

# PROFESSIONAL SERVICES AGREEMENT

CITY OF SAN BUENAVENTURA AND \_\_\_\_\_  
AGREEMENT NO. \_\_\_\_\_

By this Professional Services Agreement ("Agreement"), the City of San Buenaventura ("CITY") agrees to engage the services of CONSULTANT (identified below), and CONSULTANT agrees to perform the services for CITY as herein described, for the compensation, during the term, and otherwise subject to the covenants and conditions herein set forth. CITY and CONSULTANT may be individually referred to as "Party" or collectively as the "Parties."

**1. SUMMARY DESCRIPTION OF SERVICES.**

**2. PARTIES:**

A. CITY OF SAN BUENAVENTURA ("CITY"), a charter city and municipal corporation of the State of California, located at 501 Poli Street, Ventura, CA 93002

B. CONSULTANT: \_\_\_\_\_,  
a(n) [capacity] \_\_\_\_\_,  
Address: \_\_\_\_\_

**3. TERM OF AGREEMENT:** From (Date): \_\_\_\_\_ To (Date): \_\_\_\_\_

Extension – Initial term, plus any option to extend shall not exceed a total of 5 years. A partial year shall count as one year:

**4. AGREEMENT AMOUNT:** \$ \_\_\_\_\_ (Include amount anticipated for all extensions and increases).

**CONTINGENCY AMOUNT:** \$ \_\_\_\_\_

**5. DESIGNATED REPRESENTATIVES.**

The Designated Representatives listed below shall be authorized to act on behalf of the named Party, be responsible for negotiations and contractual matters, and coordinate with each other to perform the services under this Agreement. Additionally, CONSULTANT's services shall be performed or immediately supervised by the CONSULTANT's Representative:

<p><u>CITY</u> Designated Representative:</p> <p>Name: Title: Phone: Email: Mailing Address (if differs from above):</p>	<p><u>CONSULTANT</u> Designated Representative:</p> <p>Name: Title: Phone: Email: Mailing Address (if differs from above):</p>
--	--

## **CONTRACTUAL PREREQUISITES:**

**6.1.** This Agreement must first be approved as to form by the City Attorney, then executed by the CONSULTANT, and finally executed by an authorized person on behalf of the CITY.

**6.2.** A request for modification of the terms herein must be made in writing and presented to the Designated Representative prior to the time this Agreement is submitted to the City Attorney's office for review and approval.

**6.3.** All proof of business license, insurance, and/or W-9 forms is required prior to execution of this Agreement.

## **CONSULTANT'S SERVICES.**

CONSULTANT shall perform the tasks, obligations, and services set forth in the "Scope of Services," attached to and incorporated into this Agreement as "Exhibit A." Once this Agreement is executed, the Scope of Services may only be modified by written Amendment pursuant to Section 18 of this Agreement.

## **COMPENSATION.**

CITY shall pay CONSULTANT for the services performed pursuant to the terms of this Agreement in the time and manner set forth in the "Schedule of Compensation," attached to and incorporated into this Agreement as "Exhibit B." Once this Agreement is executed, the Schedule of Compensation may only be modified by written Amendment pursuant to Section 18 of this Agreement.

## **PAYMENT.**

The CITY shall pay all undisputed portions of any applicable invoice within thirty (30) days after receipt of an invoice. In the event the CITY disputes one or more items in an invoice, the CITY shall, within thirty (30) days after receipt of such invoice, notify the CONSULTANT of the item(s) being disputed and the reason(s) therefore. The CITY may withhold payment for such disputed items until resolution of the dispute.

## **10. COMMENCEMENT OF PERFORMANCE.**

CONSULTANT shall not perform any work under this Agreement until: (i) CONSULTANT furnishes proof of insurance as required under Sections 6 and 21 of this Agreement, and (ii) CITY provides CONSULTANT a signed Professional Services Agreement, which shall serve as a Notice to Proceed. All services required of CONSULTANT under this Agreement shall be completed on or before the end of the term of the Agreement.

## **11. STATUS OF CONSULTANT.**

The Parties agree that CONSULTANT (and any subconsultants), in performing the services herein specified, shall act as an independent contractor and shall have control of all work for which CONSULTANT is responsible, and the manner in which it is performed. CONSULTANT shall be free to contract for similar service to be performed for other employers while under contract with CITY, provided that such work does not create a conflict of interest. CONSULTANT shall have no right or power to bind the CITY to any contracts or agreements with third parties. CONSULTANT is not an agent or employee of the CITY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits CITY provides for its employees. However, the CITY retains the right to provide general instructions to and observe the CONSULTANT in the performance of all services done on behalf of the CITY.

In the event CONSULTANT or an employee, agent, or subconsultant of CONSULTANT providing services under this Agreement is determined by a court of competent jurisdiction with the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, protect, defend, and hold harmless the CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or their employees, agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which might otherwise be deemed the responsibility of the CITY.

## **12. LAWFUL PERFORMANCE.**

CONSULTANT shall abide by all Federal, State, and Local Laws and Regulations as may be related to the performance of duties under this Agreement. CONSULTANT, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

## **13. SAFETY REQUIREMENTS.**

CONSULTANT shall not perform any services for the CITY when the CONSULTANT is impaired by alcohol or a controlled substance. When there is reasonable cause to believe that any person has violated this provision, that person shall be immediately removed from the premises and be subject to any applicable civil and/or criminal penalties under the CITY's Code and/or under state law. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public. The CITY reserves the right to issue restraining or cease and desist orders to CONSULTANT when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The acceptance of CONSULTANT's work by CITY shall not operate as a release of the CONSULTANT from such standard of care and workmanship.

## **14. OWNERSHIP OF CONSULTANT'S WORK PRODUCT.**

CITY shall be the owner of any and all technical documents and records, including, computations, plans, correspondence, and/or other pertinent data and information, both hard copy and electronic, gathered or prepared by CONSULTANT in performance of this Agreement and shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when the same may be requested by CITY.

**14.1. Records and Inspections.** The CONSULTANT shall maintain full and accurate records, with respect to all services and matters covered under this Agreement. The CITY shall have free access at all reasonable times to such records, both hard copy and electronic, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings, and activities.

**14.2. Deliverables.** CONSULTANT shall deliver to the CITY the studies, plans, specifications, or other documents as are identified in the Scope of Services; and CONSULTANT shall, upon completion of all work, submit to the CITY all information developed in the course of the CONSULTANT's services. CONSULTANT shall, in such time and in such form as the CITY may require, furnish reports concerning the status of services required under this Agreement. CONSULTANT shall, upon request by CITY and upon completion or termination of this Agreement, deliver to the CITY all material furnished to CONSULTANT by the CITY.

**14.3. Ownership – Generally.** All inventions, discoveries, enhancements, changes, or improvements of computer programs developed pursuant to this Agreement shall be the property of the CITY, and all patents or copyrights shall be assigned to the CITY, unless otherwise agreed. CONSULTANT agrees that CITY may make modifications to computer software furnished by CONSULTANT without infringing CONSULTANT’s copyright or any license granted to CITY, unless otherwise agreed.

**14.4. Ownership of Documents.** Every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONSULTANT pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

**14.5. Confidentiality.** CONSULTANT may be granted access to information that is exempt from disclosure to the public (Government Code Section 6254 and 6254.16) and may contain “trade secrets” (see Government Code Section 6254.7) when it is necessary for CONSULTANT to perform its obligations pursuant to this Agreement. If CONSULTANT is granted such access to confidential information, CONSULTANT shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

**14.6. Disclosure of Information.** CONSULTANT shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to CONSULTANT by the CITY or other information to which the CONSULTANT has had access during the term of this Agreement without the prior written approval of the CITY’s Designated Representative during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

## **15. NON-APPROPRIATION OF FUNDS.**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted, and unencumbered appropriation of the CITY. In the event the CITY has not appropriated sufficient funds for payment of CONSULTANT’s services beyond the current fiscal year, and if no funds are legally available from other sources to lawfully make the payments, this Agreement may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the current original or renewal term. The CITY will provide notice of its inability to continue the Agreement at such time as the CITY’s Designated Representative is aware of the non-appropriation of funds. However, failure to notify does not renew the term of the contract.

## **16. TERMINATION OF AGREEMENT.**

At any time, with or without cause, the CITY shall have the right, in its sole discretion, to terminate this Agreement by giving written notice to CONSULTANT pursuant to Section 30 of this Agreement, and such termination shall be effective immediately upon giving notice. There shall be no period of grace after giving the notice of termination. Upon termination, CITY shall be liable to CONSULTANT only for work done by CONSULTANT up to and including the date of termination of this Agreement unless the termination is for cause, in which event CONSULTANT need be compensated only to the extent required by law. CONSULTANT may terminate this Agreement at any time during the term of the Agreement by giving the CITY sixty (60) days’ written notice.

## **17. OPTION TO EXTEND AGREEMENT.**

When in the CITY's best interest, this Agreement may be extended on a daily, month-to-month, annual, or other basis by modification pursuant to Section 18 of this Agreement. The initial term, plus any option to extend, shall not exceed a total of five (5) years.

## **18. MODIFICATION OF AGREEMENT.**

This Agreement may be amended, modified, or otherwise altered, or its provisions waived, only upon mutual consent of the Parties by written amendment, and subject to compliance with the San Buenaventura Municipal Code, sections 4.600.190 and 4.500.200.

## **19. ASSIGNMENT.**

This Agreement is for the professional services of CONSULTANT. Any attempt by CONSULTANT to assign the benefits or burdens of this Agreement without the prior written approval of CITY shall be prohibited and shall be null and void. CONSULTANT's services pursuant to this Agreement shall be provided by the CONSULTANT's Designated Representative or directly under his/her supervision, and CONSULTANT shall not assign another to supervise the CONSULTANT's performance of this Agreement without the prior written approval of CITY, by and through the CITY's Designated Representative.

## **20. INDEMNIFICATION & HOLD HARMLESS.**

As a separate and independent covenant from CONSULTANT's obligations under Section 21 hereof, CONSULTANT shall indemnify, protect, defend with counsel acceptable to the CITY, and hold CITY and CITY's officers, employees, agents, and volunteers harmless and free from any and all claims, liabilities, or expenses, including attorney's fees, arising out of or relating to any negligent act, negligent omission, or wrongful conduct related in any way to CONSULTANT's performance of its services pursuant to this Agreement. In the event CITY and/or any of CITY's officers, employees, agents, or volunteers are named in any lawsuit, or should any claim be made against it or any of them by lawsuit or otherwise arising out of or relating to such negligent act, negligent omission, or wrongful conduct, CONSULTANT shall indemnify them for any judgment rendered against them for such negligent act, negligent omission, or wrongful act, any sums paid out in settlement or otherwise, and all costs incurred by them in their defense, including but not limited to attorney's fees.

CONSULTANT also understands and agrees that it is being employed to perform the services provided for by this Agreement because of CONSULTANT's professed expertise and experience in performing such services. In addition, CONSULTANT understands and agrees that while CITY or CITY's officers, employees, agents, or volunteers may elect to do so, they have no duty to review, inspect, monitor, or supervise the work performed by CONSULTANT pursuant to this Agreement except as otherwise expressly provided for by this Agreement. As a consequence, CONSULTANT waives any right of contribution against CITY or any of CITY's officers, employees, agents, or volunteers arising out of such failure to inspect, review, monitor, or supervise the work performed by CONSULTANT pursuant to this Agreement.

The CONSULTANT's obligations under this Section of the Agreement shall survive the termination of the Agreement.

## **21. INSURANCE.**

Prior to commencing the services required by this Agreement, and at all other times this Agreement remains in effect, the CONSULTANT shall procure and maintain in full force and effect all of the insurance required by Exhibit "C," attached hereto and incorporated herein by this reference.

## **22. LIVING WAGE REQUIREMENTS.**

During the term of this Agreement, CONSULTANT understands and agrees that if Living Wages are applicable subject to the provisions of Chapter 2.525 of the San Buenaventura Municipal Code (the "Code") entitled, "Living Wages and Benefits for City Services" (a copy of which is available upon request), CONSULTANT will pay and/or provide the wages and/or benefits required therein to all of its employees engaged in whole or in part in performing the services provided for by this Agreement.

## **23. COVENANTS AND CONDITIONS.**

Each term and each provision of this Agreement to be performed by CONSULTANT shall be construed to be both a covenant and a condition.

## **24. NOTICE OF BREACH AND OPPORTUNITY TO CURE.**

Neither Party will be deemed to be in breach of this Agreement based on a breach that is capable of being cured until it has received written notice of the breach from the other Party. The Party charged with breach will have fifteen (15) days from the date of receiving such notice in which to cure the breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been cured or explained to the satisfaction of the other Party within fifteen (15) days from the date on which the Party received notice of breach, the non-breaching Party may terminate this Agreement.

## **25. WAIVER.**

CITY's review or acceptance of, or payment for, work product prepared by CONSULTANT under this Agreement will not be construed to operate as a waiver of any rights CITY may have under this Agreement or of any cause of action arising from CONSULTANT's performance. A waiver by CITY of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

## **26. DISPUTES.**

Except as otherwise provided in these provisions, any dispute concerning a question of fact arising under this Agreement, shall be decided by the CITY's Designated Representative, who shall reduce this decision to writing and mail a copy to the CONSULTANT. The decision of the CITY's Designated Representative shall be final and conclusive unless CONSULTANT requests mediation within ten (10) calendar days. Pending final decision of a dispute, the CONSULTANT shall proceed diligently with the performance of the Agreement and in accordance with the decision of the CITY's Designated Representative.

## **27. DISPUTE RESOLUTION.**

Should an unresolved dispute arise out of this Agreement, any Party may request that it be submitted to mediation. within a reasonable time not to exceed forty-five (45) days of a request. The mediator

shall be agreed to by the mediating Parties. In the absence of an agreement, the Parties shall each submit one name from mediators listed either by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a “blindfold” process. The cost of mediation shall be borne equally by both Parties. Neither Party shall be deemed the prevailing Party. No Party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the Parties but not more than sixty (60) days, unless the maximum time is extended by both Parties.

## **28. TAXPAYER IDENTIFICATION NUMBER.**

CONSULTANT shall provide CITY with a completed Request for Taxpayer Identification Number and Certification as issued by the Internal Revenue Service.

## **29. USE OF THE TERM “CITY.”**

Reference to “CITY” in this Agreement includes the CITY, its City Manager, or any authorized representative acting on behalf of the CITY.

## **30. NOTICES.**

All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by first-class mail. Notice sent by mail shall be addressed to each Party’s Designated Representative as set forth above. When addressed in accordance with this Section, such notice shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this Section.

## **31. FORCE MAJEURE.**

Neither the CONSULTANT nor the CITY shall be responsible for any delay caused by any contingency beyond their control, including, but not limited to, war or insurrection, walkouts by the Party’s own employees, fires, natural calamities, riots, or demands or requirements of governmental agencies other than the CITY.

## **32. GOVERNING LAW.**

The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of California, County of Ventura.

## **33. SEVERABILITY.**

In the event that any one or more of the provisions of the CITY’s standard contract terms and conditions shall be found to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect and be enforceable.

**34. INTEGRATED AGREEMENT.**

This Agreement and the attached exhibits to this Agreement represent the entire understanding between the Parties. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any subsequent successors and assigns.

**35. NO THIRD-PARTY BENEFICIARY.**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

**36. AUTHORITY TO EXECUTE.**

Each Party hereto expressly warrants and represents that through its Designated Representative it has the authority to execute this Agreement on behalf of its corporation, partnership, business entity, or governmental entity, and warrants and represents that the Designated Representative has the authority to bind each Party to the performance of its obligations hereunder.

**37. EXECUTION – COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and each such duplicate counterpart shall constitute an original, but they shall not be effective nor enforceable unless and until it is executed with the handwritten signature of an authorized representative of each of the relevant Parties. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other Party to this Agreement is in the physical possession of the Party seeking enforcement thereof.

**38. INCONSISTENT OR CONFLICTING TERMS.**

In the event of any contradictions or inconsistencies between any attached documents or exhibits incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control. Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the CITY are not binding upon the CITY's Designated Representative unless specifically agreed to in writing, and initiated by CITY's Designated Representative, as to each additional contractual term or condition.

**39. ACKNOWLEDGEMENT.**

By signing below, CONSULTANT acknowledges that it has reviewed the terms and conditions and insurance requirements of this professional services agreement and that CONSULTANT hereby agrees to full compliance.

***Signatures Follow***



In witness whereof, the Parties have entered this Agreement on the date last signed below (“Effective Date”).

**CITY OF SAN BUENAVENTURA**

\_\_\_\_\_  
[CONSULTANT NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tax Identification Number

APPROVED AS TO FORM  
GREGORY G. DIAZ, CITY ATTORNEY  
PER SBMC, SECTION 4.600.050

Any modification to this pre-approved  
Standard Form requires further  
review and approval by the City Attorney.

**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT**  
**(City of San Buenaventura and )**

**SCOPE OF SERVICES**

**EXHIBIT B**

**PROFESSIONAL SERVICES AGREEMENT**  
(City of San Buenaventura and )

**SCHEDULE OF COMPENSATION**

## EXHIBIT C

### PROFESSIONAL SERVICES AGREEMENT (City of San Buenaventura and \_\_\_\_\_)

#### INSURANCE REQUIREMENTS

**Prior to contract approval, Consultant must procure, agree to maintain, and supply evidence of insurance at the levels listed and in accordance with the other provisions listed in this document.**

#### 1. Coverage Types and Limits

a) Commercial General Liability (ISO CGL CG 00 01) - including coverage for bodily injury, property damage, products & completed operations, and personal injury arising from the consultant's activities. Commercial General Liability (CGL) per Occurrence Commercial General Liability Aggregate or Combined Single Limit (CSL)	\$1 million \$2 million
b) Auto Liability for owned, hired, and non-owned vehicles per Occurrence (or non-owned & hired if consultant has no autos). Auto Liability Aggregate or Combined Single Limit	\$1 million \$2 million
c) Worker's Compensation with a Waiver of Subrogation in favor of the City Employer's Liability	Statutory Limits \$500,000
d) Crime/Employee Dishonesty Policy <i>The Crime policy shall name The City of San Buenaventura as Loss Payee. Pertains to IT and Financial contracts. Contact Risk Manager for specific requirements.</i>	\$0-1 million
e) Professional Liability Policy <i>See item (v) below for examples of Contractors that may need to supply evidence of this coverage.</i>	\$0-1 million
f) Cyber Liability Policy with Network Security/Data Privacy Coverage <i>Pertains to contracts with IT component. Contact Risk Manager for specific requirements.</i>	\$0-1 million
g) Technology E&O/Technology Professional Liability <i>Contact Risk Manager for specific requirements.</i>	\$0-1 million

## Insurance Policy Provisions, Endorsements, and other Requirements

**Consultant agrees to comply with the following additional requirements with respect to the insurance:**

Liability Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any officer, employee, agent, or volunteer of City. As such, a Primary and Non-Contributory Endorsement (with coverage at least as broad as ISO CG 2001 04 13) is required on all liability policies.

Consultant waives its right of subrogation against the City. As such, a Waiver of Subrogation Endorsement is required on the Consultant's Worker's Compensation policy.

A "Blanket" Additional Insured Endorsement (a/k/a "automatic additional insured endorsement"), attached to the Commercial General Liability policy covering premises liability, ongoing operations, product liability, and completed operations is required. If a "Blanket" endorsement is not available, Consultant may submit a combination of the following endorsements:

An Additional Insured Endorsement covering Premises and Ongoing Operations CG 20 10 04 13 or its equivalent (CG 20 26, CG 20 33, or CG 20 38) AND

an Additional Insured Endorsement covering Completed Operations CG 20 37 04 13.

Insurance Policies must be issued by an insurance company licensed to do business in the State of California with an *AM Best* rating of not less than A:VII.

Each insurance policy required above shall provide that coverage shall not be canceled except with 30 days' notice to the City.

The Description section of the Certificate must include the following language:

*The City of San Buenaventura, its officers, officials, agents, employees and volunteers shall be named as an additional insured under the General Liability and Auto Liability policies. All Liability policies are primary and Non-Contributory. Waiver of Subrogation applies to the Worker's Compensation policy. 30 day notice of cancellation will be provided to the Certificate Holder.*

A Certificate of Insurance must include the following language in the Certificate Holder section:

*City of San Buenaventura, its officers, officials, agents, employees and volunteers  
P O Box 99  
Ventura, CA 93002*

Consultant will 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. Such proof will be submitted to the City within 10 days of renewal.

Consultant shall provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance and any required endorsements evidencing all of the coverages required. Any failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any other additional insured in this or any other regard.

Consultant shall ensure that coverage provided to meet these requirements is applicable separately to each insured, and that there will be no cross liability exclusions that preclude coverage for any legal action between Consultant and City, between Consultant and any other named insureds or additional insureds under the insurance policy, or between City and any party associated with City or City's officers, officials, employees, agents, or volunteers.

Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. There shall be no cross liability exclusion and no Consultant limitation endorsement. In addition, there shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or employment-related practices, except for a provision or endorsement limiting liability arising from pollution to liability caused by sudden or accidental pollution.

Any umbrella liability insurance over primary insurance provided to meet primary limits shall apply to bodily injury, personal injury, and property damage, at a minimum. Coverage shall be as broad as any required underlying primary coverage, and shall include a "drop down" provision providing primary coverage for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be provided with defense costs payable in addition to policy limits. Coverage shall have starting and ending dates concurrent with the underlying coverage.

Coverage shall be written on an "occurrence basis" if such coverage is available, or on a "claims made" basis if not available. When coverage is provided on a "claims made" basis, Consultant shall continue to maintain the insurance in effect for a period of three (3) years after this Agreement expires or is terminated. Such insurance shall have the same coverage and limits as the policy that was in effect during the term of this Agreement, and shall cover Consultant for all claims made by City arising out of any errors or omissions of Consultant, or the officers, employees or agents of Consultant during the time this Agreement was in effect.

Consultant shall require all sub-Consultants or other parties hired by Consultant to perform any part of the services required by this Agreement to purchase and maintain all of the insurance specified above and submit evidence of all such insurance. Consultant shall obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required herein.

No contract used by any Consultant, or contracts Consultant enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. When requested, Consultant shall provide City with all agreements with sub-Consultants or others with whom Consultant contracts on behalf of City, and with all certificates of insurance obtained in compliance with this paragraph. Failure of City to request copies of such documents will not impose any liability on City, or its employees.

In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary to meet the requirements of this Agreement, and any premium paid by City for such insurance will be promptly reimbursed by Consultant, or, if not promptly reimbursed, deducted from any compensation to be paid by City to Consultant pursuant to this Agreement.

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the

exclusion of other coverage, or a waiver of any type. Coverage shall not be limited to the specific location, individual, or entity designated as the address of the project or services provided for by this Agreement. Insurance coverage limits are subject to change based on the unique liability associated with each project over and above standard coverage limits at the discretion of the City's Risk Manager or their designee.

Consultant shall provide immediate notice to City of any claim against Consultant or any loss involving Consultant that could result in City or any of City's officers, employees, agents, or volunteers being named as a defendant in any litigation arising out of such claim or loss. City shall not incur any obligation or liability by reason of the receipt of such notice. However, City shall have the right, but not the duty, to monitor the handling of any such claim or loss that is likely to involve City.

In the event of any loss that is not insured due to the failure of Consultant to comply with these requirements, Consultant will be personally responsible for any and all losses, claims, suits, damages, defense obligations, and liability of any kind attributed to City, or City's officers, employees, agents, or volunteers as a result of such failure.

**Please note:**

Automobile Liability insurance is not required if the Vendor and its employees does NO traveling in providing services for completion of the Agreement (e.g. telecommuting). If the Vendor has employees but no vehicles registered to the business (personal vehicles only), the non-owned and hired automobile liability coverage should be included in the Vendor's Commercial General Liability policy.

Workers Compensation insurance is not required if the Consultant is a sole proprietor/partner/corporate officer with no employees. Otherwise, Worker's Compensation is required under CA Labor Code Section 3700. A Workers Compensation Insurance Waiver is required stating Consultant is a sole proprietor/partner/corporate officer with no employees. This waiver is to be included with the other submitted documents.

Professional Liability may be required for the following types of contractors. These are only examples and not an all-inclusive list. Contact Risk Manager for clarification and requirements.

*Examples:*

*Appraisers, notaries, imaging of records, EOC plan, Fair Housing assessments, trainers*

*Chemists, auditors, insurance agents and brokers, lawyers, laboratories, surveyors, building inspectors, traffic engineering services.*

*Ambulance services, actuaries, counselors, medical providers. Also includes engineers, architects, construction managers, hazardous materials evaluators, environmental impact evaluators. All IT related projects, contractors and consultants.*

Cyber Liability and Network Security/Data Privacy Coverage and Technology E&O/Technology Professional Liability coverage may be required in agreements that have an IT or data component. Contact Risk Manager for clarification and requirements.