

**CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF COLUSA AND
[INSERT CONSULTANTS NAME]**

THIS AGREEMENT (hereinafter referred to as “**Agreement**”) is made and entered into this ____ date of 2014, by and between the City of Colusa, a municipal corporation, having its principal place of business at 425 Webster Street, Colusa California 95932, (herein “**City**”) and _____ [Insert Name], a California _____ [Insert type of entity], having a principal place of business at _____ [Insert address], (herein “**Consultant**”), wherein Consultant agrees to provide the City and City agrees to accept the services specified herein.

WHEREAS, the City proposes [insert brief details/recitals re: contract] _____;
and

WHEREAS, the Consultant has presented a proposal for such services to the City, dated _____, 2014, and is duly licensed, qualified and experienced to perform those services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. SCOPE OF SERVICES.

Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in the Description of Scope of Services, attached hereto and incorporated herein by this reference as Exhibit A, subject to the direction of the City Contract Administrator, as provided from time to time.

2. CONTRACT ADMINISTRATOR.

_____ [Insert employee name], at telephone number (530) 458-4740 will administer this Agreement on behalf of City (herein “**Contract Administrator**”). _____ [Insert consultant contact] at telephone number _____ is the authorized representative for Consultant and shall administer this Agreement on behalf of Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

3. EXHIBITS.

Attached to this Agreement are the following Exhibits. Said Exhibits shall be initialed by Consultant. Said Exhibits are incorporated herein by reference:

Exhibit A. Description of Scope of Services to be performed by Consultant (“**Services**”)

Exhibit B. A listing of hourly rates of Consultant’s personnel, and a contract budget for the Services.

Exhibit C. Insurance Requirements.

4. TIME OF PERFORMANCE.

Consultant shall commence performance after the approval and execution of this Agreement, and receipt of written notice to proceed by the Contract Administrator, and shall thereafter diligently prosecute the Services through to completion in a prompt and timely manner, unless otherwise directed by City or unless earlier terminated.

5. COMPENSATION OF CONSULTANT.

A. The Consultant shall be paid for the actual fees, costs and expenses for all time and materials required and expended, pursuant to the Payment Plan incorporated herein as Exhibit B, but in no event shall total compensation exceed [REDACTED] dollars (\$ [REDACTED]), without City's prior written approval.

B. Consultant shall submit monthly invoices during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall reflect the phase or task to which the request for payment is being invoiced in accordance with Exhibit A and contain a detailed description of the services provided, the amount of time expended in providing such services, and the person providing such services, and other information as the Contractor Administrator may request. City shall make payment of undisputed amounts within forty-five (45) days of receipt of invoices, for services satisfactorily performed and for authorized reimbursable costs incurred.

C. Consultant agrees to provide all Services for the amount specified in this Section without compensation in excess of such amount. Consultant shall not provide additional Services until Consultant has received authorization from the City Council and executed an written amendment to this Agreement. Should the Consultant elect to proceed prior to receiving such authorization, the Consultant does so at Consultant's own risk.

D. If the work is halted at the request of the City, City shall compensate Consultant for all outstanding costs and reimbursable expenses reasonably incurred for work satisfactorily completed as of the date of the written notice of termination.

E. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Consultant to correct such work or billings or seek any other legal remedy.

6. INDEPENDENT CONTRACTOR.

Consultant shall perform the Services as an independent contractor as defined in Labor Code 3353, and nothing herein contained shall be construed to be inconsistent with this relationship or status. The Consultant shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by the Consultant are employees and agents of the Consultant and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

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

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Agency therefore has no responsibility for such contributions beyond the compensation required under this Agreement.

7. TERMINATION.

This Agreement may be terminated, without cause, at any time by the City upon () days' written notice. Upon receipt of such notice, Consultant shall cease all work under this Agreement. In the event of any such termination, the Consultant shall be compensated as provided for in this Agreement. Upon such termination, the City shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimated performed to that date in accordance with Section 9 hereof. The obligations of section 16 of this Agreement relating to Consultant's obligations to defend and indemnify the City shall survive any termination of this Agreement.

Notwithstanding any provision of this Agreement, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined.

8. TIME AND EXTENSION OF TIME.

A. Time is of the essence in the performance of this Agreement. All Services performed by Consultant under this Agreement shall be completed in accordance with the time schedules set forth in Exhibit A or otherwise determined by the Contract Administrator. Consultant may, for good cause, request extensions of time to perform the Services required hereunder.

B. The Contract Administrator may, by written instrument, extend the duration of this Agreement for an additional period not to exceed the lesser of one year or the original term of the Agreement, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 5, Compensation.

9. PROPERTY OF CITY.

All materials prepared by the Consultant under this Agreement shall become the property of the City, and the Consultant shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant in performing this Agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information.

10. CONFIDENTIAL MATERIALS.

All materials, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

11. COMPLIANCE WITH LAW AND WARRANTY.

A. Consultant shall (and shall cause its agents and contractors), at its sole cost and expense, to comply with all City, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the provision of Services and this Agreement. Permits and/or licenses shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement.

B. Consultant represents that it is qualified to properly provide the services set forth in Exhibit A in a manner which is consistent with the generally accepted standards of Consultant's profession, and has the skills, expertise, licenses and permits necessary to perform the Services. Consultant shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Consultant is engaged. All products of whatsoever nature which Consultant delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

[IF SCOPE OF WORK INCLUDES A PROJECT FOR WHICH PREVAILING WAGE MUST BE PAID, INCLUDE THE FOLLOWING PROVISION:]

C. Consultant, to the extent required by the California Labor Code, shall pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California.

12. ASSIGNABILITY.

Consultant shall not assign or transfer any interest in this Agreement without the prior written consent of the City, which shall not be unreasonably withheld. However, claims for money due or to become due to Consultant from the City under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Consultant shall promptly furnish notice of any assignment or transfer, whether voluntary or involuntary, in writing to the City.

13. INTEREST IN CONTRACT.

A. Consultant covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any present interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its Services hereunder.

B. Consultant may serve other clients, but none whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

C. The City has determined, based on the Scope of Services in Exhibit A that the Consultant, or its principal employees on working for the City under this Agreement:

_____ Is required to file a Form 700 because he/she is involved in the making or participating in making of a decision which may foreseeably have a material effect on any financial interest, as further described in the Political Reform Act and implementing regulations.

_____ Is not required to file a Form 700 because he/she is not involved in the making or participating in making of a decision which may foreseeably have a material effect on any financial interest, as further described in the Political Reform Act and implementing regulations.

If it is determined that Consultant is covered by the City’s Conflict of Interest Code at any time after the execution of this Agreement City determines and notifies Consultant in writing that Consultant’s duties under this agreement warrant disclosure by Consultant, Consultant agrees to make all disclosures required by the City’s conflict of interest code in accordance with the Category designated by the City.

14. RECORDS AND AUDITS.

A. Consultant shall establish and maintain records pertaining to this Agreement. Consultant's accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, utility bills, invoices and vouchers.

B. Consultant shall permit City and its authorized representatives to inspect and examine Consultant's books, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Consultant pursuant to this Agreement and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Agreement; and Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Agreement.

15. LIABILITY OF CONSULTANT-NEGLIGENCE.

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of the Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

16. INDEMNIFICATION.

[GENERAL INDEMNIFICATION PROVISION, TO BE USED FOR MOST CONTRACTS EXCEPT AS SET FORTH BELOW:]

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend, with legal counsel reasonably acceptable to the City, indemnify and hold harmless City and its officers, agents, officials, representatives, employees and volunteers (collectively "**Indemnitees**") from and against any and all claims, demands, losses, costs, damages, injuries, (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), expenses and liabilities of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

[OR USE THE FOLLOWING INDEMNIFICATION CLAUSE WHEN CONTRACTING WITH THE FOLLOWING DESIGN PROFESSIONALS: (1) LICENSED ARCHITECTS; (2) LICENSED ENGINEERS; (3) LICENSED LANDSCAPE ARCHITECTS, AND/OR (4) LICENSED LAND SURVEYORS:]

A. Consultant agrees to indemnify, including the cost to defend, City and its officers, officials, representatives, employees and volunteers (collectively "Indemnitees") from and against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to

the negligence, recklessness, or willful misconduct of Consultant and its employees or agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages arising from the sole negligence or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement nor completion of the Services shall release Consultant from its obligations under this Section 16, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

D. Consultant's compliance with the insurance requirements does not relieve Consultant from the obligations under this Section, which shall apply whether or not such insurance policies are applicable to a claim or damages.

17. INSURANCE.

Consultant shall provide insurance in accordance with the requirements of Exhibit C, which is attached hereto and incorporated herein by reference. Consultant agrees to have and maintain the policies set forth in Exhibit C entitled "Insurance Requirements" attached hereto and incorporated herein by reference. All policies, endorsements, certificates, and/or binders shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing, in advance, by City. A lapse in any required insurance coverage during this Agreement shall be breach of this Agreement.

18. PERSONNEL.

A. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such services.

B. Consultant shall make every reasonable effort to maintain stability and continuity of Consultant's Key Personnel assigned to perform the Services. Key Personnel for this contract are defined to include the following people: [REDACTED]. Consultant shall provide City with a minimum twenty (20) days prior written notice of any changes in Consultant's Key Personnel assigned to the provide Services, provided that Consultant receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

19. NOTICES.

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: City of Colusa
425 Webster Street
Colusa, CA 95932
ATTN: CITY MANAGER

Consultant: _____

ATTN: _____

20. CITY NOT OBLIGATED TO THIRD PARTIES.

City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

21. MISCELLANEOUS PROVISIONS.

A. NON-DISCRIMINATION.

Consultant shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

B. UNAUTHORIZED ALIENS.

Consultant hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

C. SECTION HEADINGS.

The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

D. SEVERABILITY.

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

E. REMEDIES NOT EXCLUSIVE.

No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

F. NO WAIVER OF DEFAULT.

No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

G. ENTIRE AGREEMENT AND AMENDMENT.

This document represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral. This document may be amended only by written instrument signed by both City and Consultant.

H. SUCCESSORS AND ASSIGNS.

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

I. APPLICABLE LAW; VENUE; ATTORNEYS' FEES

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Colusa, if in state court, or in the federal court nearest to the City of Colusa, if in federal court. In any action brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs.

J. AUTHORITY.

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any

entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Consultant is obligated, which breach would have a material effect hereon.

K. CONFLICTING TERMS.

This Agreement and its Exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by City.

CITY OF COLUSA

CONSULTANT

By: _____
Jesse Cain, City Manager

By: _____
(Title)

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
Shelly Kittle, City Clerk

[Corporations require signature of two officers]

[SIGNATURES MUST BE NOTARIZED]

CERTIFICATE OF COMPLIANCE WITH LABOR CODE §3700

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that Code. I will comply with such provisions before commencing the performance of this work under this Agreement, and my method of compliance is further described below.

With the above understanding, I certify the following:

_____ Consultant is insured against liability for workers' compensation.

_____ Consultant is self-insured for workers' compensation. I will provide a copy of Certificate of Consent to Self-Insure issued by the State of California Department of Industrial Relations.

_____ Consultant is a sole proprietor or partnership. I am the owner of the organization or a partner, and Consultant is exempt from the State workers' compensation requirements because we have no employees.

CONSULTANT

By: _____
Title:

EXHIBIT A

Description of Scope of Services to be performed by Consultant

[To Be Inserted; If Excerpt from proposal is to be used as Exhibit A, be sure that Excerpt only includes references to the services. If rates or contracting provisions are included, line through those with black marker to show they are not included terms]

EXHIBIT B

[A listing of hourly rates of Consultant's personnel, and a contract budget for the Services.]

[To Be Inserted; If a provision from the Proposal is to be used, be sure to include the title page and note that this is an excerpt from the proposal]

EXHIBIT C
INSURANCE REQUIREMENTS
TO
CONSULTANT SERVICES AGREEMENT

Consultant shall, at all times it is performing Services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. 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 Consultant in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

[USE THIS CLAUSE FOR MOST CONTRACTS, EXCLUSIVE OF CONTRACTS FOR CONSTRUCTION OR PROFESSIONAL SERVICES]

1. Commercial General Liability (“CGL”): Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 0001 or an approved 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 shall be less than TWO MILLION DOLLARS (\$2,000,000) each occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit

[USE THIS CLAUSE FOR PROFESSIONAL SERVICES/SOLE PROPRIETOR CONTRACTS]

1. Commercial General Liability (“CGL”): Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 0001 or an approved 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 shall be less than ONE MILLION DOLLARS (\$1,000,000) each occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit

2. Automobile Liability: Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than ONE MILLION DOLLARS (\$1,000,000) each occurrence for bodily injury and property damage. If Consultant or its employees will use personal autos in any way related to the performance of this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.

3. Workers’ Compensation: Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum

limits of ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury or disease. If Consultant is self insured, provide a Certificate of Consent to Self-Insure, signed by the Department of Industrial Relations. Workers' Compensation is not required if the Consultant provides written verification that it has no employees.

4. 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 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" 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 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, subconsultants or others involved in the performance of Services pursuant to this Agreement. 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 ONE MILLION (\$1,000,000) per occurrence.

5. Professional Liability Insurance. (Required for all Licensed Consultants). Professional Liability (Errors and Omissions) insurance 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 include the type of work performed under this Agreement. The policy limit shall be no less than ONE MILLION (\$1,000,000) per claim and TWO MILLION (\$2,000,000) in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

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

a. 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. Consultant also agrees to require all contractors, and subcontractors to do likewise.

b. Consultant agrees to waive subrogation which any insurer or Consultant may acquire from Consultant by virtue of any payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the insurer. 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.

c. All insurance coverage and limits provided by Consultant 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.

d. 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.

e. 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.

f. 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.

g. 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 may terminate this Agreement in accordance with the provisions of this Agreement.

h. Certificate(s) are to reflect that the insurer will provide thirty (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.

i. 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, noncontributing basis in relation to any other insurance or self insurance available to City.

j. Consultant agrees to ensure that subconsultants, and any other party involved with the performance of Services pursuant to this Agreement who is brought onto or involved in such Services by Consultant, provide the same minimum insurance coverage required of Consultant, provided, however, that only subconsultants performing professional service will be required to provide professional liability insurance. 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 performance of Services will be submitted to City for review.

k. Any deductibles or self-insured retention must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower deductible

or retention or provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention, or other coverage or solutions.

l. 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.

m. 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.

n. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.

o. 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.

END OF DOCUMENT