90% complete plans to create Hale North Phase 2A Plans and Estimate.
- b. Prepare plats and legal descriptions for additional street right of way at 3 locations within the Hale Avenue North project as required by the City. Additionally, a plat and legal description will be prepared for the PUE required by PG&E for utility undergrounding facilities within the MHUSD parcel.
- c. Coordinate acquisition of Preliminary Title Reports from Old Republic Title Company for 2 parcels. The cost of the PTRs will be treated as reimbursable costs.

Task 3 Engineering Services During Construction

Effort under this task is increasing to accommodate the splitting of the work into multiple contracts.

Task 4 Project Management

Provide additional effort to plan, organize and direct work. The additional effort is based on additional coordination meetings among the City and Valley Water, and utilities.

Attachment: First Amendment - Woodard Curran (2851 : First Amendment with Woodard and Curran)

Revised Exhibit B
Hourly Rate Schedule
August 25, 2020

2020 Standard Rates	
Labor Category	2020 Rate
Engineer 2 (E2)	192
Engineer 3 (E3)	217
Senior Project Manager (SPM)	289
Senior Technical Practice Leader (STPL)	315
Senior Designer (SD)	169
Project Assistant (PA)	113
<i>Note: The individual hourly rates include salary, overhead and profit. Other direct costs (ODCs) such as reproduction, delivery, mileage (as allowed by IRS guidelines), and travel expenses will be billed at actual cost plus 10%. Subconsultants will be billed as actual cost plus 10%. Woodard & Curran, Inc., reserves the right to adjust its hourly rate structure at the beginning of each year for all ongoing contracts.</i>	

Attachment: First Amendment - Woodard Curran (2851 : First Amendment with Woodard and Curran)

City of Morgan Hill

Amendment 1
HALE AVENUE IMPROVEMENTS RELATED TO UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT

Tasks	Labor							Outside Services				ODCs	Total
	Xavier Irias/Glenn Hermanson	QA/QC	Nathan Hansen	Chu To	Joanne Johnson	Total Hours	Total Labor Costs	Mark Thomas & Co.	Subtotal	Sub Markup	Sub Consultant Total Cost	Total ODCs	Total Fee
	Senior Technical Practice Leader	Senior Project Manager	Engineer 2	CAD	Project Assistant								
Task 1: Surveying and Data Collection													
Task 1. Surveying and Data Collection			0	0		0	\$0	\$2,000	\$2,000	\$200	\$2,200	\$0	\$2,200
Subtotal Task 1:	0	0	0	0	0	0	\$0	\$2,000	\$2,000	\$200	\$2,200	\$0	\$2,200
Task 2: Plans, Specifications, and Cost Estimates													
2.1 Prepare 50% Plans, Specifications, and Cost Estimates						0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2.2 Prepare 90% Plans, Specifications, and Cost Estimates						0	\$0	\$10,000	\$10,000	\$1,000	\$11,000	\$0	\$11,000
2.3 Prepare Final Plans, Specifications, and Cost Estimates						0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
a. Revise plan sheets							\$0	\$50,000	\$50,000	\$5,000	\$55,000	\$0	\$55,000
b. Plats and legal descriptions							\$0	\$8,000	\$8,000	\$800	\$8,800	\$0	\$8,800
c. Coordinate PTR's							\$0	\$4,000	\$4,000	\$400	\$4,400	\$0	\$4,400
Subtotal Task 2:	0	0	0	0	0	0	\$0	\$72,000	\$72,000	\$7,200	\$79,200	\$0	\$79,200
Task 3: Engineering Services During Bid and Construction													
3.1 Construction Support	4		16			20	\$4,332	\$10,000	\$10,000	\$1,000	\$11,000		\$15,332
Subtotal Task 3:	4	0	16	0	0	20	\$4,332	\$10,000	\$10,000	\$1,000	\$11,000	\$0	\$15,332
Task 4: Project Management, QA/QC, and Meetings													
4.1 Project Management	4		36		13	53	\$9,641	\$2,000	\$2,000	\$200	\$2,200	\$0	\$11,841
4.2 Meetings	6		32			38	\$8,034	\$1,000	\$1,000	\$100	\$1,100	\$0	\$9,134
4.3 QA/QC		10				10	\$2,890	\$1,000	\$1,000	\$100	\$1,100	\$0	\$3,990
Subtotal Task 4:	10	10	68	0	13	101	\$20,565	\$4,000	\$4,000	\$400	\$4,400	\$0	\$24,965
Total Extra work	14	10	84	0	13	121	\$24,897	\$88,000	\$88,000	\$8,800	\$96,800	\$0	\$121,697
less transfer from contingency													\$50,000
Net Amendment													\$71,697

Note: Amounts shown above are in addition to the base contract. Terms of the original contract remain.

Attachment: First Amendment - Woodard Curran (2851 : First Amendment with Woodard and Curran)



Attachment: Project Location Map (2851 : First Amendment with Woodward and Curran)

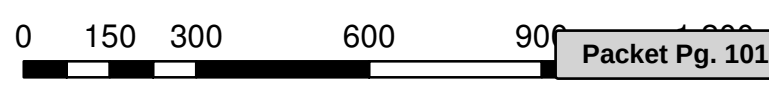
County of Santa Clara, San Jose



**Engineering and Utilities Department
CIP Engineering Division**

Document Path: G:\R-14\PROJ\GIS\StaffReport_SiteMaps\Hale Ave Project Location Map.mxd

Project Location Map For Hale Avenue North Improvements





CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO BRIGHTVIEW GROUPS 1, 3, AND 6 MAINTENANCE SERVICE AGREEMENT

RECOMMENDATION(S)

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Approve and authorize the City Manager to execute and administer the third amendment to the maintenance service agreement with Brightview Landscape Services, Inc. extending the agreement for one additional year of service at \$134,183 and increasing the total contract amount to \$528,258; and

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a third amendment to the City's contract for landscape maintenance services with Brightview Landscape Services, Inc. If approved, the amendment will extend the term of the agreement by one year. This amendment will increase the total amount of the agreement by \$134,183 for the additional year of service.

The City has long contracted with landscape maintenance contractors to provide services and has divided the work into different groupings of similar services. The groups that are the subject of this report include: Group 1- Park Mowing and Edging; Group 3-Street Medians, Streetscapes, Parking Lots and Misc. Facility; and Group 6- Downtown Area. The City's current contract with Brightview Landscape Services for these three groups expires on December 31, 2020. The original amount of the Agreement was \$261,552 for two years. On November 29, 2018, the First Amendment to the Agreement memorialized the deletion of the El Toro Youth Center from Group 3 for \$2,860 and the addition of the Bioswale next to the Downtown Parking Garage to Group 6 for \$1,200. The net change to the contract amount was a net reduction of \$1,660 for a new contract amount of \$259,892. On October 31, 2019, the Second Amendment extended the term of the agreement by one year to December 31, 2020.

The annual amount of the contract increased by approximately 4% to \$134,183 and the total agreement amount increased to \$394,075.

With the termination of the agreement coming up, staff prepared to go out to bid in order to establish a new agreement. Before doing so, however, Brightview offered to extend the agreement for an additional year with no change in service costs. Staff is aware that labor and material costs have increased since this agreement was established in 2017. There are also additional costs related to workplace safety due to COVID. Based on the City's last landscape contract bidding process, which resulted in substantially higher bids, staff believes that issuing competitive bids for these groups at this time is likely to result in substantially higher bids.

Section 3.04.150(1) of the Morgan Hill Municipal Code authorizes this action if the Council determines that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances. Staff has been satisfied with the services performed by Brightview Landscape Services and recommends that the Third Amendment be approved based on the City Council's determination that soliciting competitive bids would not be likely to result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances. The Amendment extends the term by one year while increasing total compensation allowed by the agreement by the annual amount of \$134,183. The new total amount of the agreement will be \$528,258.

COMMUNITY ENGAGEMENT: Not Applicable

As landscape maintenance services are a regular and expected City service, no efforts were made to inform the community about this proposed contract amendment.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to proceed with a request for proposals (RFP) for landscape maintenance services in order to have a new agreement in place by January 1, 2021. Recent RFP and bid results in other areas have shown significant increases in pricing and staff does not believe an RFP will result in improved pricing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council previously awarded the original agreement to Brightview Landscape Services, Inc. on December 6, 2017. The First Amendment to the agreement was approved on October 17, 2018. The Second Amendment was approved via City Manager authority on October 31, 2019.

FISCAL AND RESOURCE IMPACT:

The funding for the landscape maintenance services is included in many areas of the City's operating budget, including Park Maintenance, Street Maintenance, Downtown Maintenance and Landscape Assessment Districts.

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Third Amendment Brightview Groups 1, 3, and 6

THIRD AMENDMENT TO AGREEMENT BRIGHTVIEW LANDSCAPING SERVICES, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and BRIGHTVIEW LANDSCAPING SERVICES, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of January 4, 2018, for services for a maximum compensation of TWO HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO DOLLARS (\$261,552) ("MAINTENANCE SERVICE AGREEMENT").
3. On April 16, 2018, CITY notified SERVICE PROVIDER to stop providing services to El Toro Youth Center effective May 1, 2018 resulting in a decrease in the Agreement by \$2,860.00 to TWO HUNDRED FIFTY-EIGHT THOUSAND SIX HUNDRED NINETY-TWO DOLLARS (\$258,692.00)
4. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 29, 2018, adding additional services under which the maximum compensation was increased to TWO HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED NINETY-TWO DOLLARS (\$259,892.00).
4. The CITY and SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of October 31, 2019, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to THREE HUNDRED NINETY-FOUR THOUSAND SEVENTY-FIVE AND 04/100 DOLLARS (\$394,075.04). The MAINTENANCE SERVICE AGREEMENT, and the First and Second Amendments thereto, are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from January 4, 2018, until December 31, 2021. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. Amount. Compensation under this Agreement shall not exceed FIVE HUNDRED TWENTY-EIGHT THOUSAND TWO HUNDRED FIFTY-EIGHT AND 08/100 DOLLARS (\$528,258.08) and shall be billed based on the rate and basis set forth in **Exhibit B**. As of the January 1, 2021, SERVICE PROVIDER'S billing rates have increased and are set forth in the attached revised Exhibit "B" dated August 19, 2020. 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 SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the preceding term of this Agreement."

C. Paragraph 8.2.2. shall be amended and replaced in its entirety by the following:

"8.2.2 Workers Compensation.

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

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(Signatures on Next Page)

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, Deputy City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

BRIGHTVIEW LANDSCAPING SERVICES, INC.

Donald A. Larkin, City Attorney

Date: _____

By:

Title:

Fred Freund, SVP

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

08/27/2020

Date:

[Signature]

By:

Title:

CFO, Maintenance Services

Print Name and Title of Signer.

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

Date:

9/2/2020

Attachment: Third Amendment Brightview Groups 1, 3, and 6 (2847 : Brightview 1, 3, and 6 Third Amendment)

**SECOND AMENDMENT TO AGREEMENT
BRIGHTVIEW LANDSCAPE SERVICES, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 10/31/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and BRIGHTVIEW LANDSCAPE SERVICES, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of January 4, 2018, for services for a maximum compensation of TWO HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO DOLLARS (\$261,552.00) ("MAINTENANCE SERVICE AGREEMENT").
3. On April 16, 2018, CITY notified SERVICE PROVIDER to stop providing services to El Toro Youth Center effective May 1, 2018 resulting in a decrease in the Agreement by \$2,860.00 to TWO HUNDRED FIFTY-EIGHT THOUSAND SIX HUNDRED NINETY-TWO DOLLARS (\$258,692.00).
3. The CITY and SERVICE PROVIDER entered into a "First Amendment" made as of November 29, 2018, adding additional services under which the maximum compensation was increased to TWO HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED NINETY-TWO DOLLARS (\$259,892.00). The Maintenance Agreement and the First Amendment are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from January 4, 2018, until December 31, 2020."

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 THREE HUNDRED NINETY-FOUR THOUSAND SEVENTY-FIVE AND 04/100 DOLLARS (\$394,075.04) and shall be billed based on the rate and basis set forth in Revised **Exhibit B** dated October 3, 2019."

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."

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Signature on Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

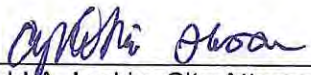
- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

rw 
 Michelle Bigelow, Deputy City Clerk

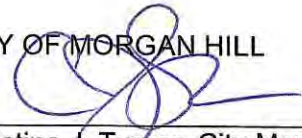
Date: 11/8/19

APPROVED AS TO FORM:

rw 
 Donald A. Larkin, City Attorney

Date: 10-25-19

CITY OF MORGAN HILL


 Christina J. Turner, City Manager

Date: 10/31/19

BRIGHTVIEW LANDSCAPE SERVICES, INC.


 By: **Fred Freund, SVP**

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 10/21/2019

Brett Urban

By: CFO BrightView Maintenance Services

Print Name and Title of Signer.

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

Date: 10/22/2019

128-04-18-001

EXHIBIT "1"

**FIRST AMENDMENT TO AGREEMENT
BRIGHTVIEW LANDSCAPE SERVICES, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on November 29, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and BRIGHTVIEW LANDSCAPE SERVICES, INC., a California corporation ("SERVICE PROVIDER").

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 October 17, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of January 4, 2018, for services for a maximum compensation of TWO HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO AND NO/100 DOLLARS (\$261,552.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.
3. On April 16, 2018, SERVICE PROVIDER was notified to stop providing services to El Toro Youth Center effective May 1, 2018, thereby reducing the contract by \$2,860.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

- A. Paragraph 3 shall be amended by adding the following:

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "2":

In addition to the services stated in the original MAINTENANCE SERVICE AGREEMENT, the services to be performed by SERVICE PROVIDER shall consist of the deleted and additional services set forth in Exhibit "2" dated October 17, 2018, and incorporated herein by this reference."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed TWO HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED NINETY-TWO AND NO/100 DOLLARS (\$259,892.00) and shall be billed based on the rate and basis set forth in revised Exhibit B dated October 17, 2018. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2, the City Manager shall have the authority to increase the maximum

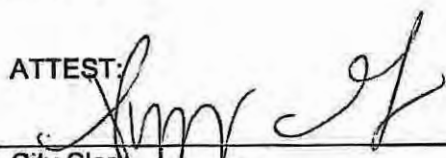
compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.

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

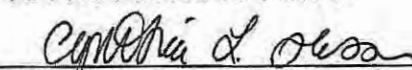
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

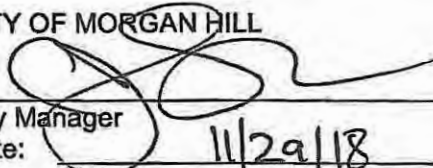
ATTEST:

Deputy 
 City Clerk
 Date: 12/11/18

APPROVED AS TO FORM:

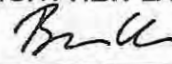

 City Attorney
 Date: 11-19-18

CITY OF MORGAN HILL


 City Manager

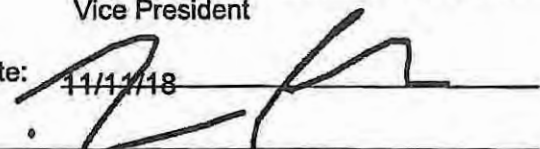
Date: 11/29/18

BRIGHTVIEW LANDSCAPE SERVICES, INC.


 By: Brett Urban, CFO BrightView Landscape Services
 Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: 11/11/18


By: VP Finance
 Title:

Print Name and Title of Signer.

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

Date: 11/13/2018

128-04-18-001

EXHIBIT "1"

MAINTENANCE SERVICE AGREEMENT
Brightview Landscape Services, Inc.

THIS AGREEMENT is entered into and becomes effective on 1/4/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Brightview Landscape Services, 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 action of the Morgan Hill City Council taken on December 6, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2019 at which time SERVICE PROVIDER'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 SERVICE PROVIDER shall be landscape maintenance and irrigation services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$261,552.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred sixty-one thousand five hundred and fifty-two 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 SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER 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. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product

or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT 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 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.**

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.

- 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:

Brightview Landscape Services, Inc.
450 Phelan Avenue
San Jose, CA 95112

Address of CITY is as follows:

Chris Ghione, CS Director	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. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 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.

16.2. **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.

16.3. **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.

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

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

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Updated: October 2017

19. **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.

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.** 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").

21.2. **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.

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 SERVICE PROVIDER.

21.4. **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 (21) 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.

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

22. **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.

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 SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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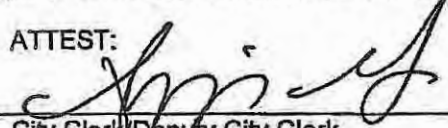
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

mw
 Michelle Wilson
 Print Name

Date: 1/5/18

APPROVED AS TO FORM:


 City Attorney

Donald A. Larkin
 Print Name

Date: 1/3/2018

CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

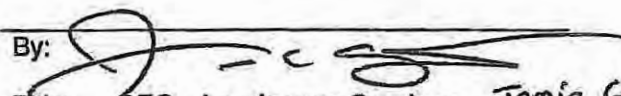
Date: 1/4/18

BRIGHTVIEW LANDSCAPE SERVICES, INC.

By: 

Jeff Harold
 Title: President - Landscape Services
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: 11/27/2017

By: 

Jamie Gollotte
 Title: CFO - Landscape Services
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 11/27/2017

266211
 Contractor's License Number(s) (if applicable)

Expiration Date(s) 3/31/18

Seal:
 U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

1000005364
 Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 6/30/18

EXHIBIT A SCOPE OF SERVICES

The scope of work is the City of Morgan Hill's Landscape Groups 1, 3 and 6. Group 1 is Park Mowing and Edging, Group 3 is Street Medians and Group 6 is the Downtown Landscape Maintenance.

The City will regularly inspect the Contractor's work and rate it according to the maintenance standards in the Request for Proposals. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection.

The Contractor will be paid for work rated as "meets standards". Contractor will not be paid for work rated as "below standard" until conditions improve and rate as "meet standards" if the below standard work is attributed to neglect on the part of the Contractor. If an area does not meet City standards, it will be considered "below standard". Contractor will not be paid additional amounts for remedial work required to improve "below standard" areas if the below standard work is attributed to neglect on the part of the Contractor. City staff will work closely with Contractor's representatives to achieve the results described in the standards and inspection criteria. However, responsibility for meeting standards rests with the Contractor.

The Contractor shall be responsible for maintaining landscapes as described in this document and per the maintenance standards outlined in Exhibits A. The cost of maintaining the areas shall be included in the base bid unless otherwise called out as "extra work" in this Request for Proposals. During the first three (3) months of the contract, the Contractor will receive one hundred percent (100%) of the monthly contract payment. During this period, Contractor will inspect the sites at least monthly and will discuss inspections with City. This process and time frame will allow the Contractor time to become familiar with the individual locations. Following this period, the Contractor shall perform quality assurance inspections a minimum of every month, or more frequently if deemed necessary by the Contractor.

The Contractor will provide electronic versions of the monthly inspections to the City by the 10th of the following month as to each site's compliance with City standards. An action plan with deadlines must be provided to the City to indicate when corrections will be made if an area is deemed "below standard". Failure to turn in inspections by the deadline will result in a monthly payment being withheld until inspections are turned in, and one hundred dollar (\$100) deduction from their monthly payment.

There will be a financial impact to the Contract if any scheduled use, (including, but not limited to, special events or recreation programs) of City facilities are impacted by neglect on the Contractor's part. Any costs associated with re-scheduling the event/activity/program may be the responsibility of the Contractor for staffing and costs, including, but not limited to lost revenue, staff salaries and alternate contractor costs, etc.

The City will perform weekly inspection reports, which will be e-mailed to the Contractor. The first time a site fails to meet City Standards as a result of these inspections the Contractor will have two (2) weeks to bring the site back into compliance. For Group 6 – Downtown, the Contractor will have one (1) week to bring the site back into compliance. If the same site is not in compliance for the same standard at any time after the first warning, no warning will be given and penalties will be

incurred. If a site is not brought back into compliance within the allotted timeframe the following penalties will occur:

1. First Penalty: Contractor to receive warning.
2. Second Penalty: At the same site within twelve (12) months of the First Penalty Assessment, the Contractor will be assessed a \$25 monthly deduction per deficiency.
3. Third Penalty: At the same site within (12) months of the First Penalty Assessment, the Contractor will be assessed a \$75 monthly deduction per deficiency.

The parties will observe the following progressive problem resolution process:

1. Written notice of the problem.
2. Field conference with City inspector and Contractor's field representative to identify problem and agree on solution as presented by Contractor.
3. Conference between City's representative and Contractor's principal.
4. Imposition of penalties and/or correcting defect at Contractor's cost.
5. Termination of Contract.

1-21 INSPECTION OF SITE WORK

Contractors are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Contractors may apply to the City for additional information and explanation before submitting proposals. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy itself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.

Submission of a proposal by a Contractor shall constitute acknowledgment that the Contractor has relied, and is relying, on its own examination of: (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work and, on his/her own knowledge of existing facilities on and in the vicinity of the site of the work and not on any representation or warranty of the lack of knowledge of the above items.

2-1 NORMAL HOURS AND DAYS OF MAINTENANCE SERVICES

- A. For the Community & Cultural Center, Gavilan College & Morgan Hill Playhouse Parking Lots, unless otherwise specified, work hours shall be 7:00 am to 12:00 noon Monday through Friday.
- B. For the Third Street Creek Park and Nob Hill Trail Park work hours shall be every Monday and Thursday between 7:00am and 5:00 pm.
- C. At all other locations, the Contractor shall perform the required maintenance services between the hours of 7:00 a.m. and 5:00 pm Monday through Friday and on weekends with prior City approval.
- D. The Contractor shall conduct the work at all times in a manner which will not interfere with normal recreation programs, school programs, pedestrian traffic on adjacent sidewalks, or vehicular traffic on adjacent streets.
- E. Any modification in the hours and days of maintenance services as stated in the Contractor's service schedule is subject to approval by the City.

2-2 PERIODIC PROJECT INSPECTIONS

Upon request, the Contractor will walk the project with the City's representative to determine and confirm compliance with the specifications or to discuss required work. The Contractor's representative must be authorized to sign documents and make changes to the work.

2-3 PERFORMANCE DURING INCLEMENT WEATHER

During periods of excessive rainfall that hinders normal operations, the Contractor shall adjust its workforce to accomplish those activities that are not affected by weather. The prime factors in assigning work shall be the safety of the workforce and damage to parks and landscaping.

2-4 NOTICE TO PROCEED

As soon as practical after execution of the Contract, and after receipt of acceptable insurance certificates by City, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

2-5 ACCEPTANCE

- A. Acceptance by the City of any services furnished under the Contract shall occur only subsequent to the final review of authorized employees of the City.
- B. The City shall reject and refuse to pay for, any and all non-conforming services.
- C. Nothing in this section shall limit or restrict the warranty and remedy obligations of the Contractor specified in the Standard Consultant Agreement.

2-6 LICENSES REQUIRED FOR DURATION OF CONTRACT

- C-27 Landscape Contractor License
- City of Morgan Hill Business License
- Qualified Applicator License (includes Santa Clara County Registration)
- Registered with the California Dept. of Industrial Relations as a Public Works Contractor (PWC)

SAFETY

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations in performing the work under this Contract. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize themselves with the aforementioned safety provisions shall not relieve them from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

2-7 RESPONSE

Contract supervision shall be immediately available at all times when Contractor employees are working on sites, must be available from 7:00 am to 10:00 pm each day via telephone, and must respond to an emergency situation/major discrepancy in the Contract within two (2) hours of initial contact.

2-8 QUALIFIED CONTRACTOR SUPERVISION

All of Contractor's supervisors must be qualified, proficient in English, trained and capable of providing adequate supervision and direction to all Contractors' employees and must demonstrate verbal and written communication skills sufficient for the work required herein.

2-9 CONTRACTOR'S EMPLOYEES

This Contract is intended to be a "partnership" between the City and the Contractor. The Contractor and his/her employees are agents of the City of Morgan Hill and represent the City in the performance of their work. Only Contractor's employees or subcontractors are allowed on City premises where work is being performed. The City shall have the right to have Contractor remove

from assignment to City facilities such Contractor and/or subcontractor employees as shall be deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interest of the City. Contractor's employees and subcontractors shall not smoke tobacco on any City property.

2-10 EMPLOYER PROVIDED UNIFORMS

The Contractor shall provide each of its employees with uniforms. Uniform apparel shall be kept neat, clean, and in good repair. All uniforms shall include the Contractor's name and logo. Contractor and subcontractor personnel shall wear uniforms at all times.

2-11 CONTRACTOR'S EQUIPMENT

The on-site supervisor shall ensure that all contractor-supplied equipment is in good working order. Any damaged equipment or equipment in need of repair shall be removed from the site. Contractor shall be responsible for any damage to the work sites, City or private property, or any injuries caused by Contractor's equipment or personnel.

2-12 LOCKS AND KEYS

The Contractor shall be responsible for the series of keys assigned to it and shall assign these keys to its personnel for use in maintaining the facilities. The Contractor shall properly use and keep safe all keys or locks issued by the City to the Contractor.

The Contractor shall report all lost or stolen keys or locks to the City within twenty-four (24) hours of discovery. The Contractor shall reimburse the City for the total cost of replacement keys and/or locks that have been lost.

Upon termination or cancellation of the Contract, the Contractor shall immediately return all keys, cards, remotes, etc., to the City. The Contractor shall reimburse the City for the total cost of lost items.

2-13 VANDALISM AND ACCIDENTAL DAMAGE

City assumes responsibility for the cost of repairing or replacing appurtenances significantly damaged by persons other than the Contractor or its agents. Vandalism or accidental damage repair costs shall be based on unit costs submitted by Contractor in the proposal or on time and materials quotes for work not called out in the proposal. Contractor shall be responsible for reporting damage to City and repairing or replacing all appurtenances damaged by Contractor or Contractor's agents.

2-14 WATER MANAGEMENT PROGRAM

Monthly, from March through November, the Landscape Maintenance Contractor must provide to the City a report of irrigation controller settings for the current month in electronic format. This report will include the following information:

- A. All irrigation programs set on controllers.
- B. Irrigation schedule start times for each irrigation program.
- C. Irrigation run days for each Irrigation program.
- D. Irrigation cycle length, in minutes for each station in an irrigation program.
- E. Number of repeat cycles for each station in an irrigation program.

All required scheduling and operation of the automatic irrigation controllers reflecting weather changes and water needs will be covered under this Contract. Contractor shall make all adjustments and setting of automatic controllers to establish frequency and length of watering periods. Any malfunction of controllers must be reported to the City along with a proposal for correction with costs.

All systems shall be programmed as needed to maintain plants in a healthy, vigorous condition. The irrigation controller program is to be sufficient to keep the plant material healthy without excessive water use.

- A. Controller programs shall incorporate the following conditions: Meet City Water Management requirements
- B. Program around Park and Facility use and events
- C. Reflect actual evapotranspiration (E.T.) requirements
- D. Reflect actual requirements of soil and plants
- E. Eliminate runoff onto streets, sidewalks, and other non-target areas

The Water Management Program is designed to optimize park and landscape water usage through field testing and irrigation schedule development. Soil moisture levels can be compared to irrigation schedules and plant water requirements to assist in responsible management of each park and landscape irrigation valve zone.

A. Irrigation Schedule Analysis:

Monthly during irrigation season (March through November), the Contractor will provide the City with the current month's irrigation schedules and monthly report on the required system check no later than the 10th day of the month. The irrigation schedules are analyzed by comparing the minutes of irrigation run time, plant water requirement and the level of environmental demand (evapotranspiration). Valve areas appearing to be over or under watered are to be further tested by the Contractor as outlined below.

B. Soil Moisture Testing:

Valve areas suspected to be over or under watered should be tested between May and October by the Contractor by removing a soil sample and testing the moisture content. Soil probing is conducted to determine soil moisture levels for automated overhead irrigation circuits.

C. Irrigation Base Schedule Development:

A monthly irrigation base schedule is developed based upon current controller settings and the feedback of moisture probing results. Adjustments are made at the controller either up or down where soil is found to be too dry or too wet. Once the Contractor has the correct run times for any given month, the starting "base schedule" is acquired. Adjustments to the "base schedule" shall occur throughout the month to accommodate changes in area use and/or environmental changes to individual sites.

D. Drought Impact on Irrigation:

The Contractor shall comply with all water use regulations and restrictions. In addition, Contractor shall comply with City directed changes in irrigation in response to drought conditions.

E. Irrigation System Evaluation:

Annually the City will turn off all landscape water accounts November through March (if warmed than expected weather occurs this might be altered). When accounts are turned back on in March each year the Contractor shall perform a complete system check of every irrigation system. The Contractor shall supply the City with a written report of every system as it is completed. Needed repairs shall occur throughout that same time period, and with the approval of the City, to ensure a fully operational system at the beginning of each spring. System evaluations of head, valves, quick couplers, etc. shall also occur monthly, at a minimum, March through November.

For any controller schedule or system check report not supplied by the 10th day of the current month by Contractor in any month, a \$50.00 penalty per controller will be assessed.

City will provide all the water and electricity necessary for the Contractor to perform the services except instances where excessive costs are incurred by the City due to waste or negligence by the Contractor. If the City determines that excessive utility costs due to waste or negligence have occurred and are a result of Contractor's actions, the City may withhold from payment to Contractor those funds necessary to reimburse the City for these additional costs. If there is a difference of opinion between the City and the Contractor as to the whether or not there has been waste due to the negligence of the Contractor, the opinion of the City will prevail.

Irrigation system repair shall occur and be compensated as stated below.

- A. Irrigation system repair will be the responsibility of the Contractor. All replacement materials are to be with new original types and models, unless a substitute is approved by the City. The Contractor shall implement repairs in accordance with all effective warranties, and no separate payment shall be made for repairs on equipment covered by warranties.
- B. Maintenance, repair, and replacement of malfunctioning sprinkler heads and quick couplers, including risers, swing joints, shall be included in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.
- C. Maintenance and repair of valves, filters, valve boxes, batteries and wiring shall be covered in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.
- D. Replacement of valves, filters, valve boxes, and wiring shall be considered "extra work" in their entirety. Decisions regarding repair verses replacement will be made by the Contractor and the City jointly. In the event that there is a disagreement with regards to how to proceed, the City's choice will prevail.
- E. Repair and replacement of lateral lines, main lines, check valves, and controllers shall be considered "extra work" in their entirety.
- F. Repairs and replacements of any irrigation component or property damaged by the Contractor or as a result of negligence, error, or omission by the Contractor shall not be submitted to the City for payment and are the responsibility of the Contractor.
- G. Repair and replacement of any irrigation components or property that is a result of vandalism, or unintentional damage, caused by the public shall be considered "extra work" in its entirety. All vandalized components must be presented to the City within one working day of the repair or replacement in order for the Contractor to be compensated for the repair or replacement. If the vandalized components are not presented within one working day the Contractor will be paid based on the above stated criteria for repair and replacement.
- H. When the Contractor observes or is notified of water waste due to excessive overspray, overwatering for irrigation system malfunction, he/she shall respond within 24 hours. Repairs/adjustments shall be completed promptly to prevent damage to the landscape.

2-15 PLANT LOSS

It is one of the Contractor's prime responsibilities to prevent loss of plants caused by pests, diseases, insects, soil conditions, nutrient, micro-climatic conditions, improper planting, or problems in irrigation.

Contractor agrees to be continuously alert in locating and defining problems and agrees to exercise prompt and proper corrective action. A preliminary written report shall be submitted for major corrective problems not covered in the Contract along with the costs.

Contractor agrees to replace, at the Contractor's cost, any dead, stunted, or damaged that are the result primarily of the Contractor's negligence including, but not limited to, irrigation malfunctions that are not addressed within a reasonable amount of time based on environmental conditions. Plants lost from Contractor's negligence shall be replaced, at the Contractor's expense, within thirty (30) days of discovery. Replacement plants shall be comparable in size to the lost plant up to a maximum size of a thirty-six (36) inch box, or if smaller, the size shall be approved by the City.

The Contractor shall not be held responsible for plant losses due to maladies beyond the Contractor's control; this includes, but is not limited to, disease or insect attack for which there is no legal recommended control, acts of vandalism, earthquakes, fires, storms, freezing/frost, and related events. Contractor shall report all such conditions to the City in writing within seventy-two (72) hours of occurrence, and submit a proposal for the work or repairs along with the costs. The Contractor shall obtain City's written permission/direction or authorization prior to proceeding with the work. Failure to notify the City within seventy-two (72) hours of occurrence will result in replacement at the Contractor's cost as if the cause was Contractor negligence.

The City shall approve all replacement plants that differ in species. However, it is agreed that replacing plants shall not be used by the Contractor as a substitute for proper care. The City will consider Contractor negligence a major breach of contract with full responsibility for costs and losses.

Dead plants and those in a state of decline shall be brought to the City's attention immediately and before removal. The City shall pay labor and material for plant replacement not caused by Contractor negligence, as deemed by the City, on an actual time and material basis.

All new plant material and irrigation installations or repairs shall be guaranteed for a period of ninety (90) days for unhealthy plant installation and/or poor workmanship. Exceptions include damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the Contractor has no control. Existing plants shall be replaced by Contractor if they die due to Contractor's negligence. All replacement plants and materials shall be inspected and approved by City prior to installation.

At the end or termination of the Contract, the City reserves the sole right to withhold final payment(s) in the amount necessary to replace any damaged or dying plant material that is a result of Contractor negligence or to restore any site which is in a condition that is worse than when the Contract was executed.

2-16 TURF AERATION

The Contractor shall perform core aerations of turf (no mow areas excluded) as part of the base bid. Two (2) aerifications are required in all turf areas each year. Aeration plugs shall be properly destroyed so as to not pose a safety issue or interfere with the use of parks and facilities. The aeration schedule shall be coordinated with the City during the first month of the contract period. Additional turf aerations may be proposed, as "extra work" by the Contractor, in order to meet the designated standard. All proposals, and costs, must be approved by the City prior to additional turf aerations occurring.

2-17 FERTILIZATION

The Contractor will be responsible for performing all fertilizations of turf and landscape and shall be included in the base bid. The fertilization schedule shall be coordinated with the City during the first month of the contract period.

All turf areas (excluding no-mow) shall receive fertilizer applications four times per year. Approximate dates of these are April 1, June 1, September 1, and November 1. Turf is to be maintained in good condition with horticultural acceptable growth and color, and additional fertilization may be required as extra work. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

All shrub, groundcover and no-mow turf areas shall receive fertilizer applications two times per year. Approximate dates of these are March 1 and September 1. Intent is to maintain plants in good condition with horticultural acceptable growth and color. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

2-18 BARK AND MULCH

The Contractor will be responsible for notifying the City when areas are in need of new bark or mulch. The City reserves the right to have the bark installed in any manner that it sees fit and by whomever it sees fit. In the event that the City requests that new bark mulch be added by the Contractor, it will be considered "extra work" in its entirety.

2-19 TREE PRUNING

The Contractor shall prune trees for clearance as part of the base bid. Pedestrian clearance shall be eight feet (8') and vehicular clearance shall be fifteen feet (15'). Responsibility for structural grid pruning, weight reduction pruning, etc. shall not be contained in the base bid and will be considered "extra work". The City reserves the right to perform this work in any manner that it deems appropriate.

2-20 MOWING AND EDGING

Lawn mowing and edging shall be performed as needed to meet the City landscape standards. When lawns cannot be cut on the scheduled day due to rain, they must be cut as soon as weather and ground conditions permit. This trimming shall include cutting all grass along walls, fences, foundations, curbs, sidewalks, shrubs, tree basins, poles, guy wires, irrigation & utility boxes, and any other object within or immediately adjacent to the lawn areas. Turf and plantings around sprinkler heads shall be trimmed to provide maximum water coverage. Trimming shall be done by power edgers or by hand, but in no case will herbicides be permitted without prior written approval. Clippings shall be removed from all adjacent walkways and other paved surfaces immediately after each mowing/edging.

Seed heads on no-mow turf shall be removed on an annual basis. No-mow turf shall be edged as needed to keep from encroaching on walls, fences, sidewalks, etc.

2-21 REFUSE DISPOSAL

All refuse and recycling materials are to be placed in the trash dumpsters and recycling containers located at the Morgan Hill Corporation Yard. Green waste is to be placed in bins provided by the City at the Bus Yard across the street from the Corporation Yard.

2-22 TRAFFIC CONTROL

Traffic control shall conform to the latest Caltrans Standards to ensure safe flow of traffic and safety of workers in traffic zones. All traffic control costs shall be included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

The Maintenance Manager shall be notified prior to any road closures. No traffic lanes on Dunne Avenue, Cochrane Road, Butterfield Blvd., Tennant Ave., or Monterey Road may be closed before 9:00 a.m. or after 3:00 p.m. without written permission from the Maintenance Manager. Access to driveways shall be maintained at all times.

When entering or leaving roadways which bear public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

The provisions in this section may be modified or altered if, in the opinion of the Maintenance Manager, public traffic will be better served and work expedited. Such modifications or alterations shall not be adopted until approved in writing by the Maintenance Manager.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Group 1: Park Mowing

		Monthly	# of months	Annual Amt.
Community Park	\$	1,560.00	12.00	\$ 18,720.00
Galvan Park	\$	390.00	12.00	\$ 4,680.00
Paradise Park	\$	390.00	12.00	\$ 4,680.00
Diana Park	\$	135.00	12.00	\$ 1,620.00
Howard Weicert	\$	203.00	12.00	\$ 2,436.00
Nordstrom Park	\$	65.00	12.00	\$ 780.00
Jackson Park	\$	78.00	12.00	\$ 936.00
GRAND TOTAL				\$ 33,852.00

Group 3: Medians and Misc. Sites

		Monthly Maintenance	Irrigation	Annual Amt.
Arterial Medians	\$	1,870.00	\$ 224.00	\$ 25,128.00
East Dunne at Peppertree	\$	236.00	\$ 24.00	\$ 3,120.00
Friendly Inn & Lot	\$	228.00	\$ 32.00	\$ 3,120.00
El Toro Youth Center	\$	115.00	\$ 15.00	\$ 1,560.00
El Dorado	\$	50.00	\$ 15.00	\$ 780.00
Sunrise Meadows	\$	215.00	\$ 45.00	\$ 3,120.00
GRAND TOTAL	\$	2,714.00	\$ 355.00	\$ 36,828.00

Group 6: Downtown

		Monthly Maintenance	Irrigation	Annual Amt.
3rd Street Landscape btwn Monterey and Depot	\$	240.00	\$ 29.00	\$ 3,228.00
4th Street Landscape btwn Monterey and Depot	\$	80.00	\$ 10.00	\$ 1,080.00
County Courthouse	\$	240.00	\$ 29.00	\$ 3,228.00
Train Station West of Tracks	\$	160.00	\$ 19.00	\$ 2,148.00
Third Street Creek Park	\$	320.00	\$ 38.00	\$ 4,296.00
Nob Hill Trail Park	\$	320.00	\$ 38.00	\$ 4,296.00
Railroad Park	\$	320.00	\$ 38.00	\$ 4,296.00
Downtown Parking	\$	240.00	\$ 29.00	\$ 3,228.00
Depot Street btwn East Dunne and Main	\$	358.00	\$ -	\$ 4,296.00
GRAND TOTAL	\$	1,920.00	\$ 230.00	\$ 30,096.00

ANNUAL GRAND TOTAL FOR CONTRACTED SERVICES \$ 100,776.00

Extra Services Maximum Amount @\$30,000.00 per year or \$60,000.00 for two year term of contract

TWO-YEAR CONTRACT AMOUNT \$ 261,552.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Work to be scheduled per Exhibit A above in coordination with Maintenance Manager, Maintenance Coordinator or Maintenance Specialist.

Attachment: Third Amendment Brightview Groups 1, 3, and 6 (2847 : Brightview 1, 3, and 6 Third Amendment)

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Updated: October 2017

BRIGHTVIEW LANDSCAPE SERVICES, INC.
FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT

Exhibit 2- Revised Scope of Services

October 17, 2018

Scope to include all of the services specified in the original MAINTENANCE SERVICE AGREEMENT dated January 4, 2018, except as follows:

Delete from Group 3: Medians and Misc. Sites

El Toro Youth Center effective May 1, 2018.

Add to Group 6: Downtown

Monthly Maintenance of Bioswale west of downtown parking structure. Scope of work to include reseeding and broadleaf spraying.

BRIGHTVIEW LANDSCAPE SERVICES, INC.
 FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT
 EXHIBIT B-SCHEDULE OF COMPENSATION RATES
 OCTOBER 17, 2018 Revised

Group 1: Park Mowing

	Monthly	# of months	Annual Amt.
Community Park	\$ 1,560.00	12.00	\$ 18,720.00
Galvan Park	\$ 390.00	12.00	\$ 4,680.00
Paradise Park	\$ 390.00	12.00	\$ 4,680.00
Diana Park	\$ 135.00	12.00	\$ 1,620.00
Howard Weicert	\$ 203.00	12.00	\$ 2,436.00
Nordstrom Park	\$ 65.00	12.00	\$ 780.00
Jackson Park	\$ 78.00	12.00	\$ 936.00
GRAND TOTAL			\$ 33,852.00

Group 3: Medians and Misc. Sites

	Monthly Maintenance	Irrigation	Annual Amt.
Arterial Medians	\$ 1,870.00	\$ 224.00	\$ 25,128.00
East Dunne at Peppertree	\$ 236.00	\$ 24.00	\$ 3,120.00
Friendly Inn & Lot	\$ 228.00	\$ 32.00	\$ 3,120.00
El Toro Youth Center	\$ 145.00	\$ 15.00	\$ 1,860.00
El Dorado	\$ 50.00	\$ 15.00	\$ 780.00
Sunrise Meadows	\$ 215.00	\$ 45.00	\$ 3,120.00
GRAND TOTAL	\$ 2,714.00	\$ 355.00	\$ 36,828.00

Deleted from
Scope 4/2018

Group 6: Downtown

	Monthly Maintenance	Irrigation	Annual Amt.
3rd Street Landscape btwn Monterey and Depot	\$ 240.00	\$ 29.00	\$ 3,228.00
4th Street Landscape btwn Monterey and Depot ¹	\$ 80.00	\$ 10.00	\$ 1,080.00
County Courthouse	\$ 240.00	\$ 29.00	\$ 3,228.00
Train Station West of Tracks	\$ 160.00	\$ 19.00	\$ 2,148.00
Third Street Creek Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Nob Hill Trail Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Railroad Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Downtown Parking	\$ 240.00	\$ 29.00	\$ 3,228.00
Depot Street btwn East Dunne and Main	\$ 358.00	\$ -	\$ 4,296.00
GRAND TOTAL	\$ 2,278.00	\$ 230.00	\$ 30,096.00

ANNUAL GRAND TOTAL FOR CONTRACTED SERVICES

\$ 100,776.00

TWO-YEAR CONTRACT AMOUNT

\$ 201,552.00

Extra Services @ \$30,000 per year or \$60,000 for two year contract term

\$ 60,000.00

ORIGINAL TWO-YEAR CONTRACT TOTAL \$ 261,552.00

Per 4/16/18 Letter deleting El Toro Youth Center \$ 2,860.00

Revised Contract Amount on 4/16/18 \$ 258,692.00

Group 6: Downtown Monthly Maintenance Irrigation Annual Amt.

Attachment: Third Amendment Brightview Groups 1, 3, and 6 (2847 : Brightview 1, 3, and 6 Third Amendment)

Add Bioswale West of Parking Garage	\$ 80.00	0	\$ 960.00
ADDITIONAL AMOUNT FOR 15 MONTHS THROUGH DEC. 2019			\$ 1,200.00
REVISED CONTRACT TOTAL FOR 15 MONTHS THROUGH DEC. 2019			\$ 259,892.00

BRIGHTVIEW LANDSCAPE SERVICE, INC.
SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT
REVISED EXHIBIT B-SCHEDULE OF COMPENSATION RATES
 October 3, 2019

Group 1: Park Mowing

	Monthly	# of months	Current Annual Amt.	4% Increase	Third Year Annual Amt.
Community Park	\$ 1,560.00	12.00	\$ 18,720.00	\$ 748.80	\$ 19,468.80
Galvan Park	\$ 390.00	12.00	\$ 4,680.00	\$ 187.20	\$ 4,867.20
Paradise Park	\$ 390.00	12.00	\$ 4,680.00	\$ 187.20	\$ 4,867.20
Diana Park	\$ 135.00	12.00	\$ 1,620.00	\$ 64.80	\$ 1,684.80
Howard Weicert	\$ 203.00	12.00	\$ 2,436.00	\$ 97.44	\$ 2,533.44
Nordstrom Park	\$ 65.00	12.00	\$ 780.00	\$ 31.20	\$ 811.20
Jackson Park	\$ 78.00	12.00	\$ 936.00	\$ 37.44	\$ 973.44
GRAND TOTAL			\$ 33,852.00	\$ 1,354.08	\$ 35,206.08

Group 3: Medians and Misc. Sites

	Monthly Maintenance	Irrigation	Current Annual Amt.	4% Increase	Third Year Annual Amt.
Arterial Medians	\$ 1,870.00	\$ 224.00	\$ 25,128.00	\$ 1,005.12	\$ 26,133.12
East Dunne at Peppertree	\$ 236.00	\$ 24.00	\$ 3,120.00	\$ 124.80	\$ 3,244.80
Friendly Inn & Lot	\$ 228.00	\$ 32.00	\$ 3,120.00	\$ 124.80	\$ 3,244.80
El Dorado	\$ 50.00	\$ 15.00	\$ 780.00	\$ 31.20	\$ 811.20
Sunrise Meadows	\$ 215.00	\$ 45.00	\$ 3,120.00	\$ 124.80	\$ 3,244.80
GRAND TOTAL	\$ 2,599.00	\$ 340.00	\$ 35,268.00	\$ 1,410.72	\$ 36,678.72

Group 6: Downtown

	Monthly Maintenance	Irrigation	Current Annual Amt.	4% Increase	Third Year Annual Amt.
3rd Street Landscape btwn Monterey and Depot	\$ 240.00	\$ 29.00	\$ 3,228.00	\$ 129.12	\$ 3,357.12
4th Street Landscape btwn Monterey and Depot'	\$ 80.00	\$ 10.00	\$ 1,080.00	\$ 43.20	\$ 1,123.20
County Courthouse	\$ 240.00	\$ 29.00	\$ 3,228.00	\$ 129.12	\$ 3,357.12
Train Station West of Tracks	\$ 160.00	\$ 19.00	\$ 2,148.00	\$ 85.92	\$ 2,233.92
Third Street Creek Park	\$ 320.00	\$ 38.00	\$ 4,296.00	\$ 171.84	\$ 4,467.84
Nob Hill Trail Park	\$ 320.00	\$ 38.00	\$ 4,296.00	\$ 171.84	\$ 4,467.84
Railroad Park	\$ 320.00	\$ 38.00	\$ 4,296.00	\$ 171.84	\$ 4,467.84
Downtown Parking	\$ 240.00	\$ 29.00	\$ 3,228.00	\$ 129.12	\$ 3,357.12
Depot Street btwn East Dunne and Main	\$ 358.00	-	\$ 4,296.00	\$ 171.84	\$ 4,467.84
Bioswale West of Parking Garage	\$ 80.00	-	\$ 960.00	\$ 38.40	\$ 998.40
GRAND TOTAL	\$ 2,358.00	\$ 230.00	\$ 31,056.00	1,242.24	32,298.24

ANNUAL GRAND TOTAL FOR CONTRACTED SERVICES

\$ 100,176.00	\$ 4,007.04	\$ 104,183.04
\$ 30,000.00		30,000.00

Extra Services @ \$30,000 per year

SECOND AMENDMENT ANNUAL AMOUNT	134,183.04
CURRENT CONTRACT TOTAL THROUGH DECEMBER 2019	259,892.00
REVISED CONTRACT TOTAL THROUGH DEC. 2020	394,075.04

Attachment: Third Amendment Brightview Groups 1, 3, and 6 (2847 : Brightview 1, 3, and 6 Third Amendment)

BRIGHTVIEW LANDSCAPE SERVICE, INC.
THIRD AMENDMENT TO MAINTENANCE SERVICE AGREEMENT
REVISED EXHIBIT B-SCHEDULE OF COMPENSATION RATES
August 19, 2020

Group 1: Park Mowing

	Monthly	# of months	Year 2 Annual Amt.	Year 3 4% Increase	Year 3 Annual Amt.	Year 4 Annual Amount
Community Park	\$ 1,560.00	12.00	\$ 18,720.00	\$ 748.80	\$ 19,468.80	\$ 19,468.80
Galvan Park	\$ 390.00	12.00	\$ 4,680.00	\$ 187.20	\$ 4,867.20	\$ 4,867.20
Paradise Park	\$ 390.00	12.00	\$ 4,680.00	\$ 187.20	\$ 4,867.20	\$ 4,867.20
Diana Park	\$ 135.00	12.00	\$ 1,620.00	\$ 64.80	\$ 1,684.80	\$ 1,684.80
Howard Weicert	\$ 203.00	12.00	\$ 2,436.00	\$ 97.44	\$ 2,533.44	\$ 2,533.44
Nordstrom Park	\$ 65.00	12.00	\$ 780.00	\$ 31.20	\$ 811.20	\$ 811.20
Jackson Park	\$ 78.00	12.00	\$ 936.00	\$ 37.44	\$ 973.44	\$ 973.44
GRAND TOTAL			\$ 33,852.00	\$ 1,354.08	\$ 35,206.08	\$ 35,206.08

Group 3: Medians and Misc. Sites

	Monthly Maintenance	Irrigation	Year 2 Annual Amt.	Year 3 4% Increase	Year 3 Annual Amt.	Year 4 Annual Amount
Arterial Medians	\$ 1,870.00	\$ 224.00	\$ 25,128.00	\$ 1,005.12	\$ 26,133.12	\$ 26,133.12
East Dunne at Peppertree	\$ 236.00	\$ 24.00	\$ 3,120.00	\$ 124.80	\$ 3,244.80	\$ 3,244.80
Friendly Inn & Lot	\$ 228.00	\$ 32.00	\$ 3,120.00	\$ 124.80	\$ 3,244.80	\$ 3,244.80
El Dorado	\$ 50.00	\$ 15.00	\$ 780.00	\$ 31.20	\$ 811.20	\$ 811.20
Sunrise Meadows	\$ 215.00	\$ 45.00	\$ 3,120.00	\$ 124.80	\$ 3,244.80	\$ 3,244.80
GRAND TOTAL	\$ 2,599.00	\$ 340.00	\$ 35,268.00	\$ 1,410.72	\$ 36,678.72	\$ 36,678.72

Group 6: Downtown

	Monthly Maintenance	Irrigation	Year 2 Annual Amt.	Year 3 4% Increase	Year 3 Annual Amt.	Year 4 Annual Amount
3rd Street Landscape btwn Monterey and Depot	\$ 240.00	\$ 29.00	\$ 3,228.00	\$ 129.12	\$ 3,357.12	\$ 3,357.12
4th Street Landscape btwn Monterey and Depot'	\$ 80.00	\$ 10.00	\$ 1,080.00	\$ 43.20	\$ 1,123.20	\$ 1,123.20
County Courthouse	\$ 240.00	\$ 29.00	\$ 3,228.00	\$ 129.12	\$ 3,357.12	\$ 3,357.12
Train Station West of Tracks	\$ 160.00	\$ 19.00	\$ 2,148.00	\$ 85.92	\$ 2,233.92	\$ 2,233.92
Third Street Creek Park	\$ 320.00	\$ 38.00	\$ 4,296.00	\$ 171.84	\$ 4,467.84	\$ 4,467.84
Nob Hill Trail Park	\$ 320.00	\$ 38.00	\$ 4,296.00	\$ 171.84	\$ 4,467.84	\$ 4,467.84
Railroad Park	\$ 320.00	\$ 38.00	\$ 4,296.00	\$ 171.84	\$ 4,467.84	\$ 4,467.84
Downtown Parking	\$ 240.00	\$ 29.00	\$ 3,228.00	\$ 129.12	\$ 3,357.12	\$ 3,357.12
Depot Street btwn East Dunne and Main	\$ 358.00	\$ -	\$ 4,296.00	\$ 171.84	\$ 4,467.84	\$ 4,467.84
Bioswale West of Parking Garage	\$ 80.00	\$ -	\$ 960.00	\$ 38.40	\$ 998.40	\$ 998.40
GRAND TOTAL	\$ 2,358.00	\$ 230.00	\$ 31,056.00	1,242.24	32,298.24	\$ 32,298.24

Annual Total for Contracted Services

Allocation for Extra Services @ \$30,000 per year

Annual Contract Amount

\$ 100,176.00	\$ 4,007.04	\$ 104,183.04	\$ 104,183.04
\$ 30,000.00		30,000.00	30,000.00
\$ 130,176.00		134,183.04	134,183.04

THIRD AMENDMENT ANNUAL AMOUNT	134,183.04
CURRENT CONTRACT TOTAL THROUGH DECEMBER 2020	394,075.04
REVISED CONTRACT TOTAL THROUGH DEC. 2021	528,258.08

Attachment: Third Amendment Brightview Groups 1, 3, and 6 (2847 : Brightview 1, 3, and 6 Third Amendment)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

AWARD BUTTERFIELD BOULEVARD LINEAR PARK EXTENSION PROJECT

RECOMMENDATION(S)

1. Adopt resolution to appropriate an additional \$100,120 in the Park Impact Fund (301) for the Butterfield Boulevard Linear Park Extension Project;
2. Approve the Butterfield Boulevard Linear Park Extension Project Plans and Specifications;
3. Award contract to Terramark General Engineering Contractors, Inc. for the Butterfield Boulevard Linear Park Extension Project in the amount of \$1,439,226;
4. Authorize expenditure of construction contingency funds not to exceed \$143,923; and
5. Authorize the City Manager to execute and administer the construction contract with Terramark General Engineering Contractors, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan

REPORT NARRATIVE:

In 2017, City staff was successful in applying for and securing a \$1,761,980 grant from the State of California's "Urban Greening" grant for the Butterfield Boulevard Linear Park Extension Project. With the City's grant match for the project of \$148,513, the total project budget at the time was \$1,910,493.

The Butterfield Boulevard Linear Park Extension Project was advertised in August 2020. The project's scope of work includes the construction of a Class I Bike Trail along Butterfield Boulevard from San Pedro Avenue to Railroad Avenue (approximately 2

miles). Additional improvements include the relocation of curb and gutter, concrete flat work, streetlight relocation, traffic signal pole relocation, storm drain relocation, tree planting and irrigation system and other miscellaneous work.

The bid opening was held on September 3, 2020 and the bid results are as follows:

Terramark General Engineering Contractors, Inc.	\$1,439,226
Lewis and Tibbetts, Inc.	\$1,450,557
Graniterock Co.	\$1,568,250
Granite Construction Company	\$1,623,900
Guerra Construction Group	\$1,659,776
Redgwick Construction Co.	\$1,864,801
Galeb Paving, Inc.	\$1,916,115

The lowest responsible bidder was Terramark General Engineering Contractors, Inc. and their bid was approximately 20% higher than the engineer's estimate of \$1,200,000.

Terramark General Engineering Contractors, Inc. is an experienced contractor for this work and has demonstrated in their bid proposal they have performed similar work in previous projects. Staff recommends the award of this project in the amount of \$1,439,226. Additionally, staff recommends a 10% contingency (\$143,923) for this project. The project is scheduled to begin in November 2020 and expected to be completed by June 2021, assuming no significant delays.

The project plans and specifications may be found on the City's website in the Community Projects page (<http://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>).

COMMUNITY ENGAGEMENT: Inform and Empower

As part of the "Urban Greening" grant, additional trees will be planted on the east side of the Butterfield Channel. Staff look to have volunteers assist with the planting of these trees.

City staff will develop a communications plan for the project to inform the community of any traffic impacts resulting from the project. During construction, staff will inform the community regarding the progress of this project using media, social media, and the City's website.

ALTERNATIVE ACTIONS:

City Council could elect to not award this construction contract and direct staff to re-bid the project in hopes of obtaining a lower bid proposal. Re-bidding the project would not guarantee that the bid amounts will be lower and would delay the project by a minimum of three months. Additionally, this project is grant funded and may cause additional delays or risks to grant funding if staff is directed to re-bid the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 19, 2017 – Adopted the Bikeways, Trails, Parks, and Recreation Master Plan.

February 7, 2018 – Adopt Resolution amending Fiscal Year 2017-18 budget to accommodate the addition of a new capital improvement project, Butterfield Connector Path Project.

FISCAL AND RESOURCE IMPACT:

The overall total project cost for the project is \$2,010,613 and includes construction, project implementation, design, and other construction related expenses, of which \$1,910,493 is already appropriated via previous City Council action. Staff recommends City Council adopt resolution (Attachment 2) appropriating an additional \$100,120 from the Park Impact Fund (301) to fully fund the project.

Out of the overall total cost of \$2,010,613, \$1,761,980 will be reimbursed through the “Urban Greening” grant, and the remaining \$248,633 will be funded from the Park Impact Fund (301). There are sufficient funds available to cover this portion. The following table below outlines the appropriations and funding sources for this project.

Description	Amount
Budget	\$ 2,010,613
Existing Appropriations	\$ (1,910,493)
Additional Appropriation Needed	\$ 100,120
Funding Sources	
"Urban Greening" Grant	\$ 1,761,980
City of Morgan Hill - Park Impact Fund	\$ 248,633
Total	\$ 2,010,613

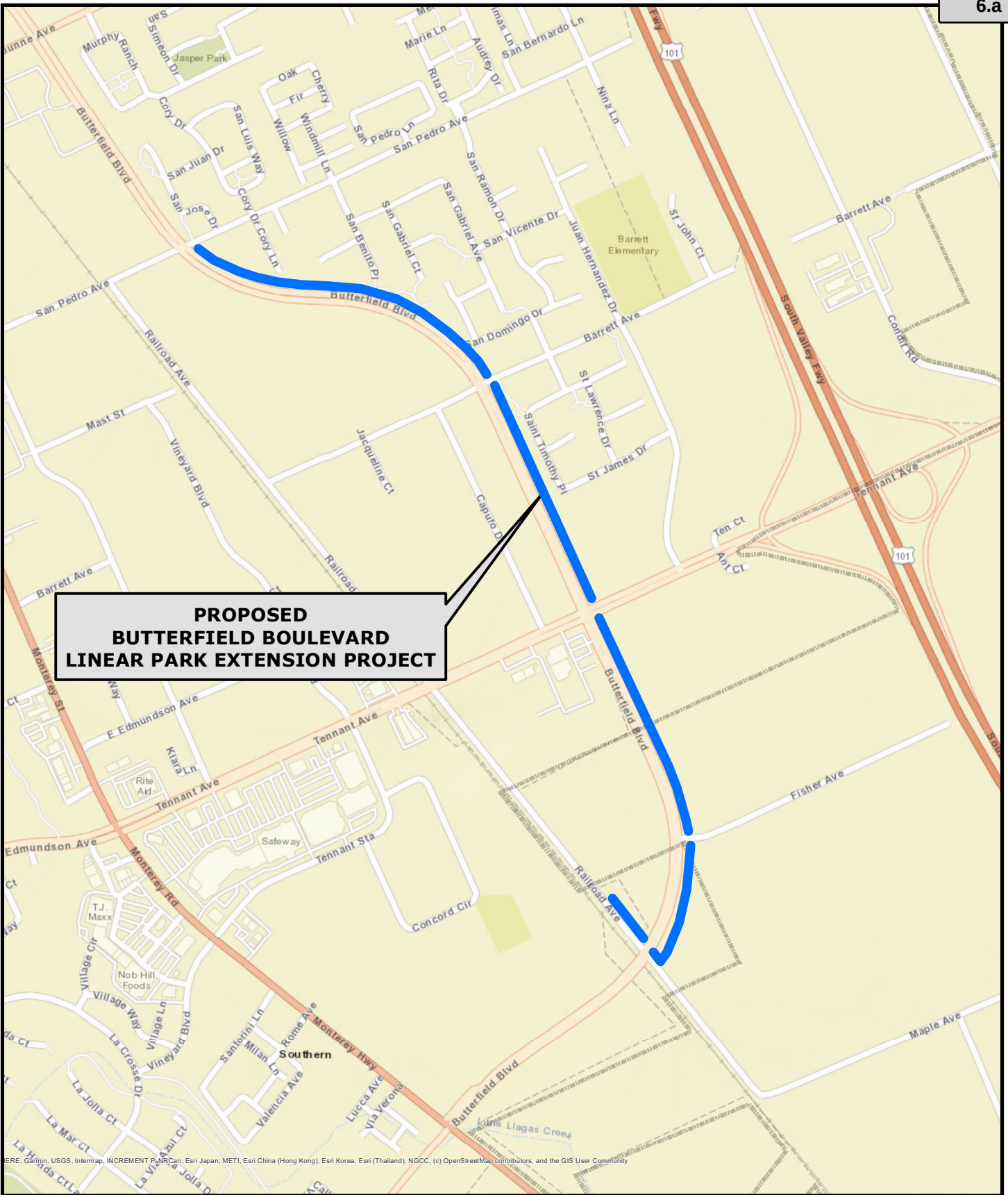
The contract amount for the construction portion of this project with Terramark General Engineering Contractors, Inc. is \$1,439,226, plus authorization for the 10% contingency of \$143,923 for this project. Any unused project contingency funds will remain in the Park Impact Fund (301).

CEQA (California Environmental Quality Act): Categorical Exemption

The Butterfield Boulevard Linear Park Extension Project is categorically exempt from CEQA per Section 15304(b)(h) – Minor Alteration to Land, 15301(c) – Existing Facilities, and 15303(e) – Construction or Conversion of Small Structures of the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Vicinity Map
2. Resolution Butterfield Boulevard Linear Park Extension Project



**PROPOSED
BUTTERFIELD BOULEVARD
LINEAR PARK EXTENSION PROJECT**

ERE, Garmin, USGS, Intermap, INCREMENT P, CAN, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community



CITY OF MORGAN HILL
Engineering and Utilities Division
Capital Improvement Program

G:\R-14\Proj\GIS\John\Yat_Path_StfRptm.mxd

**BUTTERFIELD BOULEVARD
LINEAR PARK
EXTENSION PROJECT**



0 312.5 625 1,250 1,875 2,500
Feet

Attachment: Vicinity Map (2854 : Award Butterfield Boulevard Linear Park Extension Project)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2020-21 ADOPTED BUDGET TO APPROPRIATE \$100,120 IN THE PARK IMPACT FUND (301) FOR THE BUTTERFIELD BOULEVARD LINEAR PARK EXTENSION PROJECT

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2020-21 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 2020-21 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 2020-21 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 23rd day of September 2020 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.20-XXX, adopted by the City Council at the meeting held on September 23, 2020.

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

DATE: _____

 IRMA TORREZ, City Clerk

Exhibit A

AGENDA BUDGET
SCORECARD FISCAL
YEAR 2020-21
ADJUSTMENT #

005

FUND:
DEPARTMENT:
OBJECT:

301	Park Impact Fund
8051	Park Development
86360	CONSTRUCTION

AGENDA
DATE:
AGENDA
ITEM
TITLE:

09/23/20 Butterfield Blvd Linear Park Extension Project
--

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	3,569,152	2,384,662	1,943,768	4,010,046
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	100,120	(100,120)
RESULT OF RECOMMENDED ACTION	<u>3,569,152</u>	<u>2,384,662</u>	<u>2,043,888</u>	<u>3,909,921</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: Mario Jimenez, Associate Engineer
APPROVED BY: City Manager

AWARD SEWER PIPELINE INSPECTION AND CONDITION ASSESSMENT AGREEMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute an agreement with National Plant Services Inc. in the amount of \$1,174,686 for the development of the sewer pipeline inspection and condition assessment.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Wastewater System Master Plan

REPORT NARRATIVE:

The goal of the Sewer Pipeline Inspection and Condition Assessment (Project) is to provide the data needed for significant future repairs to the City's Wastewater system. The Project will clean, inspect, and provide condition ratings for approximately 306,626 linear feet of pipe and 1,853 sewer manholes. The inspections and condition assessments shall be in compliance with the National Association of Sewer Service Companies (NASSCO), Pipe and Manhole Assessment and Certification Programs (PACP and MACP). The Consultant/Contractor will provide services consistent with the PACP and MACP methodologies for all pipe and manholes.

The Project is in response to the settlement agreement resulting from the sanitary sewer overflows (SSO) experienced during the wet winters of 2016 – 2017. The overflows violated water quality regulations. The Settlement Agreement requires that the City complete a sewer pipeline inspection and condition assessment then following the assessment make appropriate repairs to the wastewater system. Significant progress on assessment of the system has been made by in-house City staff, however, based on the timeframes required in the agreement, the work of the consultant will be needed to complete the assessment within the five year timeframe required.

The City wastewater collection system includes over 150 miles of pipe, 14 lift stations, and 8 siphons all of which could contribute to an SSO if a problem occurs. The condition and age of the collection system varies considerably with some portions of the system in great shape and others nearing failure.

The Project will conduct Closed Circuit Television (CCTV) surveys which will list required PACP information such as: Drainage area, pipe segment reference, total length, length surveyed, pipe material, lining method, year renewed, purpose, media label, location code and weather. The project then develops risk and consequence of failure ratings which will be used to prioritize projects and maintenance activities. Information developed from this project will also be used to improve accuracy of the City hydraulic model. The project elements will be incorporated into best practices to guide and define Wastewater Utility activities through time.

It is typical to encounter unknown conditions/issues while completing City wide projects of this magnitude. Due to this likelihood, staff recommends a significant contingency of 20% for this project.

Consultant Selection:

Staff solicited Request for Qualifications (RFQ) from qualified consultants. The RFQ was advertised in both the Morgan Hill Times and the San Jose Mercury News. Additionally, the RFQ was posted to the City and Public Purchase websites in May 2020 for a period of four weeks. The City received four responsive submittals.

Staff requested proposal submittals via two separate electronic documents; the first for consultant qualifications and the second for the consultant schedule of costs. An evaluation panel made up of four City staff members rated each qualification submittal based on experience and qualifications. Raters scored a maximum of 100 points in four categories including clearly demonstrating an understanding of the City's objectives, technical experience, demonstrating the ability to effectively plan and execute the project, and references. Scores from the evaluators were then averaged into the overall weighted results outlined below:

Consultant	Overall Score
Akel Engineering	84.75
Pipe & Plant	79.75
Water Works Engineers	91.50
National Plant Services	95.25

After review of proposals, National Plant Services, Inc. was selected to move on to the interview phase. When interviewed, National Plant Services, Inc. demonstrated an excellent understanding of the project and the expertise to fully execute the tasks set forth in the scope of work. National Plant Services was also the consultant, that provided a proposal that was financially feasible for the City.

COMMUNITY ENGAGEMENT: N/A

Since maintenance of the City's wastewater system is a regular and expected City service, no efforts were made to inform the community about this proposed project.

ALTERNATIVE ACTIONS:

As stated in the narrative above, the Sewer Pipeline Inspection & Condition Assessment (Project) is the result of a settlement agreement. There are no feasible alternatives to

the project. The Council could direct staff to reissue the RFP, but based on other proposals received, staff does not believe that it will result in reduced costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the current Capital Improvement Program (CIP) Budget including funding for this project on June 17, 2020.

FISCAL AND RESOURCE IMPACT:

The Sewer Pipeline Inspection and Condition Assessment Project is a component of CIP Project Sewer System Repair and Replacements (No. 302018) funded through the Sewer CIP Fund 643. There are available funds anticipated and allocated for this activity within the project budget. No significant impact will be required of staff to complete this project.

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. National Plant Services Consultant Agreement

CONSULTANT AGREEMENT NATIONAL PLANT SERVICES, 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 National Plant Services, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2021 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 Sewer Pipeline Inspection and Condition Assessment as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$1,174,685.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Million, One Hundred Seventy-Four Thousand, Six Hundred Eighty-Five 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.

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

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

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

7.1. **Insurance Types and Amounts.**

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

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00)

combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

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

- 7.1.6. **Sexual Abuse/Molestation Liability (SML)**: If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.2. **Endorsements**. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 7.2.1. **General Liability and pollution liability (when pollution liability applies)**.
- 7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- 7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- 7.2.1.3. insurance shall be primary non-contributing.
- 7.2.2. **Workers Compensation**.
- If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- 7.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. 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:

National Plant services, Inc.
2159 National Avenue
Hayward, CA 94545

Address of CITY is as follows:

Utilities Division	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.

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

National Plant Services, Inc.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

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

Date: _____

Date: 9/10/20

By: _____

 MARCO ARAB SECRETARY/TREASURER
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 9/14/2020

EXHIBIT A SCOPE OF SERVICES

PART 1 – GENERAL

1.1 SUMMARY

The City has a need to clean, inspect, and provide condition ratings for approximately 306,626 linear feet of sewer pipe and 1853 sewer manholes. The inspections and condition assessments shall be in compliance with the National Association of Sewer Service Companies' (NASSCO) Pipe and Manhole Assessment and Certification Programs (PACP and MACP). The Consultant/Contractors shall provide services consistent with the PACP and MACP methodologies for all pipe and manholes noted herein.

This section describes the requirements for equipment, labor, and materials used for the project. The City requires the use of NASSCO's PACP, and MACP version 7.0 or later methodologies and that information be collected and stored using the POSM inspection software program.

The City will consider alternative inspection techniques such as acoustic or electromagnetic methods in situations where CCTV may not be feasible. The Consultant/Contractors may use alternate inspection techniques in addition to CCTV but not as a substitute for CCTV.

1.2 SUBMITTALS

A. Submit a written description of procedures to be used to the City, including product literature for all digital video equipment including, but not limited to cabling, camera, monitor, footage counter, digital video titling device, and recorder.

B. Submit digital photographs and digital videos for each coded observation and of all lines to the City as per paragraph 3.4 of this specification. All deliverables shall be in POSM database format consistent with PACP and MACP version 7.0 or later. Databases shall be submitted in an unlocked Microsoft Access Database in accordance with PACP and MACP guidelines. All digital submittals shall be on a memory stick or portable hard drive.

C. Submit a location map outlining facilities inspected and clearly indicate street names, addresses (if needed), manhole numbers, Pipe Segment Reference numbers (Facility ID's), & length surveyed.

D. Submit all POSM condition log databases to the City. Logs shall record defects according to NASSCO's PACP and MACP version 7 or higher. All digital submittals shall be on a memory stick or portable hard drive.

E. The Contractor shall prepare Traffic control plans (TCPs) covering the range of traffic control situations that may be encountered during the project. TCP's shall be approved by the City Engineering Division prior to the start of work in City Right of Ways.

F. Consultant's project-specific safety plan. Consultant is solely responsible for the safety of workers and the public. Must be provided prior to the start of any field work.

G. Emergency Response Plan in the event of Sanitary Sewer Overflows (SSOs). Provide prior to the start of any field work.

H. Bypass pumping may be needed during the project. The Consultant/Contractor shall prepare and submit bypass pumping plan(s) to the City for approval.

1.3 QUALITY ASSURANCE

I. Comply with all codes, laws, ordinances, and regulations of governmental authorities having jurisdiction over this part of the work.

J. The Consultant/Contractor shall comply with the latest revision of the California Occupational Safety and Health requirements.

K. The Consultant/Contractor shall comply with California Water Quality Regional Board requirements.

L. All main line inspections shall be performed in accordance with the National Association of Sewer Service Companies' (NASSCO) Pipeline Assessment and Certification Program (PACP) version 7.0 format or later. Inspections conducted or submitted in other formats that do not meet all the requirements of this specification are subject to being rejected. Any survey that is rejected must be re-televised to meet the guidelines for CCTV Inspections.

M. All manhole inspections shall be performed in accordance with the National Association of Sewer Service Companies' (NASSCO) Manhole Assessment and Certification Program (MACP) version 7.0 format or later. All Manhole inspections shall be MACP level 1. Inspections conducted or submitted in other formats that do not meet all the requirements of this specification are subject to being rejected. Any survey that is rejected must be re-inspected to meet the guidelines for CCTV Inspections.

N. All surveyors and/or operators must have a valid PACP certification from the National Association of Sewer Service Companies prior to assessing and televising sewer mains within the City sewer system.

O. All surveyors and/or operators must have a valid MACP certification from the National Association of Sewer Service Companies prior to assessing manholes within the City sewer system.

P. Each CCTV survey is to be a full PACP survey, continuous from a starting manhole or access point to a finishing manhole, access point, or utility feature where possible. Any line that is not televised from a starting manhole, access point, or utility feature to a finishing manhole, access point, or ending utility feature will be considered as a partial or incomplete survey and will be rejected unless specified to do so otherwise or if the camera cannot not pass through the entire line due to an obstacle or other defect.

Q. Each CCTV inspection shall be performed one line segment at a time in accordance with NASSCO guidelines. A line segment is defined as the sewer main or lateral assembly from a manhole, cleanout, special chamber, or utility feature to the next in-line manhole, sewer main, special chamber, or utility feature. Any CCTV survey that contains multiple line segments within a single PACP inspection and/or video file will be rejected.

R. Each manhole inspection shall be performed one manhole at a time in accordance with NASSCO guidelines. Any MACP inspection that contains multiple manholes within a single inspection will be rejected.

S. All media, videos, and images are to be televised and recorded in color and shall correctly reflect the true colors within the pipe and on the video display. Videos and inspection stills televised or submitted in black and white will be rejected.

T. All media, videos, and images shall provide a clear, accurate, undistorted, and in-focus picture of the entire periphery of the pipeline for all conditions encountered. Every possible means shall be taken to ensure total viewability of the inside periphery of the pipeline.

U. All digital video files shall be continuous with no evidence of missed footages or “blink-outs”. Proof that the entire pipeline segment was traversed and inspected shall be obvious on the final video recording.

V. All post construction CCTV surveys and assessments are to be conducted after, and only after, all major construction has been completed and the line segment or manhole has passed all required post construction testing. Any line segment or manhole that has been televised or assessed prior to the full completion or testing of any newly constructed or rehabilitated sewer appurtenance will be rejected.

W. DO NOT PROVIDE VOICEOVER PIPE DEFECTS. Voiceover to be used to document operational issues only, equipment issues, or other pertinent information to describe an interruption in image.

1.4 STANDARD ABBREVIATIONS

AMH Access Manhole

CCTV Closed Circuit Televising

ANSI American National Standards Institute

MACP Manhole Assessment and Certification Program

MGO Manhole General Observation

NASSCO National Association of Sewer Service Companies

PACP Pipeline Assessment and Certification Program

RPZ Reduced Pressure Principle Backflow Prevention Assembly

1.5 COORDINATION

Whenever the Consultant/Contractor desires to use a hydrant for water supply, the Consultant/Contractor shall obtain the permission of the City. All costs associated with the use of water supplied from hydrants shall not be paid for separately but shall be deemed to be included in the bid. Operation of hydrant shall be in accordance with the City Water Utility. Use of an RPB device and/or air gap is required.

The Consultant/Contractor shall prepare, submit TCP's and obtain the necessary the permits to work in public right-of-way. The project is located entirely in the City of Morgan Hill consequently the Consultant/Contractor shall coordinate the City Engineering Division for TCP approval and ROW permits.

The Consultant/Contractor shall comply with the Emergency Spill Response Plan requirements detailed the City's 2018 Sanitary Sewer Management Plan which can be found here:

<https://www.morgan-hill.ca.gov/DocumentCenter/View/22618>

PART 2 - PRODUCTS

2.1 DIGITAL VIDEO SYSTEM & EQUIPMENT

A. CAMERA

1) The television camera used for the inspection shall be one specifically designed and constructed for such inspection. The camera shall be operative in 100 percent humidity conditions. The camera, television monitor, and other components of the digital video system shall be capable of producing picture quality to the satisfaction of the City.

2) The camera unit shall be a color pan and tilt unit with autofocusing and zoom features. The television camera shall have a resolution of 480 lines minimum and shall have a source of illumination attached to it. All CCTV equipment must have the capabilities to televise inspections in color & in full detail. With the monitor adjusted for correct saturation, the six colors plus black and white shall be clearly resolved with the primary and complementary colors in order of decreasing luminance. The gray scale shall appear in contrasting shades of gray with no tint. In order to ensure color constancy, no variation in illumination shall take place while the camera or transporter is in motion. The televised image shall be displayed on a monitor, located in an enclosed space in the television inspection vehicle.

3) CCTV Focus/Iris/Illumination: The adjustment of focus and iris shall allow optimum picture quality to be achieved and shall be remotely operated. The adjustment of focus and iris shall provide a minimum focal range from 6 inches in front of the camera's lens to infinity. The distance along the sewer in focus from the initial point of observation shall be a minimum of twice the vertical height of the sewer. The illumination must allow an even distribution of the light around the sewer perimeter without the loss of contrast or flare out of picture shadowing.

4) The camera shall be self-propelled or mounted on skids and drawn through the sewer by winches for pipelines with an equivalent diameter from 6 to 36 inches. The use of winches and skids shall be approved by the City prior to CCTV inspection services. The inspecting equipment shall be capable of inspecting a length of sewer up to at least 1,000 feet when entry into the sewer may be obtained at each end and up to 750 feet where a self-propelled unit is used, where entry is possible at one end only. The Consultant/Contractor shall maintain this equipment in full working order.

B. Where the CCTV camera or transporter is towed by winch and bond through the sewer, all winches shall be stable with either lockable or ratcheted drums. All bonds shall be steel or of an equally non-elastic material to ensure the smooth and steady progress of the CCTV camera and/or Sonar equipment. All winches shall be inherently stable under loaded conditions.

C. Each inspection unit shall contain a means of transporting the CCTV camera equipment in a stable condition through the sewer under inspection. Such equipment shall ensure the maintained location of the CCTV camera on or near to the central axis of a circular shaped sewer when required in the prime position.

D. Software: CCTV collection software shall be POSM which is compatible with PACP, MACP, and version 7.0 certified or better. All inspection data shall be stored in POSM software database(s) and shall be compatible and transferable to existing City POSM databases.

E. Recordings of all sewer line inspections shall be transferred to a memory stick or portable hard drive. The audio portion of the composite digital video shall be sufficiently free from electrical interference and background noise to provide complete intelligibility of the oral report.

F. Footage Counter Device: Measurement for location of defects during the inspection shall be aboveground by means of a footage counter device. Marking on the cable, or the like, which would require interpolation for depth of manhole, will not be allowed. Accuracy of the distance meter shall be checked by use of a walking meter, roll-a-tape, or other suitable device. The footage counter device shall be accurate to plus or minus 2 feet in 1,000 feet and be subject to approval by the City.

G. Digital video equipment shall include genlocking capabilities to the extent that computer generated data (i.e., footage, date, size, address and location, etc.) as determined by the City can be overlaid onto digital video, and both indicated on the television monitor and permanently recorded on the digital inspection.

PART 3 - EXECUTION

3.1 SEWER LINE CLEANING

All line segments and manholes shall be clean or be cleaned to the point that the entire pipe or manhole is visible unless if specified otherwise. Very light deposits may, in the opinion of City, be acceptable. However, any deposits that obscure a joint, obscure a potential defect, or result in any "holding of flow" shall not be acceptable. Inspections of any pipe sections that are, in the opinion of the City, not properly cleaned shall be re-cleaned and re-televised at no additional cost to the Sewer Utility. The inspection shall be conducted within 36 hours after being cleaned. Under no circumstances shall cleaning or flow control jetting be conducted simultaneously with a CCTV inspection.

The designated sewer sections shall be cleaned using high-velocity jet equipment. The equipment shall be capable of removing dirt, grease, rocks, sand, and other materials and obstructions from the sewer lines and manholes. If cleaning of an entire section cannot be successfully performed from one manhole, the equipment shall be set up on the other manhole and cleaning again attempted. If, again, successful cleaning cannot be performed or the equipment fails to traverse the entire section, it will be assumed that a major blockage exists and the cleaning effort shall be abandoned.

During sewer cleaning operations, satisfactory precautions shall be taken in the use of cleaning equipment to ensure the water pressure created does not damage or cause flooding of property or buildings being served by the sewer.

Roots shall be removed in the sections where root intrusion is a problem. Special attention should be used during the cleaning operation to assure almost complete removal of roots from the joints. Roots which could prevent installation of a pipe liner shall be removed. Procedures may include the use of mechanical equipment such as rodding machines, bucket machines, and winches using root cutters and porcupines, and equipment such as high-velocity jet cleaners.

Sludge, dirt, sand, rocks, grease, and other solid or semisolid material resulting from the cleaning operation shall be captured and removed at the downstream manhole of the section being cleaned, loaded in a suitable container, transported to the South County Regional Wastewater Treatment Facility in Gilroy and disposed of at that facility in accordance with all requirements and charges.

Water used to clean the sewer lines shall be discharged into the sanitary sewer downstream of the cleaning operation. Under no circumstances shall the contractor discharge water used to clean sewer lines onto the ground or into streams.

Acceptance of sewer line cleaning shall be made upon the successful completion of the television inspection and shall be to the satisfaction of the City. If television inspection shows the cleaning to be unsatisfactory, the contractor shall be required to re-clean and re-inspect the sewer line until the cleaning is shown to be satisfactory.

The contractor must have the means to access all manholes and lines that are to be surveyed. Additional equipment may be required to access off-road sewer lines or for manholes which require a tripod and harness for entry.

The Consultant/Contractor must have the means to access all manholes and lines that are to be surveyed. Additional equipment may be required to access off-road sewer lines or for manholes which require a tripod and harness for entry.

3.2 TELEVISION INSPECTION OF SEWER LINE & PROVISIONS

A. Operation of the television inspection equipment shall be controlled from above ground, with a skilled technician at the control panel in the television inspection van controlling the movement of the television camera. The technician shall have the capability to: adjust the brilliance of the built-in lighting system; change the focus of the television camera by remote control; control the pan, tilt, and zoom features of the camera; control the forward and reverse motion of the camera; and determine the camera's position, at any time.

B. Each digitally encoded inspection video shall begin with the camera facing towards the bottom of the manhole and oriented so that the outgoing sewer connection is at the 6 o'clock position. This position shall be held during video recording for a minimum of five (5) seconds then followed by the operator panning then tilting the surrounding above ground area of the entrance manhole prior to lowering the camera to the bottom of the manhole. The CCTV video shall include the view of the camera as it is placed within the manhole, the size measurement of the pipe that is to be inspected, and clearly show which pipe the CCTV camera is inserted. Any notable defects present within the manhole are to be coded as General Observations (MGO's) and to be catalogued only after the initial access point and water level observations have been coded.

C. When the Consultant/Contractor elects to "pull through" a manhole during a CCTV and/or Sonar Inspection, a new inspection will be started at the manhole "pulled through", and the footage re-set to zero (0.0) at the manhole wall where the pipe exits/enters the manhole. The video shall begin with the camera being centered within the "pull through" manhole looking down the line segment to be televised. The Consultant/Contractor shall begin the inspection by cataloguing the initial PACP access and water level codes followed by slowly panning then tilting the camera around the manhole for no less than 5 seconds. The Consultant/Contractor shall also be required to visually capture and catalogue the field measurement of the pipe size at any "pulled through" manhole location.

D. If during an inspection an unmapped manhole is found, follow PACP procedures and code the manhole and close out the inspection. In the corresponding manhole field of the header page, call out and label the unmapped manhole with the Facility ID of the next concurrent downstream manhole with a suffix of "-A" at the end of the field. When proceeding on, start a new inspection

from the said unmapped manhole and note the "Pipe Segment Reference" field in this inspection as "Gm. -" if sanitary sewer or "SWC. -" for storm sewer to indicate that this is different line segment than the one previously televised as this segment will require a new and unique "Facility Id". Should multiple concurrent manholes be encountered during an inspection, the surveyor shall continue the naming convention of applying the next available letter to the end of the corresponding manhole field.

E. If the camera lens becomes covered with sewage, grease, deposits etc. resulting in poor picture quality then the inspection shall be suspended and the camera shall be removed and cleaned. The inspection can then be resumed at the last clear camera location.

F. If the camera fails to pass through the entire pipe section due to the pipeline being inadequately or insufficiently cleaned, this section must be re-cleaned having all the debris removed from the system and the entire length re-televised per this specification.

G. If, and only if, during a normal flow CCTV survey the televising camera cannot pass through the entire pipe section due to a defect, anomaly, or obstruction in the pipe, the Consultant/Contractor shall attempt a reverse setup so that the inspection can be performed from the opposite manhole, wet well, or access point.

H. When a reverse or second inspection is required to complete the inspection of a sewer, the PACP database field "Reverse_Setup" shall be populated with corresponding inspection number. The "Reverse_Setup" field shall be null for all inspections that are not reverse or follow-up inspections.

I. At the start of each sewer length being surveyed or inspected and each reverse setup, the length of pipeline from zero footage (middle of the man) up to the cable calibration point shall be recorded and reported in order to obtain a full record of the sewer length. If the start manhole wall measures something other than 48" in diameter then this shall be noted in the 'Additional Comments' field of the survey.

J. The Consultant/Contractor shall adjust the camera height as necessary to ensure that the camera is centered in the pipeline at the beginning of the inspection. A position tolerance of $\pm 10\%$ of the vertical sewer pipeline diameter dimension will be allowed (i.e. for an 8-inch diameter pipeline the camera shall be centered within ± 0.8 inches of the center of the pipeline). Inspections of any pipe sections in which the camera, in the opinion of the City, is skewed or not properly centered within the main shall be re-televised at no additional cost to the Sewer Utility.

K. When beginning a CCTV inspection, the operator shall verify the diameter of the pipeline to be inspected by inserting a tape measure or surveying rod into the manhole and measure the pipeline diameter to the nearest 1/10th inch. Video proof of this measurement shall be captured during the CCTV inspection after the camera has been adequately positioned so that this measurement can be clearly read. This measurement is also to be recorded in the "height" field of the inspection database.

L. All CCTV surveys must list all required PACP information in their respective fields in addition to but not limited to the following information:

1. Drainage Area
2. Pipe Segment Reference
3. Total Length

4. Length Surveyed
5. Pipe Material (Original material if lined)
6. Lining Method (If lined)
7. Year Renewed (If rehabbed / lined)
8. Purpose
9. Media Label (CCTV Consultant/Contractor Co.)
10. Location Code
11. Weather

M. The Consultant/Contractor shall televise all sanitary and storm sewer mainlines utilizing a crawling camera with full pan, tilt, & zoom capabilities. Inspections televised via other means or methods will be rejected unless directed to do so otherwise. If picture quality is unsatisfactory, the Consultant/Contractor may attempt to re-televise the segment(s) utilizing satisfactory equipment and/or methods. Unsatisfactory inspections will be rejected by the City. No payment will be made for an unsatisfactory inspection.

N. All distances and time stamps called out for each PACP code, observation, or defect must be listed as a positive, rational number. Surveys that do not list positive numbers for distances and time stamps will be rejected.

O. At the start of each sewer length, a data generator shall electronically generate and clearly display on the viewing monitor and subsequently on the final recording a record of data in alpha-numeric form containing the following minimum information:

1. Automatic update of the camera's footage position in the sewer line from adjusted zero.
2. Sewer dimensions in inches
3. Manhole numbers (must conform to City's identification number)
4. Date of survey
5. Road name (nearest)/location
6. Direction of survey, i.e., downstream or upstream
7. Time of start of survey
8. Material of construction of the pipe
9. Consultant/Contractor

P. The size and position of the data display shall be such as not to interfere with the main subject of the picture.

Q. Once the survey of the pipeline is under way, the following minimum information shall be continually displayed:

1. Automatic update of the camera's footage position in the sewer line from adjusted zero.
2. Sewer dimensions in inches
3. Manhole numbers (must conform to City's identification number)
4. Direction of survey, i.e., downstream or upstream

R. CCTV Camera Speed: The speed of the CCTV camera in the sewer shall be limited to 30 feet per minute (0.5 ft per second) for all inspections in compliance with NASSCO guidelines. Manual winches, power winches, TV cable, and powered rewinds or other devices shall not obstruct the camera view or interfere with proper documentation of the sewer conditions to move the camera through the sewer line.

S. The inspection shall be performed with the camera traveling in a forward direction. The camera shall only travel backward as needed to allow a fuller view of a defect or observation. Inspections that are accomplished with the camera traversing backward or in reverse will be rejected.

T. While in motion, the CCTV camera is to be fully zoomed out and fixed to the “home position” where the camera head is kept at the level horizon and is centered and pointed true down the alignment of the pipe for the duration of each CCTV survey. Only when necessary to fully capture defects/observations or to avoid getting the camera lens dirty should the camera be allowed to leave the home position or use the zoom, pan, or tilt features. After the flow conditions have normalized in the pipe or the full extent of an observation/defect has been captured the camera must return to the level home position.

U. Excessive use of the pan, tilt, or zoom features, including using any of the features simultaneously, shall be avoided. The operator shall not use the pan, tilt, or zoom features of the camera until the camera tractor is at a full and complete stop.

V. The operator shall bring the camera to a complete stop at all suspected defects, noted observations, and service connections, panning then tilting the camera as necessary to closely view the defect/observation in question. The full extent of the defect/observation shall be observed.

W. When coding any defect or observation, the operator shall adjust the camera back to the “home position” as best as possible while showing the defect/observation in its entirety in relation to the pipe. The operator shall cease all movements of the camera head and tractor to allow for a clear photograph of the defect/observation while the observation is being cataloged.

X. At each coded observation, the following minimum information shall be displayed:

1. The PACP code and/or PACP code description.
2. The footage position of the defect.
3. The “Additional_Info” field in any cases where it is utilized.

Y. During the CCTV inspection, lighting intensity shall be adjusted as necessary to minimize glare and maximize viewing ability.

Z. Upon reaching an end point manhole or other access point, the camera shall be maneuvered to the center of the manhole and tilted upward and slowly panned for a minimum of 5 seconds in order to view the interior of the manhole in full detail. Any notable defect observed within the manhole or access point shall be coded as a General Observation (MGO) and be catalogued prior to coding the manhole (AMH) to close out the inspection.

AA. If for any reason the Consultant/Contractor’s equipment becomes disabled or lodged inside the sewer and cannot further proceed, the Consultant/Contractor shall be responsible for retrieving the equipment and restoring the sewer at no additional cost to the City.

3.3 MANHOLE INSPECTION

A. The inspection crew shall mobilize to the site of the manhole inspection and immediately establish traffic control measures per Santa Clara County, and/or City Gilroy requirements. The Contractor shall provide any measures required to protect pedestrians. The crew shall inspect each manhole and record required information.

B. A diligent effort shall be made to locate all structures. Metal detectors shall be used to locate buried manholes. Once a buried manhole has been located, it shall be marked with paint and/or flagging, if necessary. All pertinent information available shall be recorded including area photo, address, etc. Consultant/Contractor shall notify project manager weekly with a list of those manholes that could not be fully inspected due to unable to locate, buried, surcharged, could not open, not access, other. The Project manager may arrange to have some or all these manholes exposed, or otherwise made accessible for full inspection. The Project manager will notify Consultant/Contractor of the status and may authorize re-inspection provided the Consultant/Contractor is still working on-site.

3.4 MANDATORY MANHOLE INSPECTION HEADER INFORMATION

Once the manhole is located, the following mandatory information shall be recorded on the inspection form (template is located in the forms section). Note that the mandatory fields noted below are more inclusive than the MACP requirements. All available information shall be collected and recorded for those manholes that are buried, could not open, surcharged, etc.

- a. Manhole Number (City standard Asset Number)
- b. Sheet number
- c. Purchase Order No.
- d. Date
- e. Time
- f. Surveyor's Name
- g. Certification Number
- h. System owner
- i. Locality (City)
- j. Drainage area (tributary Pump Station Number)
- k. Map number
- l. Location (street number and name)
- m. Downstream pipe length (feet)
- n. Rim to grade (inches)
- o. Pre-cleaning method (using approved MACP codes)
- p. Location code (using approved MACP codes)
- q. Manhole surface type (using approved MACP codes)
- r. Potential for runoff (using approved MACP codes)
- s. Access point type (using approved MACP codes)
- t. Inspection status (using approved MACP codes)
- u. Area photo image reference (using CITY standard naming convention)
- v. Internal photo image reference (using CITY standard naming convention)

3.5 MANHOLE COMPONENT OBSERVATIONS

The inspection crew shall complete all fields within the manhole component/observation section of the inspection form. The following information shall be collected:

- a. Cover type (solid, vented, bolted)
- b. Cover size (top surface diameter in inches)
- c. Cover material
- d. Number of vent holes
- e. Cover/Frame fit (cover to frame fit, MACP codes)

- f. Cover condition (MACP codes)
- g. Cover insert type
- h. Cover insert condition
- i. Frame condition
- j. Frame seal condition
- k. Frame offset distance
- l. Frame seal inflow
- m. Wall material
- n. Interior wall coating
- o. Wall diameter
- p. Bench present
- q. Channel installed
- r. Additional remarks relevant to the manhole

3.6 MANHOLE INTERIOR INSPECTION

The inspection crew shall determine the types of defects within the manhole, document each defect on the manhole form and take a photograph of each defect. The manhole chimney, cone, wall, bench and channel will be inspected for structural integrity, signs of I/I and the presence of roots. All documentation shall follow NASSCO MACP standards. Each defect will be documented on the inspection form with the following information:

- a. Defect number
- b. Component of manhole containing defect
- c. Defect code (using approved MACP codes)
- d. Image Reference (using CITY approved file naming structure)

3.7 CONNECTING PIPE DETAILS

Each pipe entering and exiting the manhole shall be photographed where possible and inspected to determine diameter, pipe material, debris levels and rim to invert distance (to 0.1 feet). The pipe inspection will include the following information:

- a. Pipe photo (using CITY approved file naming structure)
- b. Pipe direction (incoming or outgoing)
- c. Pipe clock positions (6=outgoing)
- d. Pipe diameter
- e. Pipe material (using PACP codes)
- f. Rim to invert distance (measured to nearest 1/10th of a foot)
- g. Pipe special condition (drops, force mains, etc. using approved MACP codes)
- h. Debris depth
- i. Connecting structure number if manhole or cleanout, service line clock position, stub out clock position, etc.
- j. Pipe seal condition (using approved MACP codes)
- k. Pipe seal roots (using approved MACP codes)
- l. Observed pipe defects, obstructions, roots, etc. (using PACP codes)

3.8 MANHOLE SKETCH, MAP UPDATE AND NOTES

The inspection crew shall complete the manhole plan view sketch noting all connecting pipes. Any special observations or notes may be added to the profile sketch on the field form.

Influent and effluent lines in each manhole shall be compared to the existing map and corrections noted in the sketch section of the field form.

3.9 NOTIFICATIONS

Consultant/Contractor shall promptly notify the City whenever they encounter any of the following conditions:

Potentially illicit connections draining into the sanitary sewer system or cross connections between the sanitary and storm drain systems.

Potentially hazardous materials (liquid or solid). Pipe collapse or blockage requiring immediate attention. Locations of system surcharging.

Locations of sulfide odor or other hazardous atmospheric conditions.

Any defects posing imminent danger to the public (missing lids, covers broken during inspection, sink holes, etc.).

Sewage spills or evidence of sewage spills.

3.10 DOCUMENTATION OF THE TELEVISION RESULTS

A. Television Inspection Logs: Develop and keep digital location records that clearly show the location in relation to an adjacent manhole of each infiltration point observed during inspection. In addition, record other points of significance such as locations of building sewers, unusual conditions, roots, storm sewer connections, broken pipe, presence of scale and corrosion, and other discernible features.

B. Photographs: A digital photograph or digital video still shall be captured for each coded observation. If no defects are present provide one still image of pipe for information purposes. All digital still images shall be in JPEG file format. For all digital still images, the file naming format shall be generated using a concatenation of standard PACP database fields in the format Facility_ID" _ "Upstream_MH" _ "Downstream_MH" _ "Direction" _ "PACP_Code" _ "Distance" (multiple digital still images may have "-01", "-02", "-03" at end of file name).

C. Video Recordings: A visual and audio recording of all areas of the lines shall be of a single line segment, performed and produced in MPEG 1 file format. Videos shall also be non-proprietary and able to be viewed with Windows Media Player. For all digital encoded inspection videos, the file naming format shall be generated using a concatenation of standard PACP database fields in the format "Facility_ID" _ "Upstream_MH" _ "Downstream_MH" _ "Direction" _ "Date".

4.0 REHABILITATION PROGRAM DEVELOPMENT

The Consultant/Contractor shall prepare a prioritized rehabilitation program including a table summary, by pipe segment, that includes type of defect, severity, recommended rehabilitation/repair method, schedule and cost estimate. The Consultant/Contractor shall use best technical expertise and engineering judgment to develop the rehabilitation program. For example, making judgements

about when it more appropriate to replace a pipe segment instead of doing repairs will be needed for this project.

The City will make available record drawings or other records to help identify construction constraints or conditions that may influence the selection of recommended rehabilitation methods. The final product shall be comparable to the 15 - 20% design level. The expectation is sufficient detail will be developed to hand off to a design team to produce construction documents for the various project. A final rehabilitation report shall be prepared and include, at a minimum, summary tables, maps/drawings, cost estimates for pipe and manhole repair projects. The final report signed and sealed by Professional Engineer. The Consultant/Contractor will coordinate with the City's O&M staff to identify areas of concern and areas that require frequent maintenance.

Consultant Work Plan and Project Management

Document Review

The first part of any Project is to gather the existing data on the system. When a project scope is issued, we will have a Kickoff Meeting at the City offices to review the scope of work, set expectations for communication, traffic control, and inspection details. Sewer maps, GIS, and all other information will be reviewed so NPS staff can get a complete picture of the project and surrounding area. We will review the existing GIS and any paper maps (if available) to collect the location and asset information of all the components to be evaluated as part of this project. A master asset summary list will be generated, which will be the basis for the condition assessment tracking and evaluations.

Draft Inspection Plan

Based on the results of the kickoff meeting and the scope and budget as agreed to with the City, a typical inspection plan will be created and reviewed with the City staff. The inspection plan will include the equipment, schedule of inspections and coding details, coordination City and any subcontractors, traffic control and encroachment permit planning, deliverables, project team, daily reporting requirements, QA/QC plan, and public notifications. Any comments or changes to the inspection plan will be incorporated and finalized. The inspection plan will then be used as the guideline for all inspections going forward. NPS has 16 PACP certified CCTV operators, plus 32 support personnel, and we guarantee that we will have the staff and equipment to perform all work orders in a timely manner.

A complete site reconnaissance will be performed, and traffic plans and encroachment permits generated and submitted to the appropriate entity as quickly as possible. The deployment plan will be generated and tracked in a master MS Project Schedule. The schedule will be developed and maintained to increase efficiency of the inspection work, thereby increasing productivity, and reducing any traffic impacts, whenever possible. A detailed schedule will be generated upon issuance of a work phase and will reflect accurate scope and completion timeframes and dates.

Cleaning Operations

Cleaning and inspection operations procedures will be completed by flow area/map page, from upstream to downstream. Cleaning will proceed first using our combination jet/vacuum truck. Our cleaning truck will be set up at the downstream manhole and will clean upstream until all debris is removed. We will use one of our many nozzles, as necessary, based on sewer line condition and

debris levels. Cleaning will start at the highest point upstream and proceed downstream along each flow run until that run is completed. CCTV inspection will follow immediately behind the cleaning work using PACP coding. Flows can be drawn down through simultaneous vacuum operations, flow-through plugs, bypassing, or inspections performed at night to take advantage of lower flows. Crews will maintain debris logs noting the amount and composition of the debris removed.

A CCTV inspection will be completed immediately after cleaning to assess the condition of the sewer line. If the sewer line is still found to have debris or roots, the lines will be cleaned with additional passes with the jet/vac, as needed, then reinspected and PACP coded. We will bring a variety of CCTV cameras and tractor/raft platforms with us to ensure that we have the right equipment for the conditions/pipe sizes. In the event the conditions of the sewer lines prevent flow diversion or bypass, submerged sewer lines can be inspected using sonar, as allowed by the City.

Sewer Inspections

For the pipeline inspections, we generally start inspections at the most upstream portion of the system, following behind the cleaning trucks, and working downstream in a logical fashion until all inspections are completed. Each 'deployment run' will consist of a series of manhole segments that will be deployed in continuous runs of up to 2,000 LF. We will set up our trucks and equipment at manholes that will be of less impact to traffic, customers, or environmentally sensitive areas. We will use the appropriate platform (tractor or float), and type of camera for the pipelines that we will inspect. A safety line is attached to the robot, the robot is lowered into the starting manhole, and the raft/tractor is allowed to move at a controlled speed not in excess of 30 feet per minute. Operators will PACP code all pipelines live in the field. If a blockage is observed that prevents completion of an inspection, a reverse inspection will be attempted.

Any critical issues discovered in the field (collapses, blockages, etc) will be reported to the City immediately via email and/or phone upon discovery. PACP software will be used to record all City of Morgan Hill inspections. We use POSM, IT Pipes, Granite, and Wincan software, but all data can be exported into a PACP version 7 exchange file that can be imported into any other PACP certified software.

Our PACP certified technicians will receive the inspected data weekly and begin QA/QC. Any issues will be fixed promptly, and the data delivered to the Asset Management/Engineering team to begin the review and recommendations phase. Work will be continuously reviewed as it is inspected, generating condition information and required repairs that will go into the final summary report.

Multiple crews may be sent to inspect the assets (depending on the size of the project and project deadlines) which will speed the rate of inspections and speed the completion of that phase of work.

Manhole Inspections

We have provided pricing for both Level 1 and Level 2 MACP inspections. All operators are PACP/MACP/LACP certified and can perform a complete MACP Inspection of manholes in the scope. As an added benefit to the city, and at no additional charge, both Level 1 or Level 2 MACP Inspections include the use of our IBAK SI Manhole Camera, which provides an advanced 3D visual scan of the manhole interior.

The IBAK PANORAMO SI uses two high-resolution digital cameras with 185° fisheye lenses. These are installed on the topside and underside of the cameras and take hemi-spherical photos at 5 cm intervals. The photos are put together to form spherical images, thus enabling a true 3D interior

view of the manhole to be created. With the image files generated in this way, the perspective from which you want to view any portion of the manhole or a defect is freely selectable. A virtual manhole inspection and the measurement of defects are also possible in the office.

QA/QC

QA/QC starts as soon as we get the asset information from the City. The operator will ensure a clean and unobstructed image, recorded at a high-quality recording setting. If the quality is not acceptable, the operator will abort the inspection, correct the deficiency, and start again.

As described above, data is kept in many locations to prevent loss of data. Data is delivered weekly to our office staff who will perform a rigorous quality check to ensure the PACP coding is done per NASSCO standards.

The data will then be transferred weekly through our secure web-based file transfer system to the Engineering staff who will perform an additional QA/QC as they review the data and begin to compile the PACP inspection results and prepare the final summary report with repair, rehabilitation, and maintenance recommendations.

NPS does something unique in our reporting that is not common in the industry; we organize the results by PACP Quick score, and present PACP defect codes in a detailed tabular format for each segment inspection. This provides the City with excellent summary information on the condition of their assets. These segments are categorized by like defect code, and recommendation for repair or rehabilitation are assigned.

We understand that most GIS systems contain errors, and are diligent in the review and correction of inaccurate asset information that we discover in the field. Crews will record the correct sewer length, diameter, and material for each inspection. This information will be presented at the end of the project in a discrepancy report so that the City can update their GIS records and as-builts.

Project Management:

Communication is the most important part of our Project Management protocol. We believe in frequent updates, so our clients are not left guessing what is happening on their project.

- Michelle Beason will act as Project Team Leader and Project Engineer.
- Daily updates will be sent out each evening/morning covering the day's progress and where the crew will begin work the following day.
 - Weekly progress updates will be emailed each Friday to discuss the project progress and findings, updated schedule, and the plans for the next week.
 - Significant Structural or O&M defects, or hazardous materials or conditions, will be reported to the City staff immediately upon discovery.
 - Problems with access or pipeline conditions will be reported immediately, with follow up action decided between the City and NPS.
 - Periodic progress reports can be provided to the City, as desired.

Rehabilitation Program Development

Our NPS and HydroScience Engineers team will not just review the PACP/MACP scoring, but we will take a risk-based approach to develop the rehabilitation priorities for the assets at risk. We will combine the PACP/MACP results, along with the probability and consequence of failure/risk factors that are associated with those assets, to prioritize the most at-risk assets. Following this review, we will then develop recommendations for follow-up preventative maintenance and/or rehabilitation of

all assets, which will be described fully in the final Assessment Report. These recommendations will include repair and rehabilitation requirements over a 5-year Capital Improvement Program. NPS will work with the City on the available annual maintenance and rehabilitation budget, and then prioritize the most at-risk pipelines first for rehabilitation.

The Rehabilitation Program will be worked on throughout the duration of the CCTV inspection project. As inspection data comes in, it will be reviewed, assessed, and prioritized so that the final Rehabilitation report can be delivered soon after completion of all field work.

NPS is experienced in many methods of maintenance and trenchless rehabilitation, and therefore can recommend the latest innovations in pipe rehabilitation, and also simple repair methods that will maintain or improve the level of service at the lowest cost. NPS crews are highly experienced in CIPP point repairs and CIPP connection and lateral lining, injection grouting to stop infiltration, and centrifugally cast concrete pipe structural coatings (CCCP). We will recommend quick and low-cost repairs whenever possible that can go a long way toward restoring reliability and efficiency of a storm drain system.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
Mobilization	l.s	1	\$ 5,000.00	\$ 5,000.00
Pipe Cleaning	l.f.			
6-8 Inch dia	l.f.	207,048	\$ 0.52	\$ 107,665.14
10-15 Inch dia	l.f.	42,120	\$ 0.54	\$ 22,744.92
16-21 Inch dia	l.f.	42,154	\$ 0.68	\$ 28,664.90
24-28 Inch dia	l.f.	15,304	\$ 1.10	\$ 16,834.04
CCTV inspection				
6-8 Inch dia	l.f.	207,048	\$ 0.75	\$ 155,286.26
10-15 Inch dia	l.f.	42,120	\$ 0.89	\$ 37,486.99
16-21 Inch dia	l.f.	42,154	\$ 1.05	\$ 44,261.98
24-28 Inch dia	l.f.	15,304	\$ 1.45	\$ 22,190.32
Manhole cleaning	each	371	\$ 60.00	\$ 22,260.00
MH Insp. Lvl 1	each	1482	\$ 80.00	\$ 118,560.00
MH Insp. Lvl 2	each	371	\$ 200.00	\$ 74,200.00
bypass pumping	Force Account	1	\$ 50,000.00	\$ 50,000.00
Debris Disposal			\$ -	\$ - no cost through SCRWA
Traffic Control Plans	each	45	\$ 250.00	\$ 11,250.00
Major Traffic Control Setup	each	45	\$ 2,500.00	\$ 112,500.00
Rehabilitation Program	l.s (600hrs)	1	\$ 150,000.00	\$ 150,000.00
Permits/Fees	cost + 10%			\$ - City to waive permit fees
Subtotal				\$ 978,904.56
20% contingency				\$ 195,780.91
TOTAL				\$ 1,174,685.47

EXHIBIT C
SCHEDULE OF PERFORMANCE

Draft schedule below shows the overall duration of the project. Duration of the project will be approximately one year.

A detailed schedule will be developed during the kickoff meeting.

Task Name	Duration	Start	Finish
Notice To Proceed (estimated	1 day	Mon 8/3/20	Mon 8/3/20
Develop Inspection Plan	12 days	Tue 8/4/20	Wed 8/19/20
Prepare Traffic Control Plans	7 days	Thu 8/20/20	Fri 8/28/20
Obtain Permits	20 days	Mon 8/31/20	Fri 9/25/20
Mobilization	1 day	Mon 9/28/20	Mon 9/28/20
Cleaning and CCTV Inspections (3600 LF/Day provided by 1-2 or more	200 days	Tue 9/29/20	Mon 7/5/21
QA/QC of Inspection Data and Final Report Preparation	202 days	Fri 10/2/20	Mon 7/12/21
Rehabilitation Program Development	210 days	Sat 10/10/20	Thu 7/29/21
Final Project Review Meeting	1 day	Fri 7/30/21	Fri 7/30/21

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for PROJECT without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of completing the PROJECT.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 6254.21 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than the PROJECT without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the PROJECT.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for PROJECT.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of the SERVICE AGREEMENT shall govern and control.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD TREE MAINTENANCE SERVICES AGREEMENT

RECOMMENDATION(S)

1. Award a Maintenance Services Agreement to A Plus Tree, Inc. for up to \$600,000 (\$300,000 annually for a two-year period) subject to future annual budget appropriations by the City Council; and
2. Authorize the City Manager to execute and administer the said agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider awarding a tree maintenance services agreement to A Plus Tree, Inc. in the amount of \$600,000. The City has contracted with professional arborists for many years to service trees throughout the community. Services provided include grid pruning, tree trimming for safety and clearance purposes, tree removals, emergency response services and arborist consultation services. The new agreement will have a two-year term with authorization for the City Manager to execute three consecutive one-year extensions. If approved, the initial two-year term will be from October 1, 2020 to September 30, 2022.

As the City's current maintenance service agreement expires on September 30th, the Request for Proposals (RFP) was originally released on June 16, 2020. On August 5, 2020, a Notice of Intent to Award was issued stating the City's intent to award a contract to A Plus Tree, Inc. A competing contractor, West Coast Arborist, protested the intended award because the RFP did not clearly indicate weighting would be used in the scoring analysis. On August 19, 2020, the City Council rejected all proposals received and directed staff to rebid the agreement with an amended RFP indicating that the cost proposal analysis would be weighted.

The rebid was noticed in the MH Times on August 21, 2020. The proposals were due on September 1, 2020, and six proposals were received. Proposals were first evaluated on a narrative response to questions. They were scored for previous work experience, work quality and references, qualifications of staff and organized communication systems. Proposals receiving a minimum of 30 out of 40 points were then evaluated based on weighted averages for each firm's pricing for grid pruning, and average unit pricing for tree trimming, tree and stump removal, tree planting, arborist's hourly rates,

tree watering and average crew rental rates. Proposals were received from A Plus Tree, Arborist Now, Arbor Works, Brightview Tree, Atlas Tree and West Coast Arborists. Attached is a scoring summary (Attachment 1).

Based on the narrative response and the weighted cost proposal scoring, A Plus Tree, Inc., is the qualified bidder with the highest scoring (and lowest cost) cost proposal. A Plus Tree, Inc. has 18 years of experience and currently manages over 1,000 commercial properties annually with a combined total of over 250,000 trees.

Staff recommends the award of the tree maintenance services agreement for \$600,000 for two years, which is \$300,000 per year subject to future annual budget appropriations by the City Council (Attachment 2). The \$300,000 amount represents a base amount of \$150,000 for scheduled services and up to \$150,000 in extra services related to emergencies and capital projects, like sidewalk repairs, that also require these services.

COMMUNITY ENGAGEMENT: Inform

As tree maintenance services are a regular and expected City service, no efforts were made to inform the community about this proposed agreement. The actual tree maintenance work resulting from this agreement is shared via City communication tools, including “The Scoop,” a weekly maintenance update on the City website, and Nextdoor Morgan Hill. Signs will be posted when tree maintenance services are performed that will affect or impair access to the street or public sidewalks.

ALTERNATIVE ACTIONS:

An alternative action would be to not approve this agreement or to modify the approval in some way, however, this is not recommended as it would jeopardize ongoing tree maintenance and safety.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council awarded the prior tree maintenance services agreement to West Coast Arborist, Inc. on July 15, 2015 and approved several amendments during the contract’s term. As stated above, the Council rejected the first set of proposals received for the prior RFP on August 19, 2020.

FISCAL AND RESOURCE IMPACT:

The funding for tree maintenance services is included in many areas of the City’s operating budget, including Street Maintenance, Landscape Assessment Districts, Park Maintenance, Downtown Maintenance, and various Capital Improvement projects.

CEQA (California Environmental Quality Act):

Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. REBID Tree Maintenance Scoring Summary
2. A Plus Tree Inc Tree Maintenance Service Agreement

Morgan Hill: REBID 2020 Tree Maintenance Narrative and Bid Pricing

NARRATIVE SCORING								NARRATIVE SCORING (40 points)									
								Points Available	A Plus Tree	Arborist Now	Arbor Works	Brightview Tree	Atlas Tree	West Coast Arborist			
Previous Experience providing superior levels of tree maintenance service to like-sized public and/or private agencies								15.0	13.0	11.5	12.0	13.3	12.5	14.0			
Assessments of work quality, performance and working relationships by current and recent clients indicating high levels of satisfaction and eff								10.0	8.5	8.3	8.8	7.8	8.5	9.0			
Qualifications of staff to be assigned to provide tree maintenance services to the City								5.0	4.8	4.5	4.3	4.5	4.5	4.8			
Well organized communication systems and electronic reporting capabilities								10.0	9.5	7.8	7.0	7.8	7.5	9.25			
SUBTOTAL- NARRATIVE POINTS								40.0	35.8	32.0	32.0	33.3	33.0	37.0			
BID PRICING								BID PRICING SCORING (60 points)									
Item	Lowest Bidder	A Plus Tree	Arborist Now	Arbor Works	Brightview Tree	Atlas Tree	West Coast Arborist		Points Available	A Plus Tree	Arborist Now	Arbor Works	Brightview Tree	Atlas Tree	West Coast Arborist		
1. Grid and Park Pruning Price	58.75	58.75	375.00	69.00	109.00	750.00	62.00	38.00%	22.8	22.8	3.6	19.4	12.3	1.8	21.6		
2A. to 2E. Average Trim Price	131.20	152.00	377.00	171.80	271.16	625.00	131.20	2.00%	1.2	1.0	0.4	0.9	0.6	0.3	1.2		
3A. To 3B. Average Tree Removal Price	36.00	1,100.00	1,100.00	36.00	55.60	88.50	44.00	2.50%	1.5	0.0	0.0	1.5	1.0	0.6	1.2		
4. Stump Removal	10.00	10.00	150.00	15.00	22.50	10.00	10.00	2.50%	1.5	1.5	0.1	1.0	0.7	1.5	1.5		
5A. To 5C. Average Tree Planting Price	220.00	235.67	516.67	236.67	281.67	366.67	220.00	2.00%	1.2	1.1	0.5	1.1	0.9	0.7	1.2		
6. Evaluation by Certified Arborist	70.00	70.00	150.00	127.50	172.00	140.00	100.00	4.00%	2.4	2.4	1.1	1.3	1.0	1.2	1.7		
7. Tree Watering	198.00	198.00	900.00	-	665.00	200.00	199.00	2.00%	1.2	1.2	0.3	-	0.4	1.2	1.2		
8. Average Crew Rental Price	180.00	212.50	180.00	357.50	322.50	437.50	255.00	47.00%	28.2	23.9	28.2	14.2	15.7	11.6	19.9		
SUBTOTAL-PRICING POINTS								100%	60.0	54.0	34.2	39.5	32.5	18.9	49.5		
GRAND TOTAL								100.0	89.7	66.2	71.5	65.8	51.9	86.5			
									1	4	3	5	6	2			

Point Score is lowest bidder's item price divided by each Contractor's item price times the number of points available. For example, Arbor Work's Average Crew Rental Price Amount = 180.00/357.50 X 28.2 points = 14.2 points

Attachment: REBID Tree Maintenance Scoring Summary (2841 : Tree Maintenance Contract)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 23, 2020

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

RESPONSE TO COVID-19, COUNTYWIDE ISOLATION AND QUARANTINE SUPPORT PROGRAM

RECOMMENDATION(S)

1. Receive report and consider funding \$154,917 for the continuation of an established Countywide "Isolation and Quarantine Support Program" by:
 - a. Adopting resolution to appropriate \$107,208 from the General Fund (010); and
 - b. Authorizing expenditure of \$47,709 from the Housing Fund (236);

OR

2. Provide feedback and direct staff to return with an alternative option.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2020-2021 Strategic Priorities

Community Engagement and Messaging
Affordable Housing and Homelessness

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

POLICY CONSIDERATION:

The purpose of this report is to allow City Council to consider funding the Countywide Isolation and Quarantine Support Program in the amount of \$154,917, for services between August 1, 2020 through December 31, 2020.

NARRATIVE:

BACKGROUND

In response to COVID-19, the County identified an urgent need to provide Temporary Shelter and Services to Help Individuals and Families effectively Isolate or Quarantine. Since March 2020, the County and its partners have increased temporary shelter in response to the pandemic. The County has added congregate shelter beds, and also reserved hotel/motel rooms, including rooms at the Holiday Inn and Hampton Inn in Morgan Hill. The County has prioritized non-congregate shelter (NCS) settings, such as motel rooms for individuals who: 1) because of their age or underlying health conditions are at-risk for serious illness or death if they contract COVID-19; 2) may have been in

close contact with a COVID-19 positive person (a “case”); or, 3) have tested positive for COVID-19. These programs primarily serve homeless individuals and families, but the programs also serve persons who have stable housing but whose residential settings or circumstances do not allow for effective isolation.

After operating a pilot program for a few months, the County has identified the need to expand upon the Countywide Isolation and Quarantine Program and are “*transitioning to a Broader Isolation and Quarantine Support Program (I/Q Program)*”. The I/Q Program is for COVID+ cases and close contacts. The County seeks to continue to help residents isolate if they have tested positive for COVID-19, or quarantine if they have been in close contact with a COVID-19 positive person. The County is requesting that Morgan Hill contribute \$154,917 to support the on-going activities.

The countywide Case Investigation and Contact Tracing team (CICT) makes determinations based on the circumstances of each interaction. The CICT also helps cases and contacts understand how and why it is important to safely isolate or quarantine. The isolation period is typically between 14 and 21 days, and varies depending on the duration of illness. Quarantine generally lasts 14 days, so long as the person does not become a case. Many individuals and their families will be able to isolate or quarantine in their homes without assistance. Others have situations that make isolating or quarantining difficult. These challenges include, but are not limited to, crowded households, the lack of paid sick leave, recent unemployment, co-habitation with at-risk individuals, and obligations to care for family members. Primary among these challenges are: 1) access to a room in which the case or contact may stay and remain separate from other members of the household; and, 2) access to one’s own bathroom or the ability to clean the bathroom after each use. The CICT team is trained to talk with cases and contacts about what they may need to effectively isolate or quarantine in their own home.

The County’s Emergency Operations Center (EOC) established a CICT team to use a brand-new contact tracing management information system that is being implemented statewide. Program staff will assess needs, coordinate services and resources. Using bilingual staff and/or the County’s language access service, the Program will provide language access to residents to ensure that every resident has meaningful access to County services, programs, benefits, and information. During the pilot phase, the Program has been staffed with three to five persons seven days a week from 8 a.m. to 5:00 p.m. managed by the Housing and Human Services Unit in the County’s EOC.

SERVICES PROVIDED THROUGH THE PROGRAM

The CICT’s final task is to refer cases and contacts to an isolation and quarantine support program (Program) where needed. This enables the Program’s resource coordinators to proactively engage each case and contact to assess and determine

eligibility for needs. If the Council elects to fund the I/Q Program, the County will provide the following services and program administration:

Support Request Line. The County will provide staff or contractors to receive requests for assistance from cases, contacts, medical providers, cities' emergency operations centers, Public Health unit and community-based organizations (CBOs) via telephone or email.

Coordination. The team and manager assigned to the Support Request Line are also responsible for coordinating with the Public Health Special Investigations Group (SIG) and CITC to ensure that all teams are aware of and can take appropriate actions for each case and contact. Coordinators are assigned to the Support Request Line and assess cases and contacts for needs and arrange for the services described below.

Support at Home. Even individuals or families who have adequate home settings may need additional assistance including: transportation to/from medically necessary appointments, meals per day and/or groceries, medical screening and connection to medical services, laundry services for linens and personal clothing, and light case management services to help individuals apply for benefits (e.g., unemployment insurance, CalFresh) and other services.

Motels. Some individuals and/or family members may be placed at a motel to isolate or quarantine until they are cleared to return to their home (including a congregate care setting). The Resource Coordinators coordinate placement at one or more motels. The County negotiates agreements with the motel(s), provides on-site management staff and services via contracts with community-based organizations and hires security. In some cases, the individual may be placed in other non-congregate settings, such as a travel trailer. In these out-of-home settings, the program also provides transportation, food, health and behavioral health screenings and services, laundry, and light case management services, as needed.

Rental and Financial Assistance. If there is a documented need, cases and contacts would be eligible for rental and financial assistance *up to* \$5,000. The rental and financial assistance is limited to households earning 80% or less of the Area Median Income (AMI) adjusted for household size. Rental and financial assistance is primarily administered by Sacred Heart Community Service (SHCS) under contract with the County. Since the beginning of the epidemic, SHCS has provided \$395,850 in rental assistance to Morgan Hill residents and \$543,383 in rental assistance to Gilroy residents; 80% of those individuals had a loss of income because of COVID-19. The agreement with SHCS enables that organization to:

- Issue rental assistance or financial assistance within 72 hours of verifying eligibility;

- Connect cases and contacts to the broader network of homelessness prevention services (e.g., additional rental assistance) which is primarily implemented through the seven CBOs of the Emergency Assistance Network (EAN) and coordinated by SHCS; and,
- Connect cases and contacts to other community resources.

Other Services. Program Resource Coordinators are also responsible for arranging access to other services including, but not limited to, childcare, elder care, in-home support services, and, emergency, urgent, and/or ongoing healthcare services.

Department of Employment and Benefit Services (DEBS). The Resource Coordinators also ensure that (eligible) cases or contacts are able to access or sign up for General Assistance, CalWORKs, Medi-Cal, CalFresh, or other benefit programs administered by the County. The Resource Coordinators cannot authorize these benefits directly, but the County's DEBS has assigned an Eligibility Supervisor to:

Receive referrals directly from Resource Coordinators. Immediately contact the case or contact to help them apply for the appropriate program; and when appropriate, approve the applications for assistance.

COVID-19 Assistance Navigation Hotline (CAN-19 Hotline). For workers who need additional assistance understanding or accessing resources provided through the California Employment Development Department (EDD), such as unemployment insurance, Resource Coordinators make a connection to the County's CAN-19 Hotline. The CAN-19 Hotline assists in English, Spanish, Vietnamese, and Mandarin.

Program Period. The Pilot Program began May 26, 2020. The term of this proposed agreement is effective August 1, 2020 and will continue until December 31, 2020, unless extended by mutual consent. As contact tracing is expanded and there is an increase in COVID-19 testing capabilities, the number of cases and the number of contacts associated with each case may increase.

Unfortunately, the County does not have good estimates for the percentage of cases and contacts who would need assistance to isolate or quarantine moving forward. While less than 3% of cases have needed motel rooms or shelter at the County Field Respite Center, it is anticipated that requests for assistance will rise especially as testing services are made more accessible to underserved communities.

Although the County started the Pilot Program on behalf of all 15 cities, their ongoing primary responsibility is to serve residents of the unincorporated areas. During the pilot period, the County Administration has worked with the 15 cities to develop options for implementing and sustaining an ongoing countywide program for all Santa Clara County residents.

Funding. The County is using Community Development Block Grant (CDBG) funds as funding for the CDBG program was increased and the program was given more flexibility to respond to the pandemic. Moreover, the County administers the CDBG program on behalf of the unincorporated areas of Santa Clara County and the cities of Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, and Saratoga. The cities of Cupertino, Gilroy, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, and Sunnyvale each receive their own allocation of CDBG funds. The County established a program using CDBG funds for the “Urban County” or non-entitlement cities such as Morgan Hill; the other eight cities could establish their own programs using the County’s model or contract with the County to administer their programs.

While CDBG funds support most of the program’s services, it cannot be used to pay for costs associated with renting motel rooms. The County and cities therefore must identify alternative funding sources for leasing motel rooms.

Projected Needs by Jurisdiction, August 1, 2020 through December 31, 2020.

The table below summarizes the projected needs among residents of each jurisdiction by Program component from August 1 through December 31, 2020, which is approximately 22 weeks. The number of residents by jurisdiction is based on current Program utilization and a minimum of five – one per month – for each jurisdiction. For planning purposes, at least one resident from each jurisdiction would need a motel placement. This could change based on epidemic trends.

Projection reflects:

- Utilization June 17 through July 31, 2020
- A minimum of 5 households per jurisdiction and at least one motel placement
- 10% of enrollees will need a motel placement and 90% can isolate or quarantine at home
- 60% of all enrollees request rental assistance

		Imputed		60% of Enrollees
	Imputed	At-Home	Total Program	Request Rental
	<u>Motel</u>	<u>Support</u>	<u>Enrollments</u>	<u>Assistance</u>
CAMPBELL	2	22	24	14
CUPERTINO	1	4	5	3
GILROY	4	32	36	22
LOS ALTOS	1	4	5	3
LOS ALTOS HILLS	1	4	5	3
LOS GATOS	1	4	5	3

MILPITAS	2	22	24	14
MONTE SERENO	1	4	5	3
MORGAN HILL	4	32	36	22
MOUNTAIN VIEW	2	22	24	14
PALO ALTO	5	43	48	29
SAN JOSE	270	2430	2700	1620
SANTA CLARA	8	76	84	50
SARATOGA	1	4	5	3
SUNNYVALE	12	108	120	72
UNINCORPORATED	20	184	204	122
TOTAL	335	2995	3330	1997

COST SHARING

The County has broken down the program into four categories: fixed costs, motel costs, at-home support services, and rental and financial assistance.

- **Fixed Costs:** Each jurisdiction would reimburse the County for a portion of the Program's fixed costs regardless of utilization by the jurisdiction's residents. Each jurisdiction's share of the fixed costs is proportional to its share of the countywide population as set forth in Exhibit D of the agreement. The services associated with these costs are necessary because they allow CICT, providers and residents to access the Program's services.
- **Motel Costs:** Each jurisdiction will contribute to the cost of operating motels for isolation and quarantine based on the proportion of motel nights that its residents use. For example, in a given month, if a San Jose resident stayed in one room for 30 days and a Campbell resident stayed in another room for 30 days – and no other jurisdiction's residents stayed at the site – the costs for operating that motel site, would be evenly split between the City of San Jose and the City of Campbell.
- **At-Home Support Services:** Each jurisdiction will reimburse the County for the cost of supportive services provided directly to the jurisdiction's residents while they isolate or quarantine in their own homes.
- **Rental and Financial Assistance:** Each jurisdiction will reimburse the County for the rental and financial assistance provided directly to the jurisdiction's residents.

Exhibit C through E of the agreement (Attachment 1) outlined estimated cost by service component, estimated share by jurisdiction of fixed cost, and estimated total cost of

program by jurisdiction (summarized below). Morgan Hill's share is computed to \$154,917.

<u>Jurisdiction</u>	<u>Fixed Costs</u>	<u>Motel Costs</u>	<u>At-Home Support</u>	<u>Financial Assistance</u>	<u>Total by Jurisdiction</u>
Campbell	\$ 12,335	\$ 17,079	\$ 20,768	\$ 49,000	\$ 99,183
Cupertino	\$ 17,370	\$ 8,540	\$ 3,776	\$ 10,500	\$ 40,186
Gilroy	\$ 16,651	\$ 34,159	\$ 30,208	\$ 77,000	\$ 158,018
Los Altos	\$ 9,006	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,822
Los Altos Hills	\$ 2,454	\$ 8,540	\$ 3,776	\$ 10,500	\$ 25,270
Los Gatos	\$ 9,171	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,986
Milpitas	\$ 22,741	\$ 17,079	\$ 20,768	\$ 49,000	\$ 109,588
Monte Sereno	\$ 1,048	\$ 8,540	\$ 3,776	\$ 10,500	\$ 23,864
Morgan Hill	\$ 13,550	\$ 34,159	\$ 30,208	\$ 77,000	\$ 154,917
Mountain View	\$ 23,998	\$ 17,079	\$ 20,768	\$ 49,000	\$ 110,846
Palo Alto	\$ 20,193	\$ 42,698	\$ 40,592	\$ 101,500	\$ 204,983
San Jose	\$ 306,044	\$ 2,305,717	\$ 2,293,920	\$ 5,670,000	\$ 10,575,682
Santa Clara	\$ 37,659	\$ 68,318	\$ 71,744	\$ 175,000	\$ 352,721
Saratoga	\$ 9,051	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,867
Sunnyvale	\$ 45,651	\$ 102,476	\$ 101,952	\$ 252,000	\$ 502,080
Unincorporated	\$ 25,374	\$ 170,794	\$ 173,696	\$ 427,000	\$ 796,864
Total	\$ 572,300	\$ 2,860,797	\$ 2,827,280	\$ 6,989,500	\$ 13,249,877

COMMUNITY ENGAGEMENT: This report serves to provide an update to the community and the City Council on the Countywide Isolation and Quarantine Program, and the recommendation to enter into an agreement with the County for the continuation of the services.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve funding for the Countywide Isolation and Quarantine Program, and or direct staff to return with alternative options.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Pending City Council approval, the City would enter into an agreement with the Office of Supportive Housing for the Isolation and Quarantine Program for a period effective August 1, 2020 and will continue until December 31, 2020, unless extended by mutual consent. The total contract would not exceed \$154,917, of which \$47,709 would be funded by Housing Fund (236) and the General Fund (010) would fund the balance of \$107,208. Fund 236 commitments can be paid for through dollars contained in the housing programs budget line. The City Council would need to adopt the budget amendment resolution (Attachment 2) to appropriate the General Fund portion.

CEQA (California Environmental Quality Act):

Not a Project. It is not reasonably foreseeable that program funding will have a direct or indirect impact on the environment.

LINKS/ATTACHMENTS:

1. City County Revenue Agreement Template Isolation and Quarantine Program - Morgan Hill v2
2. Budget Amendment Resolution
3. FAQ

**FUNDING AGREEMENT BETWEEN THE
COUNTY OF SANTA CLARA
AND THE CITY OF MORGAN HILL
FOR COUNTYWIDE ISOLATION AND QUARANTINE
SUPPORT PROGRAM**

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 a Countywide Isolation and Quarantine Support Program (“Program”) to be managed by the County.

RECITALS

- A. WHEREAS, on February 3, 2020, the County Health Officer declared a local health emergency, and the County's Director of Emergency Services proclaimed a local emergency, to respond to the Coronavirus Disease (“COVID-19”) pandemic and manage its spread throughout the County; and
- B. WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California because of the threat of COVID-19; and
- C. WHEREAS, on March 16, 2020, the Santa Clara County Public Health Officer issued an Order to all residents to shelter in place and businesses to close except for essential activities, essential services, and governmental services as defined under Section 10 of the Order; and
- D. WHEREAS, on March 19, 2020, the Governor issued an Order (Executive Order N-33-20) that all individuals living in the State of California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all; and
- E. WHEREAS, as a result of the State Executive Orders and their national counterparts and the County Order in response to COVID-19, as may be extended and modified by federal, state, and local authorities, the County and City have identified an urgent need to provide a Countywide Isolation and Quarantine Support Program (“Program”) as part of the response to COVID-19; and,
- F. WHEREAS, the County has established and will operate the Program as described on Exhibit “A” attached hereto and incorporated herein by this reference; and

- G. WHEREAS, the Program assists all residents of Santa Clara County to isolate if they have tested positive for Coronavirus (COVID-19) (“Cases”) or quarantine if they have been in close contact with a COVID-19 positive person (“Contacts”); and
- H. WHEREAS, the U.S. Centers for Disease Control and Prevention defines a “close contact” as “someone who was within six feet of an infected person for at least 15 minutes starting from 48 hours before illness onset until the time the patient is isolated; however, the County Public Health Department’s Special Investigations Unit or Case Investigation and Contact Tracing group (“CICT”) will make determinations based on the circumstances of each interaction; and
- I. WHEREAS, many individuals and their families will be able to isolate or quarantine in their homes without assistance; and
- J. WHEREAS, others have situations that make isolating or quarantining difficult. These challenges include, but are not limited to, overcrowded housing, the lack of paid sick leave, recent unemployment, co-habitation with at-risk individuals, and obligations to care for family members. Primary among these challenges are: 1) access to a room in which the case or contact may stay and remain entirely separate from other members of the household; and, 2) access to one’s own bathroom or the ability to thoroughly clean the bathroom after each use. The County’s CICT group is trained to speak with individuals about what they may need to effectively isolate or quarantine in their own home; and
- K. WHEREAS, it is in the intent of this Agreement that City, along with all other 14 cities within Santa Clara County, will contribute funding to the County to pay the County for its costs in operating the Program.

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

AGREEMENT

SECTION 1 TERM

This Agreement is effective August 1, 2020 and will continue thereafter until December 31, 2020, unless extended by mutual consent.

SECTION 2 MAXIMUM FINANCIAL OBLIGATION

As explained in Section 3 below and stated in Exhibit E, City’s maximum financial obligation during the Term of this Agreement is \$154,917.

SECTION 3 ESTIMATE OF COUNTYWIDE NEED AND COST SHARING

To ensure that appropriate services are available to all Santa Clara County residents who need help with isolation or quarantine, it is the intent of this Agreement that the County and all 15 cities within the County would share in the Program's costs on a roughly proportional basis as set forth below.

a) Estimates of Countywide Need:

- i) Based upon prior utilization data, the County estimates that during the term of this Agreement, approximately 200 households who are Cases or Contacts will be referred to or will contact the Program weekly. Of the 200 households, it is estimated that approximately 25% (about 50 households) will decline services, be ineligible or referrals that cannot be contacted. Of the remaining households (approximately 150 households) who participate in the Program, 90% (about 135 households) will receive assistance to isolate or quarantine at home and 10% (about 15 households) would temporarily move into a motel. Of all households who enroll in the Program (150 households) each week, about 60% (90 households) are also expected to request and receive rental or financial assistance.
- ii) Of the households participating in the program, it is estimated that approximately 82% will be residents of the City of San José. Residency is determined by the person's or family's home address.
- iii) Exhibit B summarizes the projected needs among residents of each jurisdiction by Program component from August 1 through December 31, 2020, which is approximately 22 weeks. The number of residents by jurisdiction is based on current Program utilization and a minimum of five – one per month – for each jurisdiction. For planning purposes, at least one resident from each jurisdiction would need a motel placement.
- iv) If the person or family is homeless, their residency is determined by the location of their last permanent address or the city or unincorporated area where they spend most of their time.

b) **Cost Sharing:** Exhibit C summarizes the assumptions used to determine the Program's fixed costs, the costs of operating a motel room for one month, at-home support services, and rental or other financial assistance. These are intended to be estimates for budgeting purposes.

- i) **Fixed Costs:** Each jurisdiction would reimburse the County for a portion of the Program's fixed costs regardless of utilization by the jurisdiction's residents. Each jurisdiction's share of the fixed costs is proportional to its share of the countywide population as set forth in Exhibit D. The services associated with these costs are necessary because they allow CICT, providers and residents to access the Program's services.
- ii) **Motel Costs:** Each jurisdiction will contribute to the cost of operating motels for isolation and quarantine based on the proportion of motel nights that its residents use. For example, in a given month, if a San Jose resident stayed in one room for 30 days and a Campbell resident stayed in another room for 30 days – and no other jurisdiction's residents stayed at the site – the costs for

operating that motel site, would be evenly split between the City of San Jose and the City of Campbell.

- iii) **At-Home Support Services:** Each jurisdiction will reimburse the County for the cost of supportive services provided directly to the jurisdiction's residents while they isolate or quarantine in their own homes.
- iv) **Rental and Financial Assistance.** Each jurisdiction will reimburse the County for the rental or financial assistance provided directly to the jurisdiction's residents.
- c) **Total Estimated Costs:** Exhibit E summarizes the total estimated cost by jurisdiction. These estimates form the basis for the maximum financial obligation during the term referenced in Section 2 of this Agreement. If the number of City residents participating in the Program exceeds 50% of the total estimated participation shown in Exhibit B, then the City agrees to confer with the County on adjustments to the maximum financial obligation.
- d) The County shall submit invoices for any eligible cost up to the maximum financial obligation. For example, the County may submit the cost of information and referral for all motel rooms located in the City as a strategy to leverage Federal Emergency Management Agency (FEMA) reimbursements. The County may submit invoices to the City even if FEMA has not made a determination on the County's request(s) for reimbursement under FEMA's Public Assistance program. Invoices submitted by County will be supported by backup documentation provided with the invoice.

SECTION 4 ROLES AND RESPONSIBILITIES

County shall operate the Program as indicated in the Program Description attached as Exhibit "A."

SECTION 5 LEVERAGING AND USE OF FUNDS

- a) The City's funds may be used for any expenses that are necessary for successful operation of the Program, as described in this Agreement. This includes expenses that may be categorically ineligible for the FEMA Public Assistance program and the portion of expenses that is calculated to be the local match for the FEMA Public Assistance program.
- b) The County will work with City to leverage state and federal funds and to conserve local resources. However, since some funding sources have limitations the County may not be able to true-up costs for each city until well after the Program has ceased operations. Furthermore, based on determinations of the agencies like FEMA, the County may have to allocate certain funding to specific categories of expenses to maximize state and federal funds.
- c) The County will submit requests for reimbursement through the FEMA Public Assistance program. Reimbursements from this program require a 25% match, and not all funding sources can be used as match.

- d) The County intends to use approximately \$250,000 in Community Development Block Grant Coronavirus (CDBG-CV) funds to operate the program and to pay for a portion of costs associated with unincorporated Santa Clara County. The County would use these funds to offset the actual costs to the “Urban County” cities: Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill and Saratoga. The County, on behalf of these cities, receives CDBG funds and administers CDBG-eligible programs. Note that CDBG-CV funds cannot be used for hotel costs and can only be used to support households earning 80% or less of AMI.

SECTION 6 MUTUAL INDEMNIFICATION

County and City agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Parties under this Agreement.

SECTION 7 TERMINATION FOR CAUSE

Either party may terminate this Agreement at any time for cause upon providing notice and a reasonable opportunity to cure to the other party.

SECTION 8 ASSURANCE

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

SECTION 9 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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:

COUNTY OF SANTA CLARA

Office of Supportive Housing

Attn: Consuelo Hernandez

Phone: 408-278-6419

Address: 2310 North First St., Suite 201, San Jose, CA 95131

Email: Consuelo.Hernandez@hhs.sccgov.org

CITY OF MORGAN HILL

Attn: Rebecca Garcia

Phone: 408-310-4637

Address: 17575 Peak Avenue, Morgan Hill, CA 95037

Email: Rebecca.Garcia@morganhill.ca.gov

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

SECTION 15 AMENDMENTS

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

SECTION 16 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.

SECTION 17 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 Santa Clara County.

SECTION 18 COUNTERPARTS

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

SECTION 19 THIRD PARTY BENEFICIARIES

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

SECTION 20 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**CITY OF MORGAN HILL**

Jeffrey V. Smith
County Executive

Christina Turner
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY**APPROVED AS TO FORM**

Christopher Cheleden
Lead Deputy County Counsel

Don Larkin
City Attorney

Date: _____

Date: _____

EXHIBIT A

PROGRAM DESCRIPTION

The County shall provide the following services and program organization in operating the Program:

Program Coordination:

- **Support Request Line.** The County will provide staff or contractors to receive requests for assistance from cases, contacts, medical providers, cities' emergency operations centers, and Public Health unit and community-based organizations (CBOs) via telephone or email. The Program's "call center" would be available seven days a week from 8 am to 5 pm. Voice messages or emails received after hours would be responded to the following day.
- **Coordination.** The team and manager assigned to the Support Request Line would also be responsible for coordinating with the Public Health Special Investigations Group (SIG) and CITC to ensure that all teams are aware of and can take appropriate actions for each case and contact. Continuous coordination with SIG and CITC will be necessary because there may be a lag between the time when SIG or CITC become aware of a case or contact and the time when a case or contact or their medical provider reaches out for assistance. The manager of the team would also be responsible for data collection for reports to the County Administration and participating cities.
- **Resource Coordinators.** Coordinators would be assigned to the Support Request Line and would assess cases and contacts for needs and arrange for the services described below.
- **Support at Home.** Even individuals or families who have adequate home settings may need additional assistance including:
 - Transportation to/from medically necessary appointments if the individual is not able to use a private vehicle;
 - Up to three meals per day and/or groceries;
 - Medical screening and connection to medical services; and
 - Weekly laundry services for linens and personal clothing; and, Light case management services to help individuals apply for benefits (e.g., unemployment insurance, CalFresh) and other services.
- **Motels.** Some individuals and/or family members may be placed at a motel to isolate or quarantine until they are cleared to return to their home (including a congregate care setting). The Resource Coordinators would coordinate placement at one or more motels for cases or contacts who cannot

remain at home or do not have a home. In addition to typical motel management staff and services, the County would negotiate agreements with the motel(s), contract with a community-based organization to provide onsite coordinators and oversee security. In some cases, the individual may be placed in other non-congregate settings, such as a travel trailer. In these out-of-home settings, the program would also provide transportation, food, health and behavioral health screenings and services, laundry and light case management services, as needed.

- **Rental and Financial Assistance.** If there is a documented need, cases and contacts would be eligible for rental and financial assistance up to \$5,000. The rental and financial assistance is limited to households earning 80% or less of the Area Median Income (AMI) adjusted for household size. Rental and financial assistance would primarily be provided by Sacred Heart Community Service (SHCS) under contract with the County. The agreement with SHCS enables that organization to:
 - Issue rental assistance or financial assistance within 72 hours of verifying eligibility;
 - Connect cases and contacts to the broader network of homelessness prevention services (e.g., additional rental assistance) which is primarily implemented through the seven CBOs of the Emergency Assistance Network (EAN) and coordinated by SHCS; and,
 - Connect cases and contacts to other community resources.
- **Other Services.** Program resource coordinators would also be responsible for arranging access to other services including, but not limited to, childcare, elder care, in-home support services, and, emergency, urgent, and/or ongoing healthcare services.
- **Department of Employment and Benefit Services (DEBS).** The Resource Coordinators would ensure that (eligible) cases or contacts would be able to access or sign up for General Assistance, CalWORKs, Medi-Cal, CalFresh, or other benefit programs administered by the County. The Resource Coordinators cannot authorize these benefits directly, but the County's DEBS has assigned an Eligibility Supervisor to:
 - Receive referrals directly from Resource Coordinators;
 - Immediately contact the case or contact to help them apply for the appropriate program; and
 - When appropriate, approve the applications for assistance.
- **COVID-19 Assistance Navigation Hotline (CAN-19 Hotline).** For workers who need additional assistance understanding or accessing resources provided through the California Employment Development Department (EDD), such as unemployment insurance, Resource Coordinators would make a connection to the County's CAN-19 Hotline. The CAN-19 Hotline assists in English, Spanish, Vietnamese and Mandarin.

Exhibit B – Projected Needs by Jurisdiction, August 1, 2020 through December 31, 2020

Projection reflects:

- Utilization June 17 through July 31, 2020
- A minimum of 5 households per jurisdiction and at least one motel placement
- 10% of enrollees will need a motel placement and 90% can isolate or quarantine at home
- 60% of all enrollees request rental assistance

	Imputed			60% of Enrollees
	Imputed	At-Home	Total Program	Request Rental
	<u>Motel</u>	<u>Support</u>	<u>Enrollments</u>	<u>Assistance</u>
CAMPBELL	2	22	24	14
CUPERTINO	1	4	5	3
GILROY	4	32	36	22
LOS ALTOS	1	4	5	3
LOS ALTOS HILLS	1	4	5	3
LOS GATOS	1	4	5	3
MILPITAS	2	22	24	14
MONTE SERENO	1	4	5	3
MORGAN HILL	4	32	36	22
MOUNTAIN VIEW	2	22	24	14
PALO ALTO	5	43	48	29
SAN JOSE	270	2430	2700	1620
SANTA CLARA	8	76	84	50
SARATOGA	1	4	5	3
SUNNYVALE	12	108	120	72
UNINCORPORATED	20	184	204	122
TOTAL	335	2995	3330	1997

Exhibit C – Estimate of Costs by Service Component

		Fixed Costs	Motel Room	At-Home Support	Financial Assistance
<u>Activity</u>	<u>Est. Rate / Per Unit Cost</u>	<u>per Month</u>	<u>Cost per Month</u>	<u>Costs per HH</u>	<u>Cost per HH</u>
Resource Coordinators, Medical Screening, Program Coordination	7.0 FTE (~\$150K per FTE annually)	\$ 87,500	\$ -	\$ -	\$ -
Sacred Heart Staffing, Operations & Overhead	(28500/3) or \$9,500 per month	\$ 9,500	\$ -	\$ -	\$ -
Rental / Financial Assistance	Up to \$5,000 per HH / Avg. \$3,500 per HH	\$ -	\$ -	\$ -	\$ 3,500
Motel Room Rate & Tax	Average of \$107 per night	\$ -	\$ 3,255	\$ -	\$ -
Motel Site Management	\$25,000 per site per month	\$ -	\$ 424	\$ -	\$ -
Information & Referral Services	\$20,833 per site per month	\$ -	\$ 353	\$ -	\$ -
Motel Security	\$48,400 per site per month	\$ -	\$ 820	\$ -	\$ -
Meal Delivery	Three meals \$33 per person per day	\$ -	\$ 1,004	\$ -	\$ -
Groceries	\$50 per person per week, assume 4 ppl	\$ -	\$ -	\$ 400	\$ -
Transportation	Up to \$400 per incident (1.5/mo)	\$ -	\$ 600	\$ 400	\$ -
Laundry Services	\$40 per household per month	\$ -	\$ 40	\$ -	\$ -
Medical & Behavioral Health Services	3 FTE RN per site per month	\$ -	\$ 742	\$ -	\$ -
Administration	18%	\$ 17,460	\$ 1,303	\$ 144	\$ -
Total		\$ 114,460	\$ 8,540	\$ 944	\$ 3,500

Exhibit D – Estimate of Fixed Costs and Share by Jurisdiction

Jurisdictional Share of Monthly Fixed Costs

County Population: 1/1/2020

Source: <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/e-1/>

	FIXED COSTS			
		<u>% of Total</u>	<u>Monthly Fixed Costs</u>	<u>Aug. 1 thru Dec. 31, 2020</u>
Campbell	42,288	2.2%	\$ 2,467	\$ 12,335
Cupertino	59,549	3.0%	\$ 3,474	\$ 17,370
Gilroy	57,084	2.9%	\$ 3,330	\$ 16,651
Los Altos	30,876	1.6%	\$ 1,801	\$ 9,006
Los Altos Hills	8,413	0.4%	\$ 491	\$ 2,454
Los Gatos	31,439	1.6%	\$ 1,834	\$ 9,171
Milpitas	77,961	4.0%	\$ 4,548	\$ 22,741
Monte Sereno	3,594	0.2%	\$ 210	\$ 1,048
Morgan Hill	46,454	2.4%	\$ 2,710	\$ 13,550
Mountain View	82,272	4.2%	\$ 4,800	\$ 23,998
Palo Alto	69,226	3.5%	\$ 4,039	\$ 20,193
San Jose	1,049,187	53.5%	\$ 61,209	\$ 306,044
Santa Clara	129,104	6.6%	\$ 7,532	\$ 37,659
Saratoga	31,030	1.6%	\$ 1,810	\$ 9,051
Sunnyvale	156,503	8.0%	\$ 9,130	\$ 45,651
Unincorporated	86,989	4.4%	\$ 5,075	\$ 25,374
Total	1,961,969	100%	\$ 114,460	\$ 572,300

Exhibit E – Estimate of Total Costs by Program Component for Each Jurisdiction

For Services from August 1, 2020 through December 31, 2020

<u>Jurisdiction</u>	<u>Fixed Costs</u>	<u>Motel Costs</u>	<u>At-Home Support</u>	<u>Financial Assistance</u>	<u>Total by Jurisdiction</u>
Campbell	\$ 12,335	\$ 17,079	\$ 20,768	\$ 49,000	\$ 99,183
Cupertino	\$ 17,370	\$ 8,540	\$ 3,776	\$ 10,500	\$ 40,186
Gilroy	\$ 16,651	\$ 34,159	\$ 30,208	\$ 77,000	\$ 158,018
Los Altos	\$ 9,006	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,822
Los Altos Hills	\$ 2,454	\$ 8,540	\$ 3,776	\$ 10,500	\$ 25,270
Los Gatos	\$ 9,171	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,986
Milpitas	\$ 22,741	\$ 17,079	\$ 20,768	\$ 49,000	\$ 109,588
Monte Sereno	\$ 1,048	\$ 8,540	\$ 3,776	\$ 10,500	\$ 23,864
Morgan Hill	\$ 13,550	\$ 34,159	\$ 30,208	\$ 77,000	\$ 154,917
Mountain View	\$ 23,998	\$ 17,079	\$ 20,768	\$ 49,000	\$ 110,846
Palo Alto	\$ 20,193	\$ 42,698	\$ 40,592	\$ 101,500	\$ 204,983
San Jose	\$ 306,044	\$ 2,305,717	\$ 2,293,920	\$ 5,670,000	\$ 10,575,682
Santa Clara	\$ 37,659	\$ 68,318	\$ 71,744	\$ 175,000	\$ 352,721
Saratoga	\$ 9,051	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,867
Sunnyvale	\$ 45,651	\$ 102,476	\$ 101,952	\$ 252,000	\$ 502,080
Unincorporated	\$ 25,374	\$ 170,794	\$ 173,696	\$ 427,000	\$ 796,864
Total	\$ 572,300	\$ 2,860,797	\$ 2,827,280	\$ 6,989,500	\$ 13,249,877

1277987.1

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2020-21 ADOPTED BUDGET TO APPROPRIATE \$107,208 FROM THE GENERAL FUND (010) FOR THE COUNTYWIDE ISOLATION AND QUARANTINE SUPPORT PROGRAM**

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2020-21 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 2020-21 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 2020-21 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 23rd day of September 2020 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.20-XXX, adopted by the City Council at the meeting held on September 23, 2020.

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

DATE: _____

 IRMA TORREZ, City Clerk

Exhibit A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-21

ADJUSTMENT #

006

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
1100	City Council
42231	CONTRACT SERVICES

AGENDA DATE:

09/23/20

AGENDA ITEM TITLE:

Response to COVID-19 Countywide Isolation and Quarantine Support Program

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	16,484,740	39,631,603	43,763,247	12,353,096
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	142,148	142,148	-
RECOMMENDED ACTION		-	107,208	(107,208)
RESULT OF RECOMMENDED ACTION	<u>16,484,740</u>	<u>39,773,751</u>	<u>44,012,603</u>	<u>12,245,888</u>

FAQ – Isolation and Quarantine Support Program

- **How does Morgan Hill propose to fund the Isolation Quarantine Program?**
For the Administrative Overhead and Motel sheltering, the Housing Fund (236) has sufficient capacity to assist with fund eligible activities. This fund can only be used to provide shelter and shelter related services (\$47,709); food and transportation are not eligible expenses. Therefore, the General Fund would be required to fund the balance of the request for At-Home Support and Financial Assistance (\$107,208).
- **What happens if the City chooses not to fund the Isolation Quarantine Program?**
Morgan Hill residents will not receive service from the Isolation and Quarantine Program established by the County.
- **What is the cost per unit or per referral, how many people does \$154,917 serve?**
There is a significant amount of leveraging of countywide services and sources of funds. It is difficult to predict the precise number of individuals who will be provided service as each individual household's needs are different. However, when receiving financial assistance for example, cases and contacts could be eligible for rental and financial assistance up to \$5,000. The rental and financial assistance is limited to households earning 80% or less of the Area Median Income (AMI) adjusted for household size. The agreement would enable approximately 30 individuals to be served with that type of service.
- **What are other Cities considering?** Saratoga's City Council has approved the agreement. In addition to Gilroy and Morgan Hill, the following cities are taking steps to consider/approve the agreement: San Jose, Campbell, Los Altos, Los Altos Hills, Milpitas.
- **How will targeted outreach be provided in South County?** The County is targeting South County by pushing the infographics to all medical providers, CBOs, and elected officials, sharing the resources through the testing sites. This is a program for cases (COVID+ persons) and contacts (close contacts of cases), who can either call the program, be referred to the program (e.g., by their medical provider, a CBO) or be identified by the Case Investigation and Contact Tracing group as needing assistance.
- **Can City staff make referrals?** Yes, anyone can make a referral, but it is best for the person/family to call the hotline.
- **Who is the rental assistance provider?** Sacred Heart is the backbone for the Homelessness Prevention System and the Countywide Financial Assistance Program. They are also equipped to help clients access other financial resources through those programs or through the Emergency Assistance Network.
- **What kind of documentation is required to be eligible?** Individuals must be 80% AMI and below to receive rental assistance. Financial assistance requires the most

documentation, because the payments are made to the vendor (e.g., landlord). The other main piece would be medical verification that someone is a COVID case or a contact.

- **What is the duration of the Program?** Runs from 8/1/2020 through 12/31/2020.
- **Will the City possibly receive any FEMA reimbursement?** The County would seek partial reimbursement of costs incurred to reduce the funding obligation from Morgan Hill. For Morgan Hill to receive direct reimbursement, Morgan Hill would have to incur the costs directly and then seek reimbursement from FEMA.
- **The City of Morgan Hill is part of the County's Urban County Community Development Block Grant (CDBG) program, could those funds be used instead?** The County is already using CDBG Coronavirus (CDBG_CV) to help operate the program, it could potentially offset 100% of the "Fixed Costs" portion and Financial Assistance paid to support Morgan Hill residents, but it depends on the total need. Motel costs cannot be covered by CDBG-CV, most costs related to the motel services could be reimbursed by FEMA.
- **What is Morgan Hill's funding proportion based on?** It is in proportion to the City's share of the countywide population and utilization.

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

This agreement (AGREEMENT) is made and entered into as of the date it is fully executed, by and between the CITY OF MORGAN HILL (CITY), a municipal corporation of the State of California and the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a special DISTRICT of the State of California. CITY and DISTRICT may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS, DISTRICT is currently proceeding with the design and construction phases of its Upper Llagas Creek Flood Protection Project (DISTRICT PROJECT), for which a Final Environmental Impact Report was certified by the DISTRICT'S Board of Directors and the DISTRICT PROJECT was approved on June 10, 2014. The DISTRICT is currently constructing the Phase 1 of the DISTRICT PROJECT and is in the process of completing limited construction work in advance of Phase 2A; and

WHEREAS, CITY has proposed improvements (CITY IMPROVEMENTS) be included in the DISTRICT PROJECT; and

WHEREAS, CITY and DISTRICT have an active joint use agreement for use of the DISTRICT PROJECT's maintenance roads for recreation purposes.

WHEREAS, CITY has an easement for maintenance of its sewer system adjacent to Silveira Lake;

WHEREAS, it is in the public's best interests to achieve the economic benefits and efficiencies resulting from combining the construction of the Parties' public improvement projects; and

WHEREAS, the DISTRICT is willing to include CITY IMPROVEMENTS in DISTRICT PROJECT, at CITY'S expense and in accordance with the terms and conditions set forth in this AGREEMENT.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties hereto agree as follows:

AGREEMENT

1. PROJECT DESCRIPTION

1.1. The DISTRICT PROJECT scope of work:

1.1.1. Prepare complete design and construction documents for the DISTRICT PROJECT;

1.1.2. Deepen and widen Llagas Creek, West Little Llagas Creek, and East Little Llagas Creek to provide 100-year level of flood protection to urban areas

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of the City of Morgan Hill within Reaches 7 and 8, ten-year level of flood protection for Reach 14, and no induced flooding due to creek modifications within Reaches 4, 5, and 6;

- 1.1.3. Create the Lake Silveira compensatory mitigation wetlands;
- 1.1.4. Install approximately 114 acres of native vegetation mitigation plantings;
- 1.1.5. Invasive plant removal; and
- 1.1.6. Creation of plant, fish, and wildlife habitat.

1.2. The CITY'S IMPROVEMENTS scope of work:

1.2.1. Independently hire the DISTRICT'S PROJECT consultant and other CITY Design consultants to prepare a complete design of the proposed CITY IMPROVEMENTS and incorporate the CITY IMPROVEMENTS into DISTRICT PROJECT; and

- 1.2.2. a. West Little Llagas Creek Trail asphalt and concrete work from Watsonville Road to Silveira Lake;
- b. CITY contribution to upgraded access roads for sewer system manholes and sewer siphon; and
- c. Minor Hale Avenue utility work south of Main Avenue.

2. PROJECT LOCATION

2.1. The DISTRICT PROJECT is located from Buena Vista Avenue within the City of Gilroy, upstream and northwesterly to Llagas Road within the northern portion of the City of Morgan Hill, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.

2.2. The proposed CITY IMPROVEMENTS are located along the DISTRICT PROJECT between West Main Avenue to the south side of Silveira Lake, all within a portion of Reach 8 of the DISTRICT PROJECT, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.

3. SCOPE OF WORK

3.1. DISTRICT will perform the following:

3.1.1. Administer, design, and contract the construction of the DISTRICT PROJECT, including incorporating the CITY IMPROVEMENTS, and coordination with appropriate local, state, federal, and regulatory agencies.

3.1.2. DISTRICT, as Lead Agency for DISTRICT PROJECT, pursuant to the requirements of the California Environmental Quality Act (CEQA), will proceed with construction of DISTRICT PROJECT and the CITY IMPROVEMENTS in accordance with the DISTRICT's Final Environmental Impact Report certified on June 10, 2014, and permits, as authorized by appropriate regulatory agencies.

**COST SHARING AGREEMENT
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- 3.1.3. Ensure its obligations were met as Lead Agency under CEQA.
- 3.1.4. Construction of the proposed CITY IMPROVEMENTS will be completed as part of the DISTRICT's PROJECT. The DISTRICT will officially transfer the operations and maintenance responsibilities for the CITY IMPROVEMENTS to the CITY upon the ~~construction-completion~~completion of construction of said CITY IMPROVEMENTS, and CITY shall provide timely written acceptance of the transferred operations and maintenance responsibilities, and after written acceptance by both the CITY and the DISTRICT. The CITY will own the CITY IMPROVEMENTS and is responsible for their sustained operations and maintenance responsibilities in perpetuity.
- 3.2. CITY will perform the following:
- 3.2.1. Provide DISTRICT with all documentation and information regarding its proposed CITY IMPROVEMENTS, so the DISTRICT PROJECT team preparing the DISTRICT PROJECT design, construction documents and change orders, can include the design of these CITY IMPROVEMENTS in its DISTRICT PROJECT per CITY'S requirements.
- 3.2.2. Promptly review the DISTRICT'S design team's documents prepared for CITY ~~IMPROVEMENTS, and~~IMPROVEMENTS and provide input to DISTRICT confirming acceptance of the change order and/or contract documents.
- 3.3. Designees:
- 3.3.1. The designated project manager for DISTRICT for the duration of the DISTRICT PROJECT is Mr. Stephen M. Ferranti. DISTRICT's project manager has all the necessary authority to direct technical and professional work within the scope of the AGREEMENT and will serve as the principal point of contact with CITY.
- 3.3.2. The designated project manager for CITY for the duration of the DISTRICT PROJECT is Mr. Chris Ghione. Except as superseded by existing CITY law, rule or practice, CITY's project manager has all the necessary authority to review, approve, and accept technical and professional work within the scope of the AGREEMENT and serves as the principal point of contact with DISTRICT.
- 3.3.3. DISTRICT and CITY may change their respective project managers by providing written notice to the other Party and shall not require any amendment to the AGREEMENT.

4. COST-SHARING OF PROJECT

**COST SHARING AGREEMENT
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UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 4.1. DISTRICT has requested change orders and/or bids for the DISTRICT PROJECT that include the CITY IMPROVEMENTS in order to ascertain the prices for this work.
- 4.2. CITY has determined the costs for the CITY IMPROVEMENTS are **\$XXX,XXX** and shall remit payment in full to the DISTRICT for the CITY IMPROVEMENTS within 90 calendar days after execution of this agreement.
- 4.3. Modifications to DISTRICT'S contract with its CONTRACTOR
 - 4.3.1. DISTRICT agrees to provide CITY with written notice and documentation regarding any modifications, revisions, change orders, and/or extra work required in association with the CITY IMPROVEMENTS to CITY within seven (7) calendar days of DISTRICT becoming aware of or initiating such matter, so CITY can provide direction to DISTRICT, if necessary and appropriate.
 - 4.3.2. CITY will respond to DISTRICT regarding such matters within seven (7) calendar days of receipt of such information and provide written direction to DISTRICT, if necessary and appropriate.
 - 4.3.3. If CITY's approval(s) results in an expense above the supplemental bid items or change order amounts for which the City has ~~it~~ already remitted payment to DISTRICT, CITY agrees to remit payment in full for the additional expenses to DISTRICT within 60 calendar days of receipt of DISTRICT invoice, along with any supporting documentation for said additional costs associated with the CITY IMPROVEMENTS.

5. INSURANCE AND INDEMNIFICATION

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

**COST SHARING AGREEMENT
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authority or jurisdiction delegated to such other Party under this AGREEMENT. DISTRICT's duty to indemnify with respect to CITY IMPROVEMENTS shall terminate upon completion of construction of said improvements and CITY's approval of such work.

- 5.2 DISTRICT and CITY are self-insured. DISTRICT, as lead agency for DISTRICT PROJECT, shall require all contractors performing work to carry appropriate insurance covering all work, including CITY IMPROVEMENTS.
- 5.3. The rights, duties, and obligations of the Parties as set forth above in this Section 5 of this AGREEMENT will survive termination, suspension, completion, and expiration of this AGREEMENT.

6. ADDITIONAL PROVISIONS

- 6.1. A Party's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach of any other term, condition, or covenant.
- 6.2. This AGREEMENT contains the entire AGREEMENT between DISTRICT and CITY relating to the DISTRICT PROJECT and CITY'S IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
- 6.3. If any term, condition, or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on DISTRICT and CITY.
- 6.4. This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.
- 6.5. This AGREEMENT may be executed in counterparts and will be binding as executed.
- 6.6. The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both Parties and terminate upon DISTRICT PROJECT completion notification by DISTRICT and receipt by DISTRICT of payment in full by CITY.
- 6.7. All changes or extensions to this AGREEMENT must be in writing in the form of an amendment approved by both Parties.
- 6.8. Claims related to the design of DISTRICT'S PROJECT will be administered by DISTRICT and Claims related to the design of CITY'S IMPROVEMENTS will be administered by the CITY. The obligations of both Parties, as stated in this

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

paragraph, will survive termination, completion, suspension, and expiration of this AGREEMENT.

- 6.9. This AGREEMENT is entered into only for the benefit of the Parties executing this AGREEMENT and not for the benefit of any other individual, entity, or person.

7. TERMINATION

- 7.1. This AGREEMENT will terminate upon DISTRICT PROJECT completion, notification by DISTRICT of said completion, and receipt by DISTRICT of payment in full by CITY for CITY IMPROVEMENTS. This AGREEMENT may also terminate upon; ~~or by~~ mutual written consent and terms acceptable to both Parties.

8. NOTICES

- 8.1 All correspondence relating to the DISTRICT PROJECT, including all written notices required by the terms of this AGREEMENT may be delivered by first class mail addressed to the appropriate Party at the following addresses:

DISTRICT:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Mr. Stephen M. Ferranti, P.E., Engineering Unit Manager
Phone: (408) 630-2677
E-mail: sferranti@valleywater.org

CITY:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Mr. Chris Ghione, Public Services Director
Phone: (408) 782-9154
E-mail: chris.ghione@morganhill.ca.gov

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**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
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IN WITNESS WHEREOF, this AGREEMENT becomes effective upon full execution by the Parties as set forth below.

"CITY"

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

By: _____
Christina Turner
City Manager

Date: _____

ATTEST:

Michelle Bigelow
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: _____
Rick L. Callender, Esq.
Chief Executive Officer

Date: _____

ATTEST:

Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:

Brian Hopper
Senior Assistant District Counsel

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**CITY COUNCIL MEETING
AGENDA ITEM #9
COUNTYWIDE ISOLATION AND QUARANTINE SUPPORT
PROGRAM FOR COVID-19**



SEPTEMBER 23, 2020

Isolation and Quarantine (I/Q) Support Program



- The County identified a need to provide Temporary Shelter and Services to help individuals and families isolate/quarantine
- The I/Q Program is for COVID-19 cases and close contacts required to isolate if they have tested positive, or quarantine if they have been exposed to a COVID-19 positive person
- The Case Investigation and Contact Tracing Team (CICT) makes referrals
- Quarantine generally lasts 14 days, some in hotels; some at home
- County Program staff assess needs, coordinate services and resources

Isolation and Quarantine (I/Q) Support Program (Cont'd)



Program Period: Pilot Program began May 26, 2020. The term of this proposed agreement is August 1, 2020 through December 31, 2020

Funding: The County requests Morgan Hill to contribute up to \$154,917 to support activities to serve its residents.

The County will use \$250,000 Community Development Block Grant (CDBG) to offset certain costs for small urban county cities, including Morgan Hill.

CDBG funds support most of the program's services but cannot be used to pay for costs of rent for motel rooms. County and cities must use alternative funding sources for leasing motel rooms.

Services Provided



- Support request line
- Coordination
- Support at home
- Motels
- Rental and financial assistance

Projected Needs by Jurisdiction



Projection reflects:

- Utilization June 17 through July 31, 2020
- 10% of enrollees will need a motel placement and 90% can isolate or quarantine at home
- 60% of all enrollees request rental assistance

Projected Needs by Jurisdiction



		Imputed		60% of Enrollees
	Imputed	At-Home	Total Program	Request Rental
	<u>Motel</u>	<u>Support</u>	<u>Enrollments</u>	<u>Assistance</u>
CAMPBELL	2	22	24	14
CUPERTINO	1	4	5	3
GILROY	4	32	36	22
LOS ALTOS	1	4	5	3
LOS ALTOS HILLS	1	4	5	3
LOS GATOS	1	4	5	3
MILPITAS	2	22	24	14
MONTE SERENO	1	4	5	3
MORGAN HILL	4	32	36	22
MOUNTAIN VIEW	2	22	24	14
PALO ALTO	5	43	48	29
SAN JOSE	270	2,430	2,700	1,620
SANTA CLARA	8	76	84	50
SARATOGA	1	4	5	3
SUNNYVALE	12	108	120	72
UNINCORPORATED	20	184	204	122
TOTAL	335	2,995	3,330	1,997

Cost Sharing Components



- **Fixed Costs:** Each jurisdiction reimburses the County for a portion of the Program's fixed costs, proportional to its share of the countywide population
- **Motel Costs:** Each jurisdiction contributes to the cost of operating motels for isolation and quarantine based on the actual motel nights that its residents use
- **At-Home Support Services:** Each jurisdiction reimburses for the cost of supportive services provided directly to each jurisdiction's residents
- **Rental and Financial Assistance:** Each jurisdiction reimburses County for rental and financial assistance provided directly to each jurisdiction's residents

Estimated Program Cost by Jurisdiction



<u>Jurisdiction</u>	<u>Fixed Costs</u>	<u>Motel Costs</u>	<u>At-Home Support</u>	<u>Financial Assistance</u>	<u>Total by Jurisdiction</u>
Campbell	\$ 12,335	\$ 17,079	\$ 20,768	\$ 49,000	\$ 99,183
Cupertino	\$ 17,370	\$ 8,540	\$ 3,776	\$ 10,500	\$ 40,186
Gilroy	\$ 16,651	\$ 34,159	\$ 30,208	\$ 77,000	\$ 158,018
Los Altos	\$ 9,006	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,822
Los Altos Hills	\$ 2,454	\$ 8,540	\$ 3,776	\$ 10,500	\$ 25,270
Los Gatos	\$ 9,171	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,986
Milpitas	\$ 22,741	\$ 17,079	\$ 20,768	\$ 49,000	\$ 109,588
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Morgan Hill	\$ 13,550	\$ 34,159	\$ 30,208	\$ 77,000	\$ 154,917
Mountain View	\$ 23,998	\$ 17,079	\$ 20,768	\$ 49,000	\$ 110,846
Palo Alto	\$ 20,193	\$ 42,698	\$ 40,592	\$ 101,500	\$ 204,983
San Jose	\$ 306,044	\$ 2,305,717	\$ 2,293,920	\$ 5,670,000	\$ 10,575,682
Santa Clara	\$ 37,659	\$ 68,318	\$ 71,744	\$ 175,000	\$ 352,721
Saratoga	\$ 9,051	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,867
Sunnyvale	\$ 45,651	\$ 102,476	\$ 101,952	\$ 252,000	\$ 502,080
Unincorporated	\$ 25,374	\$ 170,794	\$ 173,696	\$ 427,000	\$ 796,864
Total	\$ 572,300	\$ 2,860,797	\$ 2,827,280	\$ 6,989,500	\$ 13,249,877

City Funding



The total contract not to exceed \$154,917.

- Housing Fund (236): \$47,709 for rental assistance
- General Fund (010): \$107,208, for remainder of services

Recommendation



1. Adopting Resolution amending FY 2020-21 General Fund (010) budget in the amount of \$107,208; and
2. Authorizing expenditure of \$47,709 from the Housing Fund (236).



**CITY COUNCIL MEETING
AGENDA ITEM #9
COUNTYWIDE ISOLATION AND QUARANTINE SUPPORT
PROGRAM FOR COVID-19**



SEPTEMBER 23, 2020

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Estimated Program Cost by Jurisdiction



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City Funding



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- Housing Fund (236): \$47,709 for rental assistance
- General Fund (010): \$107,208, for remainder of services

Recommendation



1. Adopting Resolution amending FY 2020-21 General Fund (010) budget in the amount of \$107,208; and
2. Authorizing expenditure of \$47,709 from the Housing Fund (236).



Regular Meeting Agenda

City Council

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

Wednesday, September 23, 2020 7:00 p.m.

Virtual Meeting

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways:

Members of the public may NOT physically attend meetings at the Morgan Hill City Council Chamber.

The City Council Meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at:

<<http://bit.ly/092320CityCouncilMtg>> or by calling in to: (669) 900-9128, then enter the meeting id: 898 9931 3316.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

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

PROCLAMATIONS

Proclaiming September 30, 2020 as Lewy Body Dementia Awareness Day in honor of Susan and Charles Berghoff

Proclaiming the month of September 2020 as Childhood Cancer Awareness month and Honoring Jacob's Heart Children's Cancer Support Services

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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 IMPACT FEE FINANCING AGREEMENT WITH MORGAN HILL CAR WASH, INC.

Recommendation:

Adopt resolution authorizing the City Manager to execute a Sewer and Traffic Impact Fee Financing Agreement, consistent with the Sewer and Traffic Impact Fee Financing Program and Government Code section 53083, with Morgan Hill Car Wash, Inc. for the development of a new automated car wash facility on Caputo Drive.

2. APPROVE VALLEY WATER COST SHARING AGREEMENT FOR TRAIL AND FLOOD CONTROL

Recommendation:

Approve and authorize the City Manager to enter into a cost sharing agreement for \$748,600 with Valley Water for the construction of trails and other infrastructure.

3. APPROVE FIRST AMENDMENT TO CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC. AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute and administer the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc. for \$100,000, increasing the not to exceed amount to \$550,000 and allow for additional repair services to be performed on an as needed basis and pre-approved by the City maintenance staff.

4. APPROVE FIRST AMENDMENT TO AGREEMENT WITH WOODARD AND CURRAN INC. FOR DESIGN SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer the first amendment to service agreement for design professionals with Woodard and Curran, Inc. for additional scope of services for improvements associated with Valley Water's Flood Control Project for \$71,697, increasing the total not to exceed contract amount to \$528,968.

5. APPROVE THIRD AMENDMENT TO BRIGHTVIEW GROUPS 1, 3, AND 6 MAINTENANCE SERVICE AGREEMENT

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Approve and authorize the City Manager to execute and administer the third amendment to the maintenance service agreement with Brightview Landscape Services, Inc. extending the agreement for one additional year of service at \$134,183 and increasing the total contract amount to \$528,258; and

6. AWARD BUTTERFIELD BOULEVARD LINEAR PARK EXTENSION PROJECT

Recommendation:

1. Adopt resolution to appropriate an additional \$100,120 in the Park Impact Fund (301) for the Butterfield Boulevard Linear Park Extension Project;
2. Approve the Butterfield Boulevard Linear Park Extension Project Plans and Specifications;
3. Award contract to Terramark General Engineering Contractors, Inc. for the Butterfield Boulevard Linear Park Extension Project in the amount of \$1,439,226;
4. Authorize expenditure of construction contingency funds not to exceed \$143,923; and
5. Authorize the City Manager to execute and administer the construction contract with Terramark General Engineering Contractors, Inc.

7. AWARD SEWER PIPELINE INSPECTION AND CONDITION ASSESSMENT AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute an agreement with National Plant Services Inc. in the amount of \$1,174,686 for the development of the sewer pipeline inspection and condition assessment.

8. AWARD TREE MAINTENANCE SERVICES AGREEMENT

Recommendation:

1. Award a Maintenance Services Agreement to A Plus Tree, Inc. for up to \$600,000 (\$300,000 annually for a two-year period) subject to future annual budget appropriations by the City Council; and
2. Authorize the City Manager to execute and administer the said agreement.

OTHER BUSINESS

9. RESPONSE TO COVID-19, COUNTYWIDE ISOLATION AND QUARANTINE SUPPORT PROGRAM

Recommendation:

1. Receive report and consider funding \$154,917 for the continuation of an established Countywide "Isolation and Quarantine Support Program" by:
 - a. Adopting resolution to appropriate \$107,208 from the General Fund (010); and
 - b. Authorizing expenditure of \$47,709 from the Housing Fund (236);

OR

2. Provide feedback and direct staff to return with an alternative option.

Estimated Time: 45 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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

**COST SHARING AGREEMENT
BY AND BETWEEN CITY OF MORGAN HILL
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

This agreement (AGREEMENT) is made and entered into as of the date it is fully executed, by and between the CITY OF MORGAN HILL (CITY), a municipal corporation of the State of California and the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a special DISTRICT of the State of California. CITY and DISTRICT may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS, DISTRICT is currently proceeding with the design and construction phases of its Upper Llagas Creek Flood Protection Project (DISTRICT PROJECT), for which a Final Environmental Impact Report was certified by the DISTRICT'S Board of Directors and the DISTRICT PROJECT was approved on June 10, 2014. The DISTRICT is currently constructing the Phase 1 of the DISTRICT PROJECT and is in the process of completing limited construction work in advance of Phase 2A; and

WHEREAS, CITY has proposed improvements (CITY IMPROVEMENTS) be included in the DISTRICT PROJECT; and

WHEREAS, CITY and DISTRICT have an active joint use agreement for use of the DISTRICT PROJECT's maintenance roads for recreation purposes.

WHEREAS, CITY has an easement for maintenance of its sewer system adjacent to Silveira Lake;

WHEREAS, it is in the public's best interests to achieve the economic benefits and efficiencies resulting from combining the construction of the Parties' public improvement projects; and

WHEREAS, the DISTRICT is willing to include CITY IMPROVEMENTS in DISTRICT PROJECT, at CITY'S expense and in accordance with the terms and conditions set forth in this AGREEMENT.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties hereto agree as follows:

AGREEMENT

1. PROJECT DESCRIPTION

1.1. The DISTRICT PROJECT scope of work:

1.1.1. Prepare complete design and construction documents for the DISTRICT PROJECT;

1.1.2. Deepen and widen Llagas Creek, West Little Llagas Creek, and East Little Llagas Creek to provide 100-year level of flood protection to urban areas

**COST SHARING AGREEMENT
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of the City of Morgan Hill within Reaches 7 and 8, ten-year level of flood protection for Reach 14, and no induced flooding due to creek modifications within Reaches 4, 5, and 6;

- 1.1.3. Create the Lake Silveira compensatory mitigation wetlands;
- 1.1.4. Install approximately 114 acres of native vegetation mitigation plantings;
- 1.1.5. Invasive plant removal; and
- 1.1.6. Creation of plant, fish, and wildlife habitat.

1.2. The CITY'S IMPROVEMENTS scope of work:

- 1.2.1. Independently hire the DISTRICT'S PROJECT consultant and other CITY Design consultants to prepare a complete design of the proposed CITY IMPROVEMENTS and incorporate the CITY IMPROVEMENTS into DISTRICT PROJECT; and

- 1.2.2. a. West Little Llagas Creek Trail asphalt and concrete work from Watsonville Road to Silveira Lake;
- b. CITY contribution to upgraded access roads for sewer system manholes and sewer siphon; and
- c. Minor Hale Avenue utility work south of Main Avenue.

2. PROJECT LOCATION

- 2.1. The DISTRICT PROJECT is located from Buena Vista Avenue within the City of Gilroy, upstream and northwesterly to Llagas Road within the northern portion of the City of Morgan Hill, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.
- 2.2. The proposed CITY IMPROVEMENTS are located along the DISTRICT PROJECT between West Main Avenue to the south side of Silveira Lake, all within a portion of Reach 8 of the DISTRICT PROJECT, as shown on Exhibit A, "Upper Llagas Creek Flood Protection Project" attached hereto and incorporated herein by this reference.

3. SCOPE OF WORK

- 3.1. DISTRICT will perform the following:
 - 3.1.1. Administer, design, and contract the construction of the DISTRICT PROJECT, including incorporating the CITY IMPROVEMENTS, and coordination with appropriate local, state, federal, and regulatory agencies.
 - 3.1.2. DISTRICT, as Lead Agency for DISTRICT PROJECT, pursuant to the requirements of the California Environmental Quality Act (CEQA), will proceed with construction of DISTRICT PROJECT and the CITY IMPROVEMENTS in accordance with the DISTRICT's Final Environmental Impact Report certified on June 10, 2014, and permits, as authorized by appropriate regulatory agencies.

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AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR CONSTRUCTION OF CITY IMPROVEMENTS AS PART OF THE
UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT**

- 3.1.3. Ensure its obligations were met as Lead Agency under CEQA.
- 3.1.4. Construction of the proposed CITY IMPROVEMENTS will be completed as part of the DISTRICT's PROJECT. The DISTRICT will officially transfer the operations and maintenance responsibilities for the CITY IMPROVEMENTS to the CITY upon the ~~construction-completion~~completion of construction of said CITY IMPROVEMENTS, and CITY shall provide timely written acceptance of the transferred operations and maintenance responsibilities, and after written acceptance by both the CITY and the DISTRICT. The CITY will own the CITY IMPROVEMENTS and is responsible for their sustained operations and maintenance responsibilities in perpetuity.
- 3.2. CITY will perform the following:
- 3.2.1. Provide DISTRICT with all documentation and information regarding its proposed CITY IMPROVEMENTS, so the DISTRICT PROJECT team preparing the DISTRICT PROJECT design, construction documents and change orders, can include the design of these CITY IMPROVEMENTS in its DISTRICT PROJECT per CITY'S requirements.
- 3.2.2. Promptly review the DISTRICT'S design team's documents prepared for CITY ~~IMPROVEMENTS, and~~IMPROVEMENTS and provide input to DISTRICT confirming acceptance of the change order and/or contract documents.
- 3.3. Designees:
- 3.3.1. The designated project manager for DISTRICT for the duration of the DISTRICT PROJECT is Mr. Stephen M. Ferranti. DISTRICT's project manager has all the necessary authority to direct technical and professional work within the scope of the AGREEMENT and will serve as the principal point of contact with CITY.
- 3.3.2. The designated project manager for CITY for the duration of the DISTRICT PROJECT is Mr. Chris Ghione. Except as superseded by existing CITY law, rule or practice, CITY's project manager has all the necessary authority to review, approve, and accept technical and professional work within the scope of the AGREEMENT and serves as the principal point of contact with DISTRICT.
- 3.3.3. DISTRICT and CITY may change their respective project managers by providing written notice to the other Party and shall not require any amendment to the AGREEMENT.

4. COST-SHARING OF PROJECT

**COST SHARING AGREEMENT
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- 4.1. DISTRICT has requested change orders and/or bids for the DISTRICT PROJECT that include the CITY IMPROVEMENTS in order to ascertain the prices for this work.
- 4.2. CITY has determined the costs for the CITY IMPROVEMENTS are **\$XXX,XXX** and shall remit payment in full to the DISTRICT for the CITY IMPROVEMENTS within 90 calendar days after execution of this agreement.
- 4.3. Modifications to DISTRICT'S contract with its CONTRACTOR
 - 4.3.1. DISTRICT agrees to provide CITY with written notice and documentation regarding any modifications, revisions, change orders, and/or extra work required in association with the CITY IMPROVEMENTS to CITY within seven (7) calendar days of DISTRICT becoming aware of or initiating such matter, so CITY can provide direction to DISTRICT, if necessary and appropriate.
 - 4.3.2. CITY will respond to DISTRICT regarding such matters within seven (7) calendar days of receipt of such information and provide written direction to DISTRICT, if necessary and appropriate.
 - 4.3.3. If CITY's approval(s) results in an expense above the supplemental bid items or change order amounts for which the City has # already remitted payment to DISTRICT, CITY agrees to remit payment in full for the additional expenses to DISTRICT within 60 calendar days of receipt of DISTRICT invoice, along with any supporting documentation for said additional costs associated with the CITY IMPROVEMENTS.

5. INSURANCE AND INDEMNIFICATION

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

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authority or jurisdiction delegated to such other Party under this AGREEMENT. DISTRICT's duty to indemnify with respect to CITY IMPROVEMENTS shall terminate upon completion of construction of said improvements and CITY's approval of such work.

- 5.2 DISTRICT and CITY are self-insured. DISTRICT, as lead agency for DISTRICT PROJECT, shall require all contractors performing work to carry appropriate insurance covering all work, including CITY IMPROVEMENTS.
- 5.3. The rights, duties, and obligations of the Parties as set forth above in this Section 5 of this AGREEMENT will survive termination, suspension, completion, and expiration of this AGREEMENT.

6. ADDITIONAL PROVISIONS

- 6.1. A Party's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach of any other term, condition, or covenant.
- 6.2. This AGREEMENT contains the entire AGREEMENT between DISTRICT and CITY relating to the DISTRICT PROJECT and CITY'S IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
- 6.3. If any term, condition, or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on DISTRICT and CITY.
- 6.4. This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.
- 6.5. This AGREEMENT may be executed in counterparts and will be binding as executed.
- 6.6. The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both Parties and terminate upon DISTRICT PROJECT completion notification by DISTRICT and receipt by DISTRICT of payment in full by CITY.
- 6.7. All changes or extensions to this AGREEMENT must be in writing in the form of an amendment approved by both Parties.
- 6.8. Claims related to the design of DISTRICT'S PROJECT will be administered by DISTRICT and Claims related to the design of CITY'S IMPROVEMENTS will be administered by the CITY. The obligations of both Parties, as stated in this

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paragraph, will survive termination, completion, suspension, and expiration of this AGREEMENT.

- 6.9. This AGREEMENT is entered into only for the benefit of the Parties executing this AGREEMENT and not for the benefit of any other individual, entity, or person.

7. TERMINATION

- 7.1. This AGREEMENT will terminate upon DISTRICT PROJECT completion, notification by DISTRICT of said completion, and receipt by DISTRICT of payment in full by CITY for CITY IMPROVEMENTS. This AGREEMENT may also terminate upon, ~~or by~~ mutual written consent and terms acceptable to both Parties.

8. NOTICES

- 8.1 All correspondence relating to the DISTRICT PROJECT, including all written notices required by the terms of this AGREEMENT may be delivered by first class mail addressed to the appropriate Party at the following addresses:

DISTRICT:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Mr. Stephen M. Ferranti, P.E., Engineering Unit Manager
Phone: (408) 630-2677
E-mail: sferranti@valleywater.org

CITY:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Mr. Chris Ghione, Public Services Director
Phone: (408) 782-9154
E-mail: chris.ghione@morganhill.ca.gov

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IN WITNESS WHEREOF, this AGREEMENT becomes effective upon full execution by the Parties as set forth below.

"CITY"

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

By: _____
Christina Turner
City Manager

Date: _____

ATTEST:

Michelle Bigelow
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: _____
Rick L. Callender, Esq.
Chief Executive Officer

Date: _____

ATTEST:

Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:

Brian Hopper
Senior Assistant District Counsel

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