

**CONSULTANT AGREEMENT
NAME OF CONSULTANT**

THIS AGREEMENT is made this ____ day of _____, 20____, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and _____, a California (corporation, partnership, or sole proprietorship ("CONSULTANT")).

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the City Manager’s authority (or City Council approval on _____.) (pick only one)
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from _____, until _____. 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.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of _____.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1. **Amount.** (\$_____). Compensation under this Agreement shall not exceed _____.
 - 3.2. **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required, payment shall be based on hourly rates in Exhibit “B” attached and incorporated herein by this reference.
 - 3.3. **Records of Expenses.** CONSULTANT shall keep accurate records of payroll, travel, and expenses. These records will be made available to CITY.

3.4. Termination. CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice.

4. **Insurance Requirements.**

4.1. Commencement of Work. CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability and automobile insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,
- insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

4.2. Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

4.3. Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain professional liability insurance in an amount of \$1,000,000 per claim.

4.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

4.5. Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

5. **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.

6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
9. **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.
10. **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.
11. **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 Department Director	with a copy to:
City of Morgan Hill	City Clerk
17555 Peak Avenue	17555 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

12. **CONSULTANT'S Proposal.** 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.
13. **Licenses, Permits, and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits, and licenses as may be required by this Agreement.
14. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants 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.

15. **Time of Essence**. Time is of the essence in the performance of this Agreement.
16. **Limitations Upon Subcontracting and Assignment**. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY.
17. **Authority to Execute**. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
18. **Indemnification**.
 - 18.1. For claims arising from CONSULTANT'S professional acts or omissions, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of the negligence performance and/or willful acts or omission of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.
 - 18.2. For any other claim arising from any other act or omission, performance or non-performance by CONSULTANT under this Agreement, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of this Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.
 - 18.3. The only exception to CONSULTANT'S above-named responsibilities to protect, defend, and hold harmless CITY is due to the sole negligence of CITY as adjudged by a court of competent jurisdiction. CONSULTANT shall bear any initial burden of protection, defense, and hold harmless until such court judgment is rendered.
 - 18.4. This agreement shall apply to all liability, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.
19. **Modification**. 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 subsequent mutual written agreement executed by CITY and CONSULTANT.

20. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

21. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

22. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

ATTEST:

THE CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED:

“CONSULTANT”

Risk Manager

Date: _____

By:

Title: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

By:

Title: _____

Date: _____