

CITY OF SOLVANG
PROFESSIONAL SERVICES AGREEMENT

This Professional Service Agreement (“AGREEMENT”) is made upon the date of execution, as set forth below, by and between the City of Solvang (“CITY”), a municipal corporation, and _____ (“CONSULTANT”), a Sole Proprietorship. The parties hereto, in consideration of the mutual covenants and conditions set forth herein, hereby agree to the following terms and conditions:

1. **TERM:** This AGREEMENT shall commence on _____ and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____ unless sooner terminated or amended pursuant to the provisions of this AGREEMENT.
2. **SERVICES:** CONSULTANT shall perform the tasks described and set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in **Exhibit A**. To the extent that **Exhibit A** is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing. CONSULTANT shall determine the method, details and means of performing the above-referenced services. CONSULTANT may, at their own expense, employ such assistants and sub-consultants, as CONSULTANT deems necessary to perform the services required of CONSULTANT by this AGREEMENT. However, CONSULTANT may not assign this agreement to any other person or entity in the performance of required project-related services and the CITY may not control, direct or supervise CONSULTANT’S assistants or employees in the performance of those services.
3. **PERFORMANCE:** CONSULTANT shall at all times faithfully, competently, and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT. Whenever the scope of work requires or permits approval by the CITY, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the CONSULTANT of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of CONSULTANT. 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. If CONSULTANT is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Consultant shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

4. **AGENCY MANAGEMENT:** CITY's City Manager shall be designated as the Agency Manager and shall represent CITY in all matters pertaining to the administration of this AGREEMENT and review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to CONSULTANT.

5. **PAYMENT:**

A. The CITY agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed _____ for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT or an executed amendment thereto. All CONSULTANT invoices must be approved by the AGENCY or CITY MANAGER prior to payment.

B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Agency Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency Manager and CONSULTANT at the time CITY's written authorization is given to CONSULTANT for the performance of said services.

C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice therefore.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE:**

A. The CITY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the CITY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

- B. In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the CITY. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 5.

7. OWNERSHIP OF DOCUMENTS:

- A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or its designee at reasonable times to such books and records, shall permit CITY to make transcripts or copies therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.
- B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY without the permission of the CONSULTANT. CITY acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

8. INDEMNIFICATION:

A. Indemnify for professional liability

When the law establishes a professional standard of care for CONSULTANT's services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend, and hold harmless CITY and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by any negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or sub-consultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT.

B. Indemnify for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONSULTANT or by any individual or agency for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or sub-consultants of CONSULTANT.

C. Duty to defend

In the event the CITY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by CITY, CONSULTANT shall have an immediate duty to defend the CITY at CONSULTANT's cost or at CITY's option, to reimburse CITY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, or agents, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

9. INSURANCE: CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

10. INDEPENDENT CONSULTANT

A. CONSULTANT is and shall at all times remain as to the CITY a wholly independent consultant and/or independent contractor. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times

2.01 Avoidance of Conflict of Interest. Consultant may represent, perform services for, and be employed by additional individuals or entities, in Consultant's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City's business or interfere with the timely performance and completion of Consultant's services under this Agreement.

Consultant shall comply with all conflict of interest laws and regulations including, without limitation, the City's Conflict of Interest Code (on file in the City

Clerk's Office). All officers, employees and/or agents of Consultant who will be working on behalf of the City pursuant to this Agreement may be required to file Statements of Economic Interest. Therefore, it is incumbent upon the Consultant or Consulting Firm to notify the City of any staff changes relating to this Agreement.

- A. In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of the Consultant(s) unless as indicated in Subsection B, will be performing a very limited and closely supervised function, and therefore, unlikely to have a conflict of interest arise. No disclosures are required for any officers, employees, and/or agents of Consultant, except as indicated in Subsection B. _____ (*Initials*).
- B. In accomplishing the scope of services of this Agreement, Consultant(s) will be performing a specialized or general service for the City, and there is substantial likelihood that the Consultants work product will be presented, either written or orally for the purpose of influencing a governmental decision. As a result, the following Consultant(s) shall be subject to the City's Conflict of Interest Code.

2.02 Tools and Instrumentalities: Consultant shall provide all tools and instrumentalities to perform the services under this agreement.

2.03 Workers' Compensation and Other Employee Benefits: City and Consultant intend and agree that Consultant is an independent contractor of City and agree that Consultant and Consultant's employees and agents have no right to Workers' Compensation and other City-sponsored employee benefits. Consultant agrees to provide Workers' Compensation and other employee benefits, where required by law, for Consultant's employees and agents. Consultant agrees to hold harmless and indemnify City for any and all claims arising out of any claim for injury, disability, or death of Consultant and any of Consultant's employees or agents.

2.05 Indemnification: Professional Services other than Design (a) To the fullest extent permitted by law, the Contractor shall (1) immediately defend, and (2) indemnify the City of Solvang, and its elected officials, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Contractor's performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active

negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify. The Contractor shall be obligated to defend, in all legal equitable, administrative, or special proceedings, with counsel approved by the City of Solvang, the City of Solvang and its elected officials, officers, and employees, immediately upon tender to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Contractor from its separate and distinct obligation to defend City of Solvang. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Contractor asserts that liability is caused in whole or part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the City of Solvang for reimbursement of reasonable attorneys' fees and defense costs.

(c) The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

2.06 **Insurance:** Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this agreement

3.0 OBLIGATIONS OF CITY

3.01 **Cooperation:** City agrees to comply with all reasonable requests of Consultant necessary to the performance of Consultant's duties under this agreement. City employees, agents and officers of the City agree to disclose all information relevant to this project to Consultant.

4.0 TERMINATION OF AGREEMENT

4.01 **Termination Notice:** Notwithstanding any other provision of this agreement, any party hereto may terminate this agreement, at any time, without cause, by giving at least 30 (thirty) days' prior written notice to the other parties to this agreement.

4.02 **Termination on Occurrence of Stated Events:** This agreement shall terminate automatically on the occurrence of any of the following events:

- a. Sale of the business of any party;
- b. The end of the 30 (thirty) days as set forth in section 4.01;
- c. End of the contract to which Consultant's services were necessary; or
- d. Assignment of this agreement by Consultant without the consent of City.
- e. Bankruptcy or insolvency of any party.
- f. Death of any party.

4.03 **Termination by any Party for Default:** Should any party default in the performance of this agreement or materially breach any of its provisions, the non-breaching party, at its option, may terminate this agreement, immediately, by giving written notice of termination to the breaching party.

4.04 **Termination:** This agreement shall terminate on _____, 20____, unless earlier extended as set forth in this Section. The City, with the agreement of Consultant, is authorized to extend the term of this agreement beyond the termination date, as needed, under the same terms and conditions as set forth in this agreement. Any such extension shall be in writing and be an amendment to this agreement.

5.0 SPECIAL PROVISIONS

5.01 **Additional Tasks as May Be Assigned by the City Manager:** Prior to initiating any Consultant work on matters relating to _____, but outside this contract, it shall be the responsibility of Consultant to obtain written approval of the Planning Director, or the City Manager, prior to initiation of such tasks.

5.02 **Time Schedule:** Consultant is to begin work upon receipt and execution of City contract. It is contemplated that most of the services hereunder, including but not limited to preparation, public and agency review, and submission of the draft *(e.g.: environmental document) to the e.g. City Planning Commission, Parks & Recreation Commission*, and City Council for certification, will be completed on or before _____, 20____. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** Consultant agrees to engage its best efforts to adhere strictly to the schedule set forth in the schedule, a copy of which is hereby marked Exhibit C and incorporated herein.

5.03 **Work Outside Contract Scope:** No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or

additional work. The Contract Manger may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Consultant or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

5.04 Confidentiality:

- (a) Confidential Nature of Information. Consultant shall treat all information obtained from the City in the performance of this contract as confidential and proprietary to the City. Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this contract as confidential.
- (b) Limitation on use and disclosure. Consultant agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Consultant's scope of work. Consultant will not disclose any information prepared for the City, or obtained from the City or obtained as a consequence of the performance of work to any person other than the City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the City.
- (c) Security plan. If requested by the Contract Manager, Consultant shall prepare a security plan to assure that information obtained from the City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Consultant shall advise the City of any request for disclosure of information or of any actual or potential disclosure of information.
- (c) Survival. Consultant's obligations under this paragraph shall survive the termination of this contract.

6.0 MISCELLANEOUS

6.01 **Notices:** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this agreement or by law to be served on or given to any party to this agreement shall be in writing and delivered or, in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, to the following address for each respective party:

PARTY	ADDRESS
TO: CITY OF SOLVANG	City of Solvang 1644 Oak Street Solvang, CA 93463

Attention: City Clerk

Copy to: Roy Hanley
City Attorney
HANLEY & FLEISHMAN, LLP
8930 Morro Road
Atascadero, CA 93422

TO CONSULTANT:

6.02 **Governing Law:** This agreement and all matters relating to this agreement shall be governed by the laws of the State of California in force at the time, should any need for interpretation of this agreement or any decision or holding concerning this agreement arise.

6.03 **Binding Effect:** This agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this Section shall be construed as a consent by City to any assignment of this agreement or any interest in the agreement.

6.04 **Remedies:** The remedies set forth in this agreement shall not be exclusive, but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law or equity.

6.05 **Due Authority:** The parties hereby represent that the individuals executing this agreement are expressly authorized to do so on and in behalf of the parties.

6.06 **Ownership of Work Product:** Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the City. Consultant agrees that all copyrights, which arise from creation of the work pursuant to this contract, shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

6.07. **Integration and Modification:** This contract represents the entire understanding and agreement of the City and Consultant as to those matters contained herein. This

agreement correctly sets forth the obligations of the parties hereto to each other as of the date of this agreement. All agreements or representations respecting the subject matter of this agreement not expressly set forth or referred to in this agreement are null and void. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the City and Consultant.

6.08. **Advice of Counsel:** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

6.09. **Independent Review:** Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

6.10. **Attorney Fees:** In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this agreement, or the breach hereof, the prevailing party shall be entitled, in addition to other such relief as may be granted, to a reasonable sum as and for attorney fees.

6.11 **No waiver:** The waiver of any breach by any party of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this agreement.

6.12. **Assignment:** This agreement is specifically not assignable by Consultant to any person or entity. Any assignment or attempt to assign by Consultant whether it be voluntary or involuntary, by operation of law or otherwise, is void and is a material breach of this agreement, giving rise to a right to terminate as set forth in Section 4.03.

6.13. **Time for Performance:** Except as otherwise expressly provided for in this agreement, should the performance of any act required by this agreement to be performed by either party be prevented or delayed by reason by any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause, except financial inability, which is the fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay and performance of the act during the period of delay will be excused: provided, however, that nothing contained in this Section shall exclude the prompt payment by either party as required by this agreement of the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

6.14 **Severability:** Should any provision of this agreement be held by a court of competent jurisdiction or by a legislative or rulemaking act to be either invalid, void or unenforceable, the remaining provisions of this agreement shall remain in full force and effect, unimpaired by the holding, legislation or rule.

6.15. **Construction:** The parties agree that each has had an opportunity to have their counsel review this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provision to which they relate.

6.16. **Amendments:** Amendments to this agreement shall be in writing and shall be made only with the mutual written consent of all the parties to this agreement.

6.17. **Signatures:** The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

Consultant:

Date: _____ By: _____
President

City of Solvang:

Date: _____ By: _____
Mayor or City Manager

APPROVED AS TO FORM:

City Attorney: HANLEY & FLEISHMAN, LLP

Date: _____ By: _____
Roy Hanley
City Attorney

EXHIBIT A

TASKS TO BE PERFORMED

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

[Note: may need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees]

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident or disease.

[Note: If the required limits for general liability, auto and employer’s liability are \$1 million or less, the following paragraph may be omitted.]

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, sub consultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City

has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant’s existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This

obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.