

**REQUEST FOR PROPOSAL**  
**LOAN PROCESSING SERVICES RELATED TO THE CITY'S**  
**HOUSING REHABILITATION PROGRAM**  
**JULY 1, 2023 THROUGH JUNE 30, 2025**

**INTRODUCTION**

The City of Mission Viejo is requesting proposals for a consultant to provide loan processing services related to the City's Housing Rehabilitation Program. The Housing Rehabilitation Program (Program) has been adopted by the City Council of the City of Mission Viejo to meet the City's Community Development goals of providing its residents with decent, safe and sanitary housing and a suitable living environment. The Housing Rehabilitation Program provides technical and financial assistance to qualifying Low Income Households who are owner/occupants of single-family residential properties in the City of Mission Viejo.

The primary funding for the Program is through Community Development Block Grant Program (CDBG). The Program is implemented by the City's Community Development Department. The loan processing consultant will report to the Housing Rehabilitation consultant.

**SCOPE OF WORK TO BE PERFORMED**

Consultant will be responsible for the following duties:

- A. Loan document preparation, including any of the following and any other documents the City may require:
  1. Control Instructions
  2. Deed of Trust and Rider
  3. Rider to Deed of Trust
  4. Promissory Note
  5. Loan Agreement
  6. Truth-in-Lending Disclosure Statement
  7. Request for Notice of Default
  8. Notice of Right to Cancel
- B. Deferred loan servicing, including collection and remittance of payments, monitoring payment of property taxes, monitoring insurance with notification to agent, and assessing late fees.
- C. Account inquiries and access, with City and borrower having electronic/telephone access to loan information and a detailed transaction statement, free of charge, when requested by borrower.
- D. Returned check fee, due to non-sufficient funds, with letter sent to borrower requesting immediate payment.
- E. Portfolio management including payoff quotations, satisfactions, reconveyances of mortgage, and reminder notifications to borrowers.

- F. Loan Transfer, hard copy and/or electronic, either back to the City or to another service provider, at City request and in format agreed to by City.
- G. Reports, available on-line or hard-copy by-request, to include the following:
  - 1. Portfolio status including annual payments, balances, interest rate, borrower information, and loan terms.
  - 2. Reconciliation for payments.
  - 3. Payment history.
- H. Loss mitigation of taxes and insurance including delinquency/default letter production and due diligence phone calls to determine reason for delinquency, explain the serious nature of the situation including potential loss of property, and establish commitment/plan for immediate and future payments.

### **QUALIFICATIONS**

Consultant shall include the firm's qualifications and experience in performing loan processing services, including loan underwriting, payment collection, processing and remittance, delinquency notice, escrow administration, 1098 reporting, collection services, and other functions as may be required to effectively administer the loan program.

### **METHOD OF COMPENSATION**

Consultant shall provide all pricing information relative to performing the loan processing services as described in this request for proposal. If hourly rates are proposed, adequate information must be presented to match hourly rates to specific consultant staff. It shall be specified as to whether hourly rates include all overhead and out-of-pocket expense.

### **FORMAT FOR PROPOSALS**

Consultant shall provide the following information:

- A. Letter of transmittal signed by an individual authorized to bind the proposing entity.
- B. General information about the consultant (i.e., location of office(s), years in business, organization chart, number and position titles of staff).
- C. Qualifications of staff proposed for the assignment.
- D. Detailed description of the consultant's understanding of the City's needs and a detailed plan demonstrating how the consultant will satisfy these needs.
- E. Description of the services the consultant proposes to provide.
- F. Compensation schedule.

Consultant submitting a proposal that includes the use of subcontractors shall provide the information identified above for each subcontractor.

### **ADDENDA**

If any person contemplating submitting a proposal for the loan processing services related to the

City's Housing Rehabilitation Program is in doubt as to the true meaning of any part of this Request for Proposal, that person may submit to the City's Director of Community Development a written request for an interpretation or correction.

Any interpretation or correction of the specifications will be made only by addendum issued by the City's Director of Community Development. Copies of addenda will be mailed or delivered to those persons who have received an RFP.

### **EVALUATION PROCESS AND SELECTION CRITERIA**

Evaluation of the proposals will be based upon a competitive selection process. It will not, however, be limited to price alone. The City staff will review all statements of proposals received by the stated deadline. The candidates will be evaluated on the following criteria:

- A. Experience in the same or similar position.
- B. Ability to understand and perform the Program tasks efficiently and in accordance with the requirements of City, State and Federal regulations.
- C. Cost to perform the required service as stated in the Scope of Work.
- D. Oral and written communication abilities.
- E. References.

Consultant must satisfy the City of its ability to perform the services required. Consultant must demonstrate and document a history of timely and satisfactory performance of similar services in a manner that addresses the stated evaluation criteria. Consultant shall be responsible for the accuracy of the information supplied concerning references.

In addition, the City may consider evidence of untimely and unsatisfactory performance on prior similar services or litigation by the Consultant on previous contacts to disqualify any Consultant.

The City reserves the right to reject any and all proposals.

### **SPECIFICATIONS NOT CONTRACTUAL**

Nothing contained in this Request for Proposal shall create any contractual relationship between the Consultant and the City. The City accepts no financial responsibility for costs incurred by any Consultant regarding this RFP.

### **PROOF OF AUTHORITY**

If the Consultant is a corporation, formal proof of the authority of the officer signing the proposal to bind the corporation must be submitted with said proposal. A copy of the corporate resolution, or minutes or letter may be adequate proof.

### **RESERVATIONS**

The City reserves the right to reject any and all proposals, and to waive any nonconformity of proposals with this RFP, whether of a technical or substantive nature, as the interest of the City may require.

### **CLIENT REFERENCES**

Consultant shall submit three (3) Housing Rehabilitation Program Implementation references. The

references shall identify the client, a contact name, telephone number, description of the service provided, and the location where the service was performed.

### **INSTRUCTIONS AND QUESTIONS**

City representative from whom the Consultant will receive instructions:

Jennifer Lowe  
Planning and Economic Development Manager  
City of Mission Viejo  
200 Civic Center  
Mission Viejo, California 92691 (949) 470-3024

Questions regarding this Request for Proposal should be directed to Jennifer Lowe at the above phone number. Do not contact any other City employee, City official or City consultant regarding this RFP.

### **WITHDRAWAL OF PROPOSAL**

Consultant may withdraw its proposal, either personally or by telegraphic or written request. They should, however, do this prior to the time set for the opening of proposals.

### **FIRM COMMITMENT OF AVAILABILITY OF SERVICE**

The City shall have two months from the date required for submission of all proposals within which to evaluate the proposals received and to decide which proposal, if any, to accept. During such period, the Consultant shall remain ready, willing, and able to begin work as set forth in the proposal if accepted by the Council.

### **INDEPENDENT CONTRACTOR**

The Consultant is as to the City a wholly independent contractor. The Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City.

### **LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of all local, State and Federal laws and regulations, including, but not limited to, those pertaining to conflict of interest, which in any manner affect those employed by it or in any way affect the performance of its building plan check and inspection service. The Consultant shall at all times observe and comply with all such laws and regulations.

### **CONSULTANT'S ACCOUNTING RECORDS**

Records of Consultant's direct personnel, consultants, and reimbursable expenses pertaining to the work and records of accounts between City and Consultant shall be kept on a generally recognized standard accounting basis and shall be available to City or its authorized representatives at mutually convenient times.

## **LIABILITY INSURANCE REQUIREMENTS FOR CONSULTANTS**

Please refer to Exhibit A, Draft Agreement with Insurance Requirements, which is attached to this RFP.

## **TERM**

The term for the agreement will expire on June 30, 2025. The agreement will have a 30-day termination clause.

## **SCHEDULE OF EVENTS**

The anticipated schedule of events is as follows:

Availability of RFP:	May 23, 2023
Receipt of proposal to City:	<b>June 9, 2023 (by 4:00 p.m.)</b>
Consultant interviews (if warranted) and/or negotiation with preferred consultant:	June 14-15, 2023
Execute Contract by:	June 27, 2023
Start of services:	July 1, 2023

## **PROPOSAL SUBMISSION**

A digital copy of the proposal must be received by the City no later than:

- **4:00 P.M. – Friday, June 9, 2023**
- No faxed copies
- Address proposals to: Jennifer Lowe, Planning and Economic Development Manager
- Email Proposals to: Angela Hannis at [ahannis@cityofmissionviejo.org](mailto:ahannis@cityofmissionviejo.org)
- Subject Line of Email: “PROPOSAL – LOAN PROCESSING SERVICES RELATED TO HOUSING REHABILITATION PROGRAM”

Attachment: Draft Agreement for Consultant Services (with insurance requirements)

## CITY OF MISSION VIEJO

### AGREEMENT WITH FOR LOAN PROCESSING SERVICES RELATED TO THE CITY'S HOUSING REHABILITATION PROGRAM UP TO \$30,000 *(Insurance Required)*

**THIS AGREEMENT** is made and effective as of July 1, 2023, between the **City of Mission Viejo**, a California general law city and municipal corporation ("City") and \_\_\_\_\_ ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on July 1, 2023, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2025, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding this limit on term, some duties and obligations may survive the termination, lapse, or completion 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**.

3. **PERFORMANCE.** Consultant shall at all times faithfully, competently, and to the best of his or her ability, experience, and talent, perform all tasks described herein. Consultant represents to the City that it has the qualifications and equipment/technology necessary to competently and reasonably perform the tasks required by this Agreement. Consultant shall employ, at a minimum, generally accepted standards, practices, and equipment utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PAYMENT.**

a. The City agrees to pay Consultant monthly in arrears, 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 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the total term of the Agreement unless additional payment is approved as provided in this Agreement. Any terms or conditions set forth in **Exhibit A or Exhibit B**, which do not describe the work to be performed, the payment rates and terms, or the payment schedule have not been agreed to by the City and shall not be deemed a part of this Agreement.

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 City Manager, or his or her designee. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed a cumulative contract total amount of \$30,000. Any additional work in excess of this amount shall be approved by the City Council.

c. Consultant shall submit reasonably detailed invoices monthly for actual services performed and, as applicable, equipment and materials acquired. Invoices shall be submitted on or about the first business day of each month, 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 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

d. Notwithstanding the above provisions, Consultant shall not be paid for any work performed until it has submitted to the City a fully completed and executed Internal Revenue Service Form W-9.

**5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.**

a. The City may at any time, with or without cause, in its sole discretion, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice of the decision. City shall not be obligated to explain its reasons for termination. Upon receipt of said notice, the 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 suspended or terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of suspension or termination, provided that the work performed is of value to the City and consistent with the Agreement. Upon suspension or termination of the Agreement pursuant to this Section, the Consultant will, as a precondition to being compensated, submit an invoice to the City consistent with Section 4.

**6. DEFAULT OF CONSULTANT.**

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a material default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager or their delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have ten (10) calendar days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity, or under this Agreement.

**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 designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts 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, video and sound recordings, 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. With respect to computer files, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

c. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in **Exhibit A** without the written consent of the Consultant.

d. Notwithstanding anything to the contrary, Consultant, including all persons, firms, or entities with which it may interact, shall provide City all records pursuant to the California Public Records Act at City's request. This duty and obligation shall survive the lapse, termination, or completion of this Agreement. No cost shall be charged to the City related to compliance with this provision.

**8. INDEMNIFICATION.** The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees, agents, attorneys, consultants, and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the City, its officers, officials, employees, agents, attorneys, consultants, and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the negligence of the City as judicially determined. This section shall, without limitation, survive the termination, lapse, or completion of this Agreement.

**9. INSURANCE REQUIREMENTS.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

Consultant agrees to provide insurance in accordance with the requirements set forth in **Exhibit C**. If consultant uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Consultant agrees to amend, supplement or endorse the existing coverage to do so. This duty and obligation shall survive the lapse, termination, or completion of this Agreement.

**10. INDEPENDENT CONTRACTOR.**



a. Consultant is and shall at all times remain as to the City a wholly independent contractor having only the contractual duties and obligations agreed upon as memorialized in this Agreement. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, officials, employees, agents, or volunteers, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatsoever against or for City, or bind City in any manner, whether in law or equity.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay, nor be deemed to have paid or delivered salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

**11. LEGAL RESPONSIBILITIES.** The Consultant shall keep itself informed of all County, State, and Federal laws and regulations, which in any manner affect its requirements under this Agreement and those employed by it or in any way affect the performance of its service, duties, and obligations pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, its officers, officials, employees, consultants, attorneys, agents, and volunteers shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section. This section shall survive, without limitation, the termination, lapse, or completion of this Agreement.

**12. RELEASE OF INFORMATION.**

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subcontractors shall not, without written authorization from the City or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City prior notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any person regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply the right of or require City to control, direct, or rewrite said response.

**13. NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by

Attachment

a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by subsequent written notice:

To City: City of Mission Viejo  
200 Civic Center  
Mission Viejo, CA 92691  
Attention: City Manager

To Consultant:

Attention:

**14. ASSIGNMENT.** The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City, which City may grant or withhold in its sole and absolute discretion, with no obligation to disclose the basis for its decision to any person, firm, entity, or Party. Because of the personal nature of the services to be rendered pursuant to this Agreement, only \_\_\_\_\_ shall perform the services described in this Agreement. \_\_\_\_\_ may use assistants, under their direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of \_\_\_\_\_ from Consultant's employ. Should he or she leave Consultant's employ, the city shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City and the Consultant.

**15. LICENSES.** At all times during the term of this Agreement and prior to commencement of any work under this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

**16. GOVERNING LAW.** The City and Consultant agree that the laws of the State of California, or, as necessary, the laws of the United States Federal government, shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

**17. LITIGATION.** Any litigation concerning this Agreement commenced by a Party or any person, firm, or entity claiming under Consultant shall be filed and have venue in the municipal, superior, or federal district court with geographic jurisdiction over the City of Mission Viejo.

**18. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, direct or implied, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material.



**EXHIBIT A**

**TASKS TO BE PERFORMED**

**EXHIBIT B**  
**PAYMENT SCHEDULE**

**EXHIBIT C****INSURANCE REQUIREMENTS**

The following coverages will be provided by Consultant and maintained on behalf of the City and in accordance with the requirements set forth herein. Consultant agrees to submit insurance coverages described herein before any work is performed pursuant to this Agreement.

**General Liability Insurance.** Consultant shall maintain a policy of general liability insurance against any and all claims arising out of or in connection with the work performed under this Agreement. Coverage provided shall be at least as broad as ISO form CG 00 01 in an amount not less than one million dollars (**\$1,000,000.00**) per occurrence, two million dollars (**\$2,000,000.00**) general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted. This policy shall name City, its officers, officials, employees, agents, and volunteers as additional insureds. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured.

**Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for “Any Auto, Symbol 1” or its equivalent “any owned, hired, non-owned, or rented vehicles”, in an amount not less than one million dollars (**\$1,000,000.00**) combined single limit for each accident. If the Consultant does not own any company vehicles, the requirement may be satisfied by providing a Personal Automobile Liability policy for the Consultant’s vehicle. The Consultant may use an umbrella policy or a non-owned auto endorsement to the Commercial General Liability policy to meet the limits if the Consultant’s auto insurance does not offer the \$1,000,000 combined single limit. This coverage is only required when the Consultant drives on behalf of the City to perform the activities arising out of or in connection with Work to be performed in this agreement.

**Workers' Compensation/Employer's Liability.** Consultant shall maintain workers’ compensation insurance with statutory limits and employer’s liability insurance in an amount not less than one million dollars (**\$1,000,000.00**) per accident for bodily injury or disease for Consultant’s employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. Consultant shall furnish to City a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers. If Consultant is a sole ownership/ proprietorship and does not have any employees, Consultant shall certify such facts to the City by completing a “Declaration of Non-Employer Status” declaring such and worker’s compensation coverage shall not be required.

**Professional Liability Insurance/Errors and Omissions.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of two million dollars (**\$2,000,000**) per claim and four million dollars (**\$4,000,000**) in the aggregate. If coverage is provided under a claims-made policy, any policy inception date, continuity date, or retroactive date must be before the effective date of the agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

**Umbrella or excess liability insurance.** [If required to meet higher limits]. Consultant shall maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, professional liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrency of effective dates with primary policies.

Should Consultant maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, professional liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

**Fidelity Bond Coverage or Commercial Crime Insurance.** Consultant shall maintain Fidelity Bond Coverage or Commercial Crime Insurance. Coverage shall be written on a "loss sustained form" or "discovery form" with limits of not less than one million dollars (**\$1,000,000**) per occurrence for Employee Dishonesty, Fraud, Depositor Forgery, Money Orders & Counterfeit money, Fraudulent Fund Transfers, and Theft by Electronic Means. Said policy shall also include coverage for Money & Securities – On and Off Premises – including transportation by messenger, Fraudulent Instruction, Robbery and Burglary with limits of not less than \$100,000 per occurrence. The City, its officers, officials, employees, and agents shall be named as Loss Payees. If the policy is written on a "discovery form," it must include an extended reporting period of not less than one (1) year.

**Consultant and City further agree as follows:**

1. This Exhibit supersedes 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 Exhibit.
2. Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.
3. All insurance coverage and limits provided pursuant to this agreement shall apply to the full extent of the policies involved, available, or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits on 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 as it pertains to a given issue and is not intended by any party or insured to

be all inclusive, or to the exclusion of other coverage, or a waiver or limitation of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

5. For purposes of insurance coverage only, this Agreement will be deemed enforceable immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards the performance of this Agreement.
6. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subcontractors/subconsultants.
7. Unless otherwise approved by City, Consultant's insurance shall be written by insurers authorized to do business in the State of California and which hold a minimum "Best's" Insurance Guide rating of "A:VII."
8. 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 and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.
9. Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. The insurance certificate and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all required insurance policies, at any time. Insurance certificates and endorsements must be approved by City's Risk Management prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter.
10. 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. Such proof will be furnished at least two weeks prior to the expiration of the coverages; failure to do so shall be deemed a material breach of this Agreement and may subject this Agreement to termination or the City unilaterally replacing the policy(s) at Consultant's sole expense, without prior notice.
11. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.



12. Consultant acknowledges and agrees that any actual or alleged failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement or to inform Consultant of noncompliance with any requirement in no way waives any right or remedy of City or any additional insured, in this or any other regard.
13. Consultant agrees to require all subcontractors/subconsultants or other parties hired for this project to provide proof of insurance coverage as outlined above before work is performed by said subcontractors/subconsultants or other parties pursuant to the Agreement. Consultant agrees to obtain certificates evidencing such coverage and to ensure that such coverage is provided as required herein. 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. However, in the event Consultant's subconsultant/subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant shall be required to ensure that its subcontractor/subconsultant provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractors/subconsultants scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this agreement. This provision does not relieve the Consultant of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors/subconsultant. This provision is intended solely to provide Consultant with the ability to utilize a subconsultant/subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this agreement given the limited scope of work or services provided by the subconsultant/ subcontractor. Consultant agrees to require that no contract used by any subcontractors/ subconsultant 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. Consultant agrees that upon request all agreements with subcontractors/subconsultants or others with whom Consultant contracts with on behalf of City will be submitted to City for review for competency with this Agreement. Failure of City to request copies of such agreement will not impose any liability on City, or its employees, officers, officials, agents, and volunteers, nor does it waive or limit City's right to subsequently ask for the copies.
14. If Consultant is a Limited Liability Company, general liability coverage must be amended, to City's reasonable satisfaction, so that the Limited Liability Company and its Managers, Affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.
15. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor or recommend the handling of any such claim or claims if they are likely to involve City. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.

16. The insurance provided pursuant to these requirements will not be limited to coverage for the vicarious liability or supervisory role of any additional insured. All insurance coverage and limits provided are intended to apply to the full extent of the policies. Nothing contained in this agreement limits the application of such insurance coverage.
17. Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before City's own insurance or self-insurance shall be called upon to protect it as a named insured. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects to the City, its officers, officials, employees, agents, or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
18. Duration of coverage. Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or subcontractors/subconsultants.
19. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subcontractors/ subconsultants.
20. Additional Insured Status. General liability, automobile liability, professional liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.
21. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
22. Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall be responsible for notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

23. 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 and Consultant may renegotiate Consultant's compensation.
24. Prohibition of undisclosed coverage limitations. 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.
25. Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.