

REQUEST FOR PROPOSALS

ARCHITECTURAL DESIGN SERVICES FOR THE INCLUSIVE PLAYGROUND PROJECT

SEPTEMBER 2015

UPDATED 9/23/15

Scope of Services

The City is seeking the services of an architectural firm who will assist the City and the Inclusive Playground Committee on the expansion development of this project. The architectural firm will report to the City's Project Coordinator, Chris Ghione. The architectural firm will work directly with a design committee consisting of five to seven members, including representatives from the City Staff and the Inclusive Playground Committee. Any additional questions regarding this RFP may be sent to: chris.ghione@morganhill.ca.gov.

The scope of professional services to be provided shall include the completion of the tasks described below, as well as other elements or modifications which may be agreed upon through the request for proposal process. All services shall be provided in accordance with the City's Standard Consultant Agreement which is provided as Attachment C.

General Requirements:

1. The consultant shall provide architectural design services for the Morgan Hill Inclusive Playground.
2. The consultant shall be responsible for submitting completed documents for review and approval by the City.
3. The consultant shall attend at monthly meetings of the Morgan Hill Inclusive Playground Committee, Morgan Hill Parks and Recreation Commission, Morgan Hill City Council and/or other designated public meetings through all phases of this project until final completion.

The scope of the project is comprised of five tasks through schematic design. It is anticipated that the selected consultant will be utilized for Design Development and Construction Documents following the initial schematic design, however, this will depend on performance, additional contract approval, and is not guaranteed.

Site Information

The City shall provide consultant with information on the Project site, as it has in its possession, but makes no representation as to the sufficiency of these documents. consultant shall be responsible for requesting, in writing, any information from the City, as it requires, for completion of its obligation under this Agreement.

Task 1 Project Initiation

An organization and scoping meeting will be held with City staff and the Morgan Hill Inclusive Playground Committee to:

1. Introduce the City Design Team (staff and volunteers) to the Consultant Design Team
2. Review objectives of the project
3. Review scope of services
4. Confirm project areas/boundaries
5. Collect available data and published material
6. Establish meeting and presentation schedule
7. Establish communication channels with all parties involved
8. Review and list all applicable design and planning standards
9. Coordinate with City departments, other agencies and the Morgan Hill Inclusive Playground Committee.

Changes to the Scope of Work will be made (if necessary) at the conclusion of this effort, and an amended Scope and Schedule will be published.

Task 2 Site Analysis

Analyze existing and built elements within the proposed playground site to guide playground design.

1. Natural Site Elements

- a. Topographic Survey: The design consultant is responsible to have a topographic survey done of the proposed playground site. Survey to provide information of grades, boundary lines, easements, existing vegetation and other site elements.
- b. Soils Report: The design consultant is responsible to have a soils report produced for the playground site.
- c. Sun/Shade Patterns: Observations of the playgrounds site sun/shade patterns to determine best locations for specific play elements that require shade and planting elements that require sun.
- d. Meet with the City maintenance staff on site to inventory existing trees, and review design constraints to maintain tree health. The City will have a recent arborists report available to provide to the consultant.

2. Built Site Elements

- a. Lighting & Parking Studies: The design consultant is responsible to perform lighting, parking & traffic studies for the existing and proposed site conditions.
- b. Existing Underground Infrastructure: Investigate and plan for all needed changes to existing underground infrastructure (water, sewer, electrical, etc.).
- c. Parking Study: The design consultant shall complete a parking study to anticipate the additional parking needs created by the new playground.
- d. Pedestrian & Bike Access: Review existing pedestrian and bike access to and through the site.
- e. Permits, agreements and easements: Investigate all requirements for construction. Create a checklist of all permits required and impacts to schedule related to these permits.

Task 3 Community Outreach

The purpose of the outreach is to determine the theme and design elements that the community desires to include in the park. A community outreach plan must be proposed by the consultant at the time of the proposal. The community shall include, but shall not be limited to: outreach to local youth through schools, involvement of a committee of volunteers from the Morgan Hill Inclusive Playground Committee, and outreach to the children and families with special needs. The outreach plan can be proposed as a collaborative effort with the City staff and the Inclusive Playground Committee supporting this effort. The consultant should plan for a minimum six meetings to reach various stakeholder groups.

At the conclusion of the outreach the consultant will meet with the Morgan Hill Inclusive Playground Committee and City staff to discuss findings. The Consultant will work with the committee to create a list of desired elements and possible vendors for commercially available pieces. Consultant will identify desired custom features and begin exploration of possible designs.

Task 4 Schematic/Concept Design

Based on the community outreach and site requirements the consultant shall produce concept designs for the playground. It is anticipated that during this task that there will be multiple meetings with the Design Team, Community, and the Inclusive Playground Committee to refine the designs. Concept designs will include at minimum the following items:

1. Site layout and renderings including amenities to be included in the playground and all proposed improvements adjacent to the park.
2. Budget level cost estimates itemized costs for budgeting purposes.
3. A sponsorship plan that integrates components of the playground with sponsorship opportunities. It is critical that at the concept design stage that the sponsorship opportunities are developed, so that fund raising can commence. The consultant will work with the Morgan Hill Inclusive Playground Committee to develop sponsorship opportunities that exceed the cost estimates for construction of the playground.
4. Discuss the design approach with the Morgan Hill Inclusive Playground Committee and City staff to determine a strategy for ensuring that the playground contains features that provide for play for all identified special needs.
5. Complete space programming and evaluate with the Morgan Hill Inclusive Playground Committee and the City site alternatives.
6. Finalize schedules and Project milestones including bidding and construction schedules.
7. Based upon a mutually agreed-upon program for space allocation, define schedule and construction of budget requirements, produce schematic level site plan, floor plan, elevations, sections, ~~diagrams and narratives to describe structural, mechanical, and electrical designs.~~
8. At the end of Schematic/Concept Design, consultant shall prepare an estimate of construction costs based on a mutually agreed-upon site layout and schedule. consultant's estimate shall include contingency allowances for the cost of implementing changes due to the consultant's drawing clarifications, unforeseen conditions, and escalation of prices for materials and labor that are appropriate for bidding according to the approved Project schedule. Construction cost

estimates shall be provided for both “public bid” and “community build” methods for constructing the park.

Task 5 Special Studies, Environmental Assessment and Certification

Consultant shall review, analyze and identify environmental impacts, including but not limited to, removing and removal of vegetation, demolishing curb, gutter and pavement areas, visual, tree canopy, parking, lighting and construction impacts.

The consultant shall prepare all documents necessary to complete CEQA review for the project, including consideration of staff input.

Qualifications

The architectural firm must have demonstrated expertise in successfully managing projects of the size and type of construction described; especially inclusive playground projects. In addition, the architectural firm must demonstrate expertise in integrating fundraising and sponsorship recognition into elements of playground design. Architectural firm must be willing to continue, redesign, and complement the existing park elements.

Insurance Requirements

The firm selected for the project must provide the City with evidence of insurance coverage acceptable to the City's Risk Manager, including casualty, liability, workers' compensation and errors and omission insurance at a minimum \$1,000,000.00 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000.00 for property damage. The architectural firm shall also maintain professional liability insurance in the amount of \$1,000,000.00 per claim.

Special attention shall be given to the Indemnification Requirement Section included in the contract as this is a requirement.

City Provided Services

The City will provide a Principal Project Manager for coordination and access to other City departments and to coordinate with the Morgan Hill Inclusive Playground Committee. An optional site walk through will be held on Tuesday, September 22, 2015 at 2:00pm at the playground site. The playground site is located within Morgan Hill Community Park. The entrance to the park is at 171 West Edmundson Avenue. After entering drive past the Skate Park and park in the parking lot across from the existing playground. The meeting will occur at that location.

Draft Project Schedule

September 14, 2015	RFP Release Date
September 22, 2105	Site Walk through Not Mandatory- 2:00pm at Proposed Park Site Morgan Hill Community Park Existing Playground
October 2, 2015	Architect Proposals Due (4:00pm)
October 14-16, 2015	Interviews with Firms
November 4, 2015	Contract Awarded
November, 15	Begin Tasks 1 and 2
February15, 2015	Schematic/Concept Design Due

Proposal Format

The proposal shall be ten (10) pages maximum and will include the following information:

A. Cover/Transmittal Letter

B. Please provide the following information relating to your firm:

- Firm name, telephone number, e-mail, and mailing address.
- Name of person in your firm whom we should contact about your proposal.
- Number of years the firm has been in business.
- Type of organization: individual, partnership, corporation, other (please specify).
- Year organization established.
- List of principals, officers, and associates of the firm.
- List any lawsuits or arbitration proceedings that have been initiated by or against your firm in the past five years. Briefly state the nature of the action and the outcome.
- Provide a list of the projects you are currently working on, construction cost and the scheduled completion date for each.
- Tell us anything else about your firm that might assist us in making this selection. Why do you feel your firm is especially qualified to be engaged by the City on this project?

C. Past Projects

Provide a description of similar projects which have been completed by your firm.

D. Scope of Work

Describe your proposed approach to be used in completing the tasks described in the Scope of the Services. Please provide a timeline of how your firm will proceed with this work.

E. Responsible Personnel

List the Project Manager and Key Project Staff who will be assigned to the project.

F. Architectural Fee

The primary goal of the architectural selection process is to rank each Consultant's proposal based on demonstrated competence and professional experience. Once a ranking has been established, the City will negotiate the cost of providing the technical service to be performed within the City's established budget for design services. Fees shall include all markups, overhead and profit, and reimbursable expenses. The Agreement shall provide for payment of all of the Scope of Work on a not-to-exceed time and materials basis. Submit the fee estimate in a separate sealed envelope. [Include a fee breakdown by task.](#)

Proposal Submission

Four (4) bound copies, one (1) unbound copy, and one (1) electronic copy of the proposal must be submitted by 4:00 PM on October 2, 2015. Submit proposals to:

Chris Ghione, Project Manager
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Chris.Ghione@morgan-hill.ca.gov (408) 782-9154

The Request for Proposal is not a contract or a commitment of any kind by the City of Morgan Hill and does not obligate the City to award a contract or pay costs incurred in the submission of a proposal. All proposals will become the property of the City of Morgan Hill.

Selection Criteria

The following criteria are among those, but not limited to, which will be used to evaluate the proposals and subsequent interviews:

- Demonstrated professional quality with similar projects
- Experience of personnel/sub-consultants assigned to the project
- Past Experience
- Review of references
- Quality of the proposal
- Ability to meet all aspects of the scope of work
- Community input plan
- Proposal for development of sponsorship plan that supports fundraising
- Integration of use of volunteers in proposal
- Ability to design a wide aspect of playground features, parking design, restroom and meeting buildings and adjacent park spaces
- Demonstrated flexibility in design experience and design processes
- Fee proposal

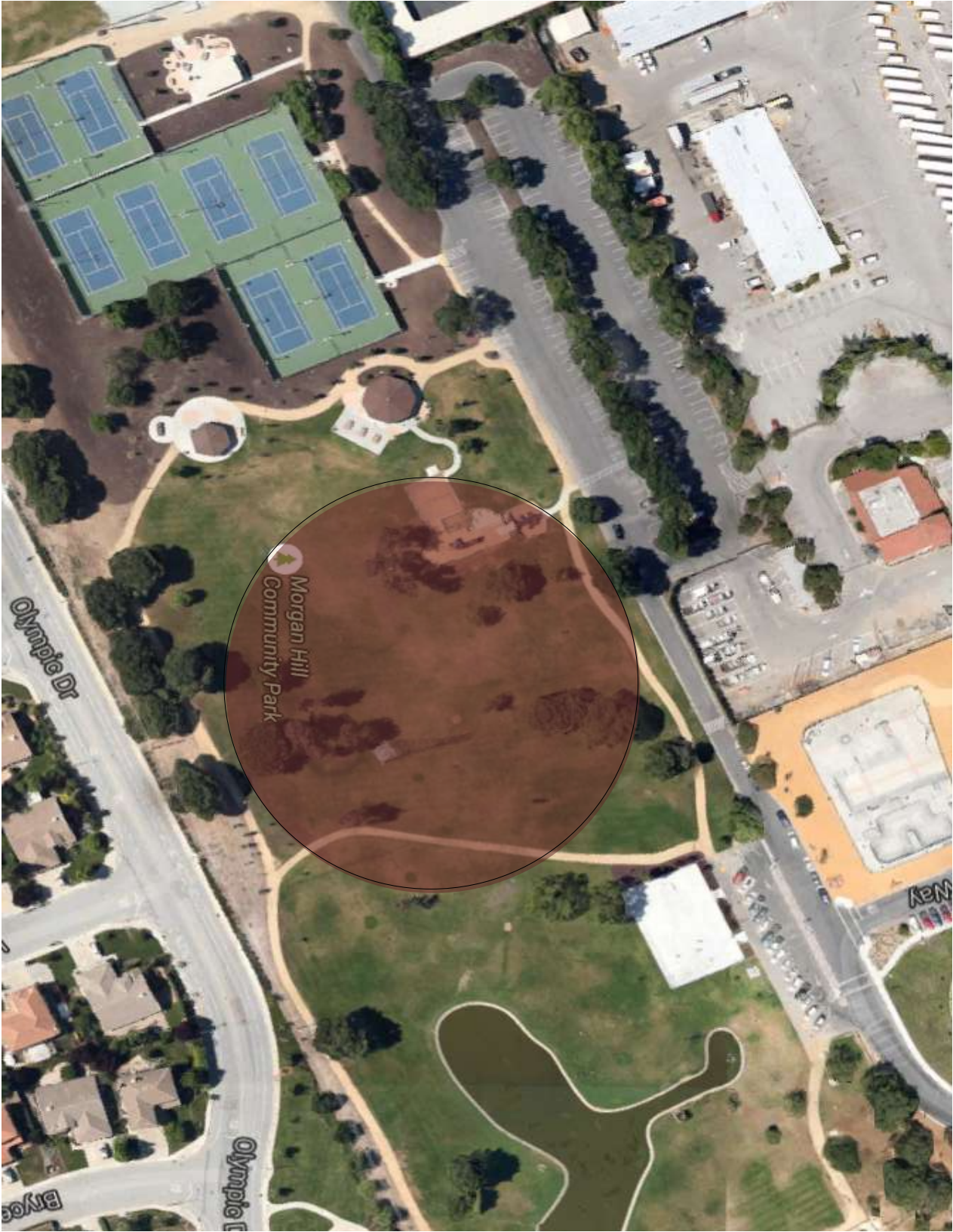
General Terms and Conditions

1. Proposals will be evaluated by City staff and the Morgan Hill Inclusive Playground Committee.
2. The City reserves the right to reject any and all proposals.
3. The City reserves the right to modify the scope of the project at any time based on the best interests of the City.
4. All documents, drawings, and findings (regardless of format) that are associated with this project shall be the property of the City of Morgan Hill.
5. Proposals shall remain effective for sixty (60) days beyond the submittal date.
6. Consultant Agreement will be the City's Standard Consulting Service Agreement.
7. Consultant shall be subject to the approval of the City.

Attachments:

- A. Community Park Site Location
- B. Standard Consultant Agreement

Attachment 1
Inclusive Playground Location at Community Park



CONSULTANT AGREEMENT

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and _____ a California Choose an item. ("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 Choose an item.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until _____ 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.** \$ _____. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed _____ dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. 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 delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

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

7.1. **Insurance Types and Amounts.**

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

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella"

policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Address of CITY is as follows:

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. **Maintenance of Records**.

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

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

15.3. **Ownership of Work Product**. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY.

CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

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

20.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall

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

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

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

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

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

25. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson
Print Name

Steve Rymer
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

By:

Renee Gurza
Print Name

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

Date: _____

Date: _____

By:

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

Date: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT C
SCHEDULE OF PERFORMANCE