



UTILITIES DIVISION
100 EDES COURT
MORGAN HILL, CA 95037
(408) 776-7333
WWW.MORGAN-HILL.CA.GOV

Request for Proposals (RFP) SCADA HMI Application Upgrade

This request for proposal (RFP) solicits qualified vendors familiar with Morgan Hill's SCADA HMI system to submit proposals for upgrading its HMI application. The vendor's proposal must highlight a strategy that will improve functionality, streamline multi-layered software and licensing requirements and leverage existing infrastructure while exploring innovative alternatives.

Instructions for delivering electronic proposals:

Due Date: No later than 3:00 p.m., PST, Thursday, February 19, 2026
Email To: Inga.alonzo@morganhill.ca.gov
Email Subject: Subject line of email will be, "RFP SCADA HMI Application Upgrade."

Non-Mandatory Pre-bid Meeting

There will be a pre-bid meeting held on Tuesday, February 3 at 9 A.M., PST at the City of Morgan Hill Corporation Yard, 100 Edes Street, Morgan Hill, CA, 95037 for the purpose of acquainting all prospective contractors with the contract documents, expectations, and worksites.

Proposals will be reviewed by staff within a reasonable period following receipt, and all respondents notified of results. **Incomplete proposals will not be considered.** Contractors submitting a proposal shall maintain the appropriate license, insurance and permit requirements of the City, State and Federal governments, and other requirements of the law.

For additional information pertaining to this proposal, please contact me by email at Inga.Alonzo@morganhill.ca.gov

Sincerely,

Inga Alonzo
Administrative Analyst

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SECTION 1 – General Instructions and Information for Contractors

Project Description. The City is issuing this Request for Proposal (RFP) to solicit qualified system integrators and solution providers for the upgrade of its Supervisory Control and Data Acquisition (SCADA) Human Machine Interface (HMI) system. This upgrade aims to enhance operational efficiency, system reliability, and user experience by either advancing the current Wonderware InTouch-based application or migrating to an alternative HMI platform that offers better integration, reduced licensing complexity, and simplified architecture.

Instructions for submitting electronic proposals:

Due Date: No later than 3:00 p.m., PST, Thursday, February 19, 2026
Email To: Inga.alonzo@morganhill.ca.gov
Email Subject: Subject line of email will be, “RFP SCADA HMI Application Upgrade”

Non-Mandatory Pre-bid Meeting

There will be a pre-bid meeting held on Tuesday, February 3 at 9 A.M., PST at the City of Morgan Hill Corporation Yard, 100 Edes Street, Morgan Hill, CA, 95037 for the purpose of acquainting all prospective contractors with the contract documents, expectations, and worksites.

Contractor is to complete the following RFP documents and include them in the proposal package:

- 1) Proposal
- 2) Attachment A: Cost Schedule
- 3) Attachment B: Response to Technical Questions Narrative
- 4) Attachment C: Wage Theft Prevention Bid Certification
- 5) Attachment D: Certification of Acceptance of Terms of Agreement
- 6) Attachment E: Non-Collusion Declaration

These forms are provided in Section 3. Incomplete proposals will not be considered.

Contractor Selection Criteria. All responsive proposals will be considered, and each will be evaluated to ascertain which one best meets the needs of the City. Additional requests for information may be necessary to clarify parts of the proposal. The City may request that interviews and/or negotiations be conducted with the top rated contractors. Evaluation criteria will include the following:

Proposals will be evaluated based on:

Relevant technical expertise and experience in municipal SCADA systems.

Quality, feasibility, and innovation of the proposed solution.

Project management and scheduling robustness.

Cost-effectiveness and total cost of ownership.

Demonstrated compliance with cybersecurity and industry standards.

Vendor reputation, stability, and client references.

1. Experience and Qualifications – Relevant technical experience of company and expertise of its staff

in SCADA systems. Demonstrated compliance with cybersecurity and industry standards. 25 points

2. Capability - Quality, feasibility, and innovation of the proposed solution. Project management and scheduling robustness. 30 points
3. References - and quality of the overall proposal including compliance with proposal requirements. 5 points
4. Firm (or firm's employees) has previous experience with Morgan Hill's SCADA system setup. 5 points
5. Cost Schedule – 25 Points
6. Interviews – Interviews will be scheduled the first week of March - 10 Points

Term of Agreement. The anticipated start date for the new agreement is April 1, 2026, and the anticipated agreement term is one year.

Examination of Contract Documents and Project Site(s). Each Contractor is solely responsible for thorough review of the Request for Proposal (RFP) Documents, Agreement, specifications, and the examination of Project site(s) prior to submitting a Proposal Package. Contractors shall fully inform themselves of all conditions in and about the work site(s). Submission of a proposal constitutes acknowledgement of the terms of this provision.

Addenda. Any addenda issued prior to Due Date and Time shall constitute part of the Contract Documents. The City reserves the right to issue addenda prior to Due Date and Time. All addenda will be posted to the City website.

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 Contractors 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.

Bid Bonds. No Bid Bonds are required.

Required Licenses. The successful Contractor will be required to obtain a City of Morgan Hill Business License.

Submittal of Written Questions regarding this RFP. Submit all questions regarding this proposal via email to Inga.alonzo@morganhill.ca.gov using subject line "SCADA Application Upgrade RFP Q&A". Last date to submit questions will be Tuesday, February 3, 2026, at 4 P.M., PST. An addendum to the project will be posted to the City of Morgan Hill website by Thursday, February 5, 2026, with all project questions and answers.

Budgeted Estimate. Total budgeted estimate for this project is \$200,000.

Insurance. If awarded the contract, the CONTRACTOR shall procure and provide proof of the insurance coverage required under Section 8 of the attached Exhibit A, Maintenance Service Agreement, in the form of certificates and endorsements within 10 days of receipt of the Notice of Award. The required insurance must cover the activities of CONTRACTOR, 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 the Contract.

Permits. The Contractor shall obtain and pay for any necessary permits.

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

Withdrawal of Proposals. Proposal may be withdrawn by the Contractor prior to the time fixed for the opening of proposals but may not be withdrawn for a period of ninety (90) days after the opening of proposals. A successful Contractor shall not be relieved of the proposal submitted without the City's consent.

Bid Protest. Any bid protest against another bidder must be submitted in writing and received by the City at the City Attorney's Office at 17575 Peak Avenue, Morgan Hill, CA, via email to cityattorney@morganhill.ca.gov, before 5:00 p.m. no later than two (2) working days after bidders are notified of bid results via an e-mail (the "Bid Protest Deadline") and must comply with the following requirements:

Only a bidder who has actually submitted a Proposal is eligible to submit a bid protest against another bidder. Subcontractors 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 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 City 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. Protected bidder must concurrently transmit a

copy of the response and all supporting documents by e-mail, by or before the Response Deadline, to the protesting bidder and any other bidder who has 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 by City Manager or if over \$75,000 by the City Council, if at all, within sixty (60) calendar days after reviewing proposals based on the proposal most advantageous to the City.

Execution of Agreement. Contractor selected through the RFP process will be expected to execute a formal Agreement with the City of Morgan Hill for the provision of the requested service as set forth in the sample agreement attached to this RFP. Submission of a signed proposal will be interpreted to mean Contractor has agreed to all the terms and conditions set forth in the pages of this RFP and the standard provisions included in the attached Agreement. Contractor must submit any and all exceptions to this RFP with its proposal, clearly identifying the exception, including the page number and section number, as appropriate. Contractor should note that the submittal of an exception does not obligate the City to revise the terms of this RFP or any resulting agreement. The City will not consider any exceptions that are not identified in the proposal. The City reserves the right to negotiate with the selected Contractor to amend services to meet the City's financial requirements.

Public Records Act. All responses to this bid will become public records after notice of intent to award under the California Public Records Act (Cal. Government Code section 7920.000 et seq.). All documents that you send to the City will be subject to disclosure if requested by a member of the public. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Morgan Hill may not be in a position to establish that the information that a Contractor submits is a trade secret. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Do not mark your entire proposal as "confidential." If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Contractors who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. The City will not be responsible for any legal or other costs incurred by Contractors seeking to shield a portion of their proposal from public disclosure.

Incurred Costs. The City is not liable for any costs incurred by a company responding to this Request for Proposals.

SECTION 2 – Scope of Work

This request for proposal (RFP) solicits qualified vendors, especially those with proven expertise with Morgan Hill's SCADA HMI system setup to submit proposals for upgrading its HMI application. The vendor's proposal must highlight a strategy that will improve functionality, streamline multi-layered software and licensing requirements and leverage existing infrastructure while exploring innovative alternatives.

Introduction

The City is issuing this Request for Proposal (RFP) to solicit qualified system integrators and solution providers for the upgrade of its Supervisory Control and Data Acquisition (SCADA) Human Machine Interface (HMI) system. This upgrade aims to enhance operational efficiency, system reliability, and user experience by either advancing the current Wonderware InTouch-based application or migrating to an alternative HMI platform that offers better integration, reduced licensing complexity, and simplified architecture.

Background

The existing SCADA application was originally developed in 2014 using Wonderware InTouch. In 2022, the city upgraded its network system hardware including servers, modems and switches alongside updating the HMI software to Wonderware InTouch 2023 R2. The system supports monitoring and controlling approximately 50 sites distributed throughout the city infrastructure. These field sites primarily utilize Tesco Controls equipment with Tesco Programmable Logic Controllers (PLCs) as their core processors. Current system metrics include approximately 26,000 HMI tags and 2,500 historian tags. Given these parameters and the evolving operational environment, the city recognizes the need for an HMI application upgrade to meet modern operational requirements, streamline licensing and architecture and ensure long-term sustainability.

Goals and Objectives

The City's primary goals with this RFP are:

Upgrade the SCADA HMI system application to improve performance, usability, and maintainability. Consider proposals that offer a one-stop solution capable of simplifying the overall system architecture and minimizing the number of licenses required for essential features. Maintain compatibility with existing hardware, especially Tesco Controls PLC 2000 and 3000 series and other field devices. Enhance data acquisition efficiency, alarm management, and visualization capabilities. Ensure compliance with industry standards and cybersecurity best practices.

The successful vendor will be responsible for the following tasks:

Task 1- System Review and Assessment

Analyze the current SCADA system architecture, including hardware and software components. Evaluate the existing InTouch 2023 R2 application and infrastructure for potential migration or enhancement opportunities.

Task 2- HMI Application Upgrade and Development

Propose and develop an upgraded HMI application that may be based on Wonderware InTouch or a suitable alternative HMI package.

Provide clear rationale if proposing an alternative, emphasizing benefits such as system simplification and license reduction.

Incorporate advanced visualization, intuitive dashboards, and efficient alarm management.

Optimize the use and management of approximately 26,000 HMI tags and 2,500 historian tags.

Task 3- System Integration and Compatibility

Ensure integration with existing Tesco Controls field equipment and PLCs.

Confirm network hardware compatibility with the upgraded system.

Task 4- Testing and Validation

Perform rigorous testing phases including unit testing, integration testing, system testing, and user acceptance testing (UAT) with City staff.

Demonstrate system performance under real-world operational loads. Set testing environment, station(s) for staff to develop, test, modify and launch HMI applications in the future.

Task 5- Security Compliance

Implement security protocols following NIST guidelines or equivalent frameworks.

Ensure secure authentication, authorization, and encryption for system access and data transmission.

Task 6- Documentation and Training

Provide comprehensive technical documentation including system design, configuration, and operational procedures.

Conduct training sessions for operators, administrators, and IT personnel.

Task 7- Support and Maintenance

Offer ongoing maintenance and support services, including timely bug fixes, updates, and system monitoring.

SECTION 3 –Written Proposal Instructions

City of Morgan Hill SCADA HMI Application Upgrade

Proposals should be no more than 25 pages total including all of the required forms attached in Section 3 of this RFP. Font should be Arial 12 or Calibri 12. **Late proposals will not be accepted.** Proposals will not be publicly opened. Proposal submittals and scores become public information after Notice of Intent to Award is issued. Incomplete proposals will not be considered. Failure to use the forms provided within the RFP package will result in an incomplete proposal. Do not use marketing materials in place of the requested narrative.

Interested vendors must submit a detailed proposal including:

- Company background and relevant experience in SCADA system upgrades and integrations.
- Resumes, qualifications, titles of key personnel who will be working on this project with the City. Include any experience specifically with Morgan Hill's SCADA system.
- Description of understanding of the City's system and the scope of work.
- Technical approach and methodology for the upgrade or migration.
- Project timeline with clear milestones and deliverables.
- Evidence of compliance with industry standards and cybersecurity requirements.
- Licensing model and a detailed cost breakdown, including development, licensing, training and ongoing support.
- References from similar projects completed within the last five years. Include agency or company name, agency or company address, contact name, contact phone number and contact email address. (Note: References will be contacted via email with a questionnaire. Make sure all email addresses are accurate and current.)
- Attachments
 - Attachment A: Wage Theft Prevention Bid Certification
 - Attachment B: Certification of Acceptance of Terms of Agreement
 - Attachment C: Non-Collusion Declaration with the notarized California All-Purpose Acknowledgement

ATTACHMENT A

Wage Theft Prevention Bid Certification

(To be executed by Contractor and submitted with bid)

All Contractors are expected to have read and understand the “Wage Theft Prevention Policy” adopted on July 26, 2017, which can be found at <http://www.morgan-hill.ca.gov/DocumentCenter/View/22921/CP-17-01-Wage-Theft-Prevention>

The undersigned Contractor hereby certifies that Contractor and its principals have ☐ , have not ☐ been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, State, or local wage and hour laws within the past five years from the date of the submitted bid or proposal. For each disclosed violation, the Contractor shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Contractor’s efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the Contractor to the City as a part of its bid or proposal. The City, at its sole discretion, may disqualify a Contractor based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct, and that this certification is executed on _____ [date], at

_____ [city], _____ [state].

Signature

Print Name and Title

Company

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

ATTACHMENT B

Certification of Acceptance of Terms of Agreement

(To be executed by Contractor and submitted with bid)

All Contractors are expected to have read and understand the attached Maintenance Service Agreement with the City of Morgan Hill. The Contractor selected through the Request for Proposals (RFP) process will be expected to execute a formal Agreement with the City of Morgan Hill for the provision of the requested service as set forth in the sample agreement attached to this RFP. Submission of a signed proposal will be interpreted to mean Contractor has agreed to all the terms and conditions set forth in the pages of this RFP and the standard provisions included in the attached Agreement. Contractor must submit all exceptions to this RFP with its proposal, clearly identifying the exception, including the page number and section number, as appropriate. Contractor should note that the submittal of an exception does not obligate the City to revise the terms of this RFP or any resulting agreement. The City will not consider any exceptions that are not identified in the proposal.

I certify that I am a person authorized to enter into contracts and agreements for the bidding entity.

I certify that I have read the form of Agreement provided with the RFP solicitation and our company is prepared to enter into an Agreement with the City of Morgan Hill within 10 days of receiving the Notice of Award.

This completed Certification shall be submitted by the Contractor to the City as a part of its bid or proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct, and that this certification is executed on _____ [date], at

_____ [city], _____ [state].

Signature

Print Name and Title

Company

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

ATTACHMENT C

Non-Collusion Declaration

(To be executed by Contractor and submitted with bid)

State of California)	ss.
)	
County of _____)	

The undersigned declares:

I am the _____ [title] of _____ [business name], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other Contractor to put in a false or sham bid. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham bid, or to refrain from bidding. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Contractor or any other Contractor, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Contractor. All statements contained in the bid are true. The Contractor 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, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct, and that this declaration is executed on _____ [date], at

_____ [city], _____ [state].

Signature

Name [print]

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE ' 1189

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

State of **CALIFORNIA**)

County of _____)

On _____, before me, _____
a Notary Public in and for said County and State, personally appeared

proved to me on the basis of satisfactory evidence to be the person/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

Place Notary Seal Above

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Exhibit A

Consultant Agreement Example

Attached below

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 **Choose an item.** **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 the **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 provided the compensation does not exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council. 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 pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The City Manager of CITY is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

7.1.5. Professional Liability.

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

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

7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall

procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.7. **Crime/Fidelity Bond.** If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.

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

7.2.1. **General Liability and pollution liability (when pollution liability applies).**

7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.

7.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and

7.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.

7.2.2. **Workers Compensation.**

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed

electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, 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 including, without limitation, complying with California Government Code section 1090 et seq., the California Political Reform Act (California Government Code section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et seq.). CONSULTANT will further comply, and will ensure that its agents and its subcontractors comply, with California Government Code section 84308 ("Levine Act") and the applicable regulations of the Fair Political Practices Commission concerning campaign disclosure (2 California Code of Regulations sections 18438.1 – 18438.8).

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
Choose an item.
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Consultant's Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Maintenance of Records.**

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

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

16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to,

California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. **Notice of Security and/or Privacy Incident.** If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 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.

28. ☐ **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.

29. **Electronic Signatures.** Unless otherwise prohibited by law or CITY 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 CITY.

30. **Counterpart Signatures.** This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

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[Signatures on Next Page]

31. **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:
Donald A. Larkin

City Attorney

By:

Print Name

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

Date: _____

Date: _____

By:

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

Date: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT C
SCHEDULE OF PERFORMANCE