



Request for Proposals

Aquatics Center and Centennial Recreation Center: Installation and Rental of three 1,000 lb. Carbon Dioxide (CO₂) Tanks and CO₂ Food Grade Micro Bulk Per Pound Pricing

The City of Morgan Hill is requesting proposals from qualified service providers to install and rent three (3) 1,000 lb. carbon dioxide (CO₂) tanks, and provide CO₂ Food Grade Micro Bulk to the Morgan Hill Aquatics Center located at 16200 Condit Road, and Centennial Recreation Center located at 171 W. Edmundson Avenue in Morgan Hill, CA 95037.

Proposals are due on Monday, September 12, 2016 at 2:30 p.m. at the City of Morgan Hill City Hall located at 17575 Peak Avenue in Morgan Hill.

REQUEST FOR PROPOSAL INFORMATION

SECTION 1 – General Instructions and Information for Service Providers

SECTION 2 – Technical Specifications

SECTION 3 – Proposal and Schedule, Subcontractor List, Non-collusion Affidavit

ATTACHMENTS

ATTACHMENT 1 – Example of Service Agreement

SECTION 1 – General Instructions and Information for Service Providers

Proposal Submission. Deliver sealed proposals to the City of Morgan Hill Community Services Department, City of Morgan Hill City Hall, located at 17575 Peak Avenue, Morgan Hill, California, by the due time and date above. Proposals must be addressed to the Community Services Department, and labeled as “Response to Aquatics Center/CRC: Installation and Rental of Carbon Dioxide (CO₂) Tanks and CO₂ Food Grade Micro Bulk Per Pound Pricing.” Service provider is to complete the following bid documents and include in the bid package: Bid Proposal, Bid Schedule, Non-Collusion Affidavit. These forms are provided in Section 3.

Examination of Contract Documents and Project Site(s). Each bidder is solely responsible for thorough review of the Request for Proposal (RFP) Documents and the examination of Project site(s) prior to submitting a Bid Proposal. Note that any areas and quantities noted are for information only. Bidders are responsible for inspecting the work locations and making their own area and quantity estimates.

Addenda. Any addenda issued prior to Bid Time shall constitute part of the Contract Documents. The City reserves the right to issue addenda prior to Bid Time.

Brand Designations and “Or Equal” Substitutions. Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an “equal” item must be submitted with a written request for substitution.

Bonds. No Bid Bonds are required. Performance and Payment Bonds are only required for all projects over \$25,000.

License. The successful bidder and any subcontractor(s) must possess a current and valid California contractor’s license(s) in the classification(s) required by law to perform the work as well as a City of Morgan Hill Business License.

City Representative. The designated City representative for this Project is Dale Dapp at (408) 310-4176.

Insurance. No later than ten days following issuance of the notice of award, Service Provider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. Bidder 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 Bidder, 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. Bidder further understands that the CITY reserves the right to modify the insurance

requirements set forth herein, with thirty (30) days' notice provided to Bidder, at any time as deemed necessary to protect the interests of the CITY.

Insurance Types and Amounts.

Commercial General Liability (CGL). Bidder 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 Bidder under Bidder's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

Workers' Compensation Insurance and Employer's Liability. Bidder 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 Bidder under Bidder's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Bidder is self-insured, Bidder shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

Pollution (Environmental) Liability. If the performance of Bidder'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, Bidder shall procure and maintain Pollution Liability covering the service provider'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 Bidder under Bidder's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

Professional Liability.

If the performance of Bidder'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), Bidder 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 Bidder under Bidder's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Bidder maintains a claims-made policy, Bidder 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.

If the performance of Bidder'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), Bidder 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 Bidder under Bidder's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

If the performance of Bidder's work or service under this Agreement involves contact with minors, Bidder 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 Bidder under Bidder's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

General Liability.

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

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,

The insurance shall be primary non-contributing.

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.

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.

Certificates. Bidder 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 Bidder'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

Permits. The Service Provider shall obtain and pay for any necessary permits.

Taxes. The bid price shall include all applicable federal, state and local taxes.

Additive or Deductive Items. If this bid solicitation includes additive or deductive items, the method to be used to determine the lowest bid is “The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items”.

Owner retains the right to add to or deduct from the Contract any of the additive or deductive alternates included in the Bid Proposal.

Bid Protest. Any bid protest must be in writing and received by the City Attorney’s Office at 17575 Peak Avenue, Morgan Hill, CA, (Fax: (408) 779-1592), before 5:00 p.m. no later than two (2) working days following bid opening (the “Bid Protest Deadline”) and must comply with the following requirements: Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subservice providers are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.

The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.

A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest

The protested bidder may submit a written response to the protest, provided the response is received by Owner before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder.

A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest

The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

Rejection of Bids and Award of Contract. City reserves the right, acting in its sole discretion, to waive non-substantive bid irregularities, the right to accept or reject any and all bids, or to abandon the work entirely. The Contract will be awarded, if at all, within sixty (60) calendar days after opening of Bids, to the responsible bidder submitting the lowest responsive bid.

SECTION 2 - Technical Specifications

1. **General Scope of Work:**

The installation of three (3) 1,000 lb. CO₂ rental tanks in an outside containment area, the monthly rental of the tanks, and the weekly or bimonthly provision of Food Grade CO₂ to Morgan Hill recreation facilities.

2. **Location: Aquatics Center at 16200 Condit Road and Centennial Recreation Center at 171 West Edmundson Ave., Morgan Hill, CA 95037**

3. **Specifications:**

The installation of three (3) 1,000 lb. CO₂ rental tanks to be located at the Aquatics Center in an existing outside containment area. Scope also includes the weekly or bimonthly provision to provide Carbon Dioxide Food Grade Micro Bulk for CO₂ rental tanks at the Aquatics Center. The CO₂ service is to be provided from the gaseous side of the tanks. Tanks will be plumbed to independently serve 3 separate, existing points of connection, as defined on site by the Building Maintenance Specialist. Please provide installation price (if any), monthly tank rental fee and per pound unit pricing for Carbon Dioxide Food Grade Micro Bulk.

Scope also includes the weekly or bimonthly provision to provide Carbon Dioxide Food Grade Micro Bulk for city owned CO₂ tanks at the Centennial Recreation Center.

4. **Authorized Work Days and Hours.**

Work days and hours as scheduled with and agreed to by a City Representative.

5. **Service Schedule**

Service schedules to be coordinated with and approved in advance by the City.

- A. Service provider shall fully complete the tank installation work for this Service within thirty (30) calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). **Installation work to be completed no later than October 21, 2016.**
- B. The Service provider shall submit a complete project schedule at the time of the pre-construction meeting.
- C. Prior to beginning work the City Representative will approve the written schedule of work. Following approval, the Service provider shall adhere to the approved written schedule in the execution of the work.
- D. Any expenses incurred by delays caused by the failure of the Service provider to adhere to the approved schedule shall be borne solely by the Service provider.
- E. Full compensation for scheduling shall be considered as included in the contract price paid for various items of work involved and no additional compensation will be allowed therefore.
- F. On a daily basis Service provider shall fully complete all work begun. Staging will be secured and measures will be implemented to protect site which is approved by the City representative in advance. All damages caused by the Service provider will be noted and repaired at the Service provider's cost.

- G. Installation requiring area closures shall be coordinated with City's representative, so as not to cause inconvenience to the facility. Service provider to post notices in conspicuous areas three (3) days in advance of beginning work noting start date, any instructions to occupants and business phone number.

6. Safety and Precautions

- A. The Service provider is responsible for public safety of his/her work site continually, and not limited to normal working hours.
- B. The Service provider shall maintain a neat appearance at the work site in all areas visible to the public.
- C. The Service provider shall be responsible for any and all damage to public and private property and shall correct any damaged property to the satisfaction of the City.

7. Public Notification

Service provider to post signs at least 48 hours in advance, at the project location notifying users when construction will begin.

8. Cleanup

- A. Upon completion of the project each location shall be left neat, clean and free of any debris.
- B. The Service provider shall properly dispose of all materials.

SECTION 3 - Bid Proposal and Schedule, Subservice provider List and Non-collusion Affidavit

Note that each document included in this section must be
included in bid proposal document.

Proposal to Furnish and Install

CO₂ Rental Tanks; Monthly Tanks' Rental Fee; And Per Pound Unit Pricing for CO₂ Food Grade Micro Bulk

_____ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“The City”) for the above-referenced project (“Project”) in accordance with the Contract Documents referenced therein.

- 1. Base Bid.** Bidder proposes to perform and fully complete the Installation Work for the Project as specified in the Contract Documents, Monthly Tanks' Rental Fee, CO₂ Per Pound Unit Pricing per the attached Bid Schedule.
- 2. Addenda.** Bidder acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

- 3. Bidder's Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

3.1 Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder's knowledge there are no errors, omissions, or discrepancies in the Contract Documents.

3.2 Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

3.3 Bidder is fully qualified to perform the Work.

3.4 Bid has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

- 4. Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder shall:

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

4.1 Enter into a Contract with The City in accordance with the terms of this Bid Proposal, by signing and submitting to The City the Contract form included with the Contract Documents; and

4.2 Submit to The City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

This Bid Proposal is hereby submitted on _____, 20__:

s/ _____
Name and Title [print]

Company Name License # and Classification

Address Phone

City, State, Zip Fax

Email

- Attachments:
Bid Schedule
Subservice provider List
Non-collusion Affidavit

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

BID SCHEDULE

**Proposal to Furnish and Install CO₂ Rental Tanks (1,000 pound each)
And
Per Pound Unit Pricing for CO₂ Food Grade Micro Bulk**

Bid Item	Item	Unit Cost	Bid Item per unit cost
1	Carbon Dioxide Tank INSTALLATION (3 tanks total)	Per tank	
2	Carbon Dioxide Tank RENTAL (3 tanks total)	Per tank per month	
3	Carbon Dioxide Food Grade Micro Bulk (Est. 300 pounds)	Per pound	

Bid Total	Not applicable- will review by Bid Item Unit Cost
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THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

NONCOLLUSION AFFIDAVIT

(To be executed by bidder and submitted with bid)

State of California)	ss.
)	
County of _____)	

_____, being first duly sworn, deposes and says that he

or she is _____ of _____
 (“Service provider”), the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify under penalty of perjury that the foregoing is true and correct.

s/ _____ Date: _____

Name and Title [print]

State of _____

County of _____

On _____ 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 capacities, 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.

WITNESS my hand and official seal.

Signature of Notary Public

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

ATTACHMENTS

ATTACHMENT 1 – EXAMPLE OF SERVICE AGREEMENT

SERVICE 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. ("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 Choose an item.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until _____ 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 _____ as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$ _____. Total compensation to SERVICE PROVIDER 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 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 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 SERVICE PROVIDER. 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 of CITY 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 the 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. 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 SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his 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 the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of the CITY.

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 the 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 the 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 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 an financial size rating of "VII" or better.

8.4. **Certificates.** SERVICE PROVIDER 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 SERVICE PROVIDER'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

9. **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.
10. **Compliance with Law.** 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.
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:

City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037	with a copy to: City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037
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15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
16. **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. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

22. **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 18 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 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:

Donald A. Larkin
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: _____

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

_____ Expiration Date(s) _____

Seal:

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT C
SCHEDULE OF PERFORMANCE