

**REQUEST FOR PROPOSAL  
ENVIRONMENTAL CONSULTANT SERVICES  
PREPARATION OF ENVIRONMENTAL DOCUMENTS  
FOR COMMUNITY DEVELOPMENT DEPARTMENT**

**INTRODUCTION**

The Community Development Department for the City of Mission Viejo invites qualified and experienced firms to submit proposals for providing environmental analyses as required by the California Environmental Quality Act (“CEQA”) for the project as described in this Request for Proposals (RFP).

The City seeks proposals from consultants that would perform analyses required by CEQA for The Oso Creek Corridor Overlay Project. The City recognizes the significance of the Oso Creek corridor, both as a sensitive environmental habitat and as a community-wide resource. As a result, the City wants to establish additional requirements to protect and preserve the area referred to as the Oso Creek Corridor. Related to this, and based on extensive public input, the City has in recent years prepared two important Vision Plans for this area of the city: the Core Area Vision Plan and the Oso Creek Golf Course and Public Space Vision Plan. The Core Area Vision Plan, approved by City Council in 2017 and designed to enhance the heart of Mission Viejo, provides a framework for open space, connecting to Oso Creek, creating a central gathering place, enhancing community aesthetics, creating a walkable village, and connecting the civic and retail core to more restaurants, shops and cultural arts activities. The Oso Creek Corridor Overlay is intended to connect the Civic Core Area to approximately 200 acres of open space along the Oso Creek. The Oso Creek Golf Course and Public Space Vision Plan was prepared to examine uses complementary to the golf course, including hospitality and recreation. Near term uses include an outdoor event area, additional parking, and a new trailhead with café, and were approved by city Council in 2021. An important principle of both Vision Plans includes improving linkages and walkability, and connecting to the creek. The City intends to establish an overlay zoning district to connect these two important Vision Plans, geographically and through further implementation of the strategies and next steps outlined in both plans.

Most importantly, it is the intent of the Oso Creek Corridor Overlay district is to promote the preservation of the creek corridor, including protection of significant wildlife habitat, riparian vegetation, water quality protection, flood protection, and open space, while identifying an appropriate balance of uses and potential development opportunities that will substantially maintain the creek corridor’s natural character and environmental and aesthetic values. The Oso Creek Corridor overlay zone will help guide important site, environmental, safety, compatibility, or design issues that require particular attention, with special consideration is given to location, size and scale, and type and appropriateness of planned use or development, consistent with and in furtherance of implementing the two community Vision Plans (Near term uses as identified in the Oso Creek and Open Space Vision Plan of 2021) within the designated boundaries of the district.

The selected consultant will be responsible for developing and preparing Initial Studies, Environmental Impact Reports, or other CEQA related documents and studies needed for CEQA

compliance. The City seeks bids from consultants that can demonstrate extensive experience with CEQA analysis and CEQA document development/preparation including but not limited to biological, cultural and air quality studies.

### **SCOPE OF SERVICES**

Prepare all documents required for CEQA review and submittal, including the detailed project description, Initial Study, Mitigated Negative Declaration or Environmental Impact Report and associated technical studies, and CEQA Determination. The CEQA review should consider the Project's compliance with the Core Area Vision Plan and Oso Creek Golf Course and Public Space Vision Plan. The City will develop the drafting of the new zoning overlay text and related maps; however, the City seeks advisement from the selected consultant to assist with:

- Preparation of the proposed zoning district and identifying development locations and intensities
- Development of a comprehensive draft and final Project Description
- Development of City Objectives
- Identification of a Reasonable Range of Project Alternatives

The proposal should include the following items:

- List of required technical studies. Additionally, identify which technical studies are included in the proposal. Any required technical studies that the consultant recommends the City to contract separately should also be listed.
- One kick-off meeting
- Minimum of four (4) meetings regarding the drafting of the overlay district
- One (1) scoping meeting
- Attendance of consultant(s) at one (1) meeting with staff to review comments regarding the draft CEQA document
- Attendance of consultant(s) at four (4) public hearings
- Minimum of one (1) round of revisions to administrative draft documents.
- Preparation of notices for public posting and noticing for comment. For budget purposes, consultant may list different prices depending on the level of analysis that may ultimately be needed.
- A response to all comments received on the environmental documentation.
- Preparation of Notice of Completion (NOC) and OPR summary form, and submittal of the NOC, OPR summary form and copies of the environmental document to the State Clearinghouse and County.
- Preparation of a Notice of Determination for submittal to State and County.
- Provide one electronic of all documents and two paper copies of the draft and final environmental documents.

In addition to the scope of work, the proposal must contain the cost proposal including cost breakdown for each task, an indirect cost rate, not-to-exceed amount, and costs for any additional services offered or recommended.

### **QUALIFICATIONS**

Consultant shall include the firm's qualifications and experience with digital scanning services for governmental agencies, specifically departments related to Community Development, Building and Safety, and Planning.

### **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.

### **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.

### **LIABILITY INSURANCE REQUIREMENTS FOR CONSULTANTS**

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:	February 23, 2024
Receipt of proposal to City:	<b>March 8, 2024 (by 4:00 p.m.)</b>
Execute Contract by:	March 26, 2024 (or soon thereafter)
Start of services:	March 17, 2024 (or soon thereafter)

## **PROPOSAL SUBMISSION**

One digital copy of the proposal must be received by the City (email preferred) no later than:

- **4:00 P.M. – Friday, March 8, 2024**
- No faxed copies
- Address proposals to: Elaine Lister, Director of Community Development
- Proposals to: Janelle Slater, Administrative Assistant at [jslater@cityofmissionviejo.org](mailto:jslater@cityofmissionviejo.org)
- Subject Line of Email: “ENVIRONMENTAL CONSULTANT SERVICES RFP”

The proposal should include the following:

1. Cover Letter: An introduction of your company and a summary of your proposal.
2. Company Profile: Provide information about your firm, including experience, references, and qualifications.
3. Timeline: Provide a detailed project timeline with milestones and delivery dates.
4. Cost Proposal: Present a comprehensive cost proposal, including pricing for services, equipment, and any additional costs.
5. References: Include at least three references from clients for whom you have performed similar services.

## **EVALUATION CRITERIA**

Proposals will be evaluated based on the following criteria:

1. Experience and Qualifications
2. Technical Approach and Methodology
3. Cost and Cost-Effectiveness
4. References
5. Compliance with RFP Instructions

## **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.

## **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.

## **QUESTIONS**

Questions regarding this Request for Proposal should be directed to the Community Development Department at [cd@cityofmissionviejo.org](mailto:cd@cityofmissionviejo.org) or (949) 470-3053. Do not contact any other City employee, City official or City consultant regarding this RFP.

**EXHIBIT A**  
**DRAFT PROFESSIONAL SERVICES AGREEMENT**

**CITY OF MISSION VIEJO**  
**AGREEMENT WITH**  
**FOR ENVIRONMENTAL CONSULTANT SERVICES OVER \$30,000**  
*(Insurance Required)*

**THIS AGREEMENT** is made and effective as of \_\_\_\_\_, 2024, 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 \_\_\_\_\_, 2024, and shall remain and continue in effect until tasks described herein are completed, but in no event later than \_\_\_\_\_, 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 their 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 Council or, if pursuant to its authority, the City Manager, or their designee. Consultant shall be compensated for any

additional services in the amounts and in the manner as agreed to by City Manager or the City's representative 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 15% of the contract amount approved by City Council or \$30,000, whichever is less. 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, consultants, employees, attorneys, agents, 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, consultants, employees, attorneys, agents, 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. 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 or 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, officials, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, 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, 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 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:

**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 they 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. Each Party has had the opportunity to have this Agreement reviewed by independent legal counsel of its own selection and is not relying on any representations, opinions, or advice of the other Party.

**19. AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrant and represent that they have the authority to execute this Agreement on behalf of the Consultant and have the authority to bind Consultant to the performance of its obligations hereunder. Consultant agrees that the person executing this Agreement is an authorized agent of Consultant with the power to bind Consultant to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CONSULTANT**

**CITY OF MISSION VIEJO**

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Vendor Name \_\_\_\_\_ Date \_\_\_\_\_  
Vendor Title \_\_\_\_\_

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Dennis Wilberg \_\_\_\_\_ Date \_\_\_\_\_  
City Manager

Attest:

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Vendor Name \_\_\_\_\_ Date \_\_\_\_\_  
Vendor Title \_\_\_\_\_

---

Kimberly Schmitt \_\_\_\_\_ Date \_\_\_\_\_  
City Clerk

[Two signatures of corporate officers required]

Approved As to Form:

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William P. Curley, III  
City Attorney

Date

Insurance Review:

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Heather Campbell  
Risk Management Administrator

Date

**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 shall be endorsed to reflect that the per occurrence and aggregate coverage shall apply on a per PROJECT basis; claims on other projects shall not erode the coverage available to the City. 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 one million dollars (**\$1,000,000**) per claim and 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.

**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.