

## **REQUEST FOR PROPOSAL**

### **PROFESSIONAL CONSULTING SERVICES, PERFORMING ARTS CENTER FUNDRAISING FEASIBILITY STUDY**

The City of Mission Viejo, California, seeks qualified firms to conduct a fundraising feasibility study to establish the community's capacity to support the building or renovation of a facility to house a performing arts center.

#### **I. COMMUNITY AND PROJECT BACKGROUND**

Mission Viejo is a master-planned community in south Orange County, California with a population of 93,000. It is located about halfway between Los Angeles and San Diego. Mission Viejo is 22 miles south of Disneyland and five miles east of Laguna Beach. On December 16, 1992, the area commonly known as Aegean Hills was annexed to the City, adding another 593 acres to the City.

Mission Viejo's master plan, approved by the County of Orange in 1965, laid the foundation for the innovative development of a community with a variety of housing opportunities designed to meet the needs of a broad range of new home buyers. The master plan calls for 52 percent of the land to be devoted to residential uses, 29 percent to parks, open space and recreation, 10 percent to schools and churches, and 9 percent to business properties.

Mission Viejo is consistently ranked one of the top 10 safest cities in the nation. It is a family-oriented community with outstanding schools, a regional trauma center, first-rate sports facilities, 54 parks, a state-of-the-art library and growing cultural arts programs.

This community is home of the Mission Viejo Nadadores, Mission Hospital, Saddleback College, and many distinguished K-12 schools. With a \$77.4 million budget and a large reserve fund, the City provides outstanding municipal services, where 99% of the residents report the quality of life is great.

#### **The Core Area Vision:**

On March 28, 2017, the City Council approved the Core Area Vision Plan, designed to enhance the heart of Mission Viejo. Based on extensive resident and property owner input, the vision provides a framework for open space; connecting to Oso Creek; creating a central gathering place; enhancing community aesthetics; creating a walkable village; and connecting our civic and retail core to more restaurants, shops and cultural arts activities.

In December 2021 the City closed on a real estate purchase in the Core Area acquiring the former Steinmart building. The land is strategically located across from the Civic Center and is intended to be the recreational link, with supporting retail, to the Oso Creek

Trail. The Trail is the cultural spine connecting the community to over 200 acres of open space.

### **Go Forward Plan – Los Osos:**

In October 2023 the City Council approved the Go Forward Plan, the first multi-year effort to implement the Core Area Vision. The first phase of construction is set to begin in January 2025.

### **Arts in the City:**

The City hosts a variety of cultural programs and concerts throughout the year, providing a range of activities for all ages.

Art classes and programs are hosted at the Potocki Center for the Arts and other venues city-wide.

The City emphasizes community participation in arts activities, and has multiple public art projects in progress or currently on display in the City that were a collaboration between local artists and community participants, such as the Special Event murals in Oso Viejo Park; the Iconic Leaves sculptures on Crown Valley Parkway; and the recently completed Mosaic Bear sculptures which are currently being installed.

Annually in July, Mission Viejo hosts the Pacific Symphony on the Village Green. The event is preceded by the family-oriented Prelude in the Park where a “Musical Playground” gives children the chance to make an instrument, play a drum, meet a musician and take part in a conducting clinic. The event is attended by approximately 5000 people each year.

The Saddleback Community College Fine Arts Complex, a \$3.5-million facility, accommodates a complete educational program for theater, art, music and speech. Encompassing 64,000 square feet, the complex includes a 400-seat theater.

The Orange County Performing Arts Center and the South Coast Repertory Theater are 18 miles north of the City of Mission Viejo. Mission Viejo has nearly 50 adult organizations with activities ranging from gardening to community theater and from hospital support to singing.

Sunset Concerts at Lake Mission Viejo attract thousands of residents for picnics and musical entertainment on warm summer nights.

### **Community Services Commission:**

The Community Services Commission advises the City Council and staff regarding the development and maintenance of parks and recreation facilities, and the provision of

recreation and youth services, senior citizen and human services, cultural and fine arts services. This commission also considers applications for community service grants.

### **Cultural Arts Committee:**

The Cultural Arts Committee was established by the City Council in 1992 to promote knowledge, enjoyment and appreciation of the performing, literary and visual arts through community interaction with the arts, in order to strengthen the quality of life in Mission Viejo. The purpose of the Cultural Arts Committee is to assist with various functions relating to cultural arts in Mission Viejo. The Committee examines and measures the impact of present and future cultural events, programs, and facilities on the cultural needs of the City; developing mechanisms for encouraging cultural programs and projects within the City.

The Committee has recently reactivated after a hiatus due to the pandemic, and is comprised of volunteer members, who have special talents and education ranging from a basic appreciation for the arts, to Masters level visual and performing arts degrees. Our members are dedicated to the beautification, enrichment, and cultural growth of the City of Mission Viejo.

### **Project Background:**

In 2015, the City embarked on a Cultural Arts Master Planning process to develop a 5- to 10-year plan that defines the role of the City of Mission Viejo in supporting the arts and culture, and the role of the arts and culture in accomplishing the City's broader goals. The process involved research and analysis by our consultant Arts Orange County, interviews with 29 key stakeholders, a focus group, a community survey with over 1000 responses, and multiple meetings with the Master Plan Steering Committee. The Cultural Arts Master Plan was adopted by the City Council in March of 2017, and contains six primary recommendations, the last of which is "Develop visual and performing arts facilities in Mission Viejo."

Three types of facilities were recommended by the community for further exploration:

- An outdoor amphitheater to accommodate concerts like Pacific Symphony, touring and local bands as well as for festivals by local cultural, civic, religious and school organizations
- A fine art center for the visual arts with classrooms, art studios and exhibition space for use by members of the community
- A mid-sized (300-400 seats) indoor venue (i.e. a theatre, playhouse, or performing arts center) to accommodate, music, theatre, dance, films and lectures

Following the adoption of the Cultural Arts Master Plan, the City was able to re-purpose an existing, under-utilized City-owned facility to create the Potocki Center for the Arts, which provides classrooms, a multi-purpose room for large classes or small programs, gallery space for exhibits, and a newly renovated flexible outdoor space that can be used

for concerts up to 200 people, programs, and an outdoor classroom. The Center opened to the public in January of 2018, and although it was closed to the public during the height of the pandemic, it has re-opened and is currently seeing the highest attendance in classes and programs since its opening in 2018.

In March of 2023, the City Council voted to pursue the next stage of exploration for a potential performing arts center, to “hire expert consultants in the field of arts facility planning to prepare a feasibility study.” The City contracted with consulting firm TheatreDNA to conduct the study, which commenced in July of 2023 and the final report was delivered in March of 2024. The study identified two market gaps in local facilities: a studio theatre seating 100-375, and a proscenium theatre seating 400-775. After viewing and evaluating the report, the Study Working Group concluded that:

- There is strong community interest and support for a performing arts center in Mission Viejo;
- The community has the potential to support a robust cultural arts program;
- There are two gaps within the current market of local venues that the City has the potential to fill;
- The cost to build and operate a venue that fill both gaps and meets nearly all of the City’s and community’s needs renders that solution infeasible at this time;
- Another option, identified in the study as “Bridging the Future” proposes that a Village Center parcel (e.g. the current CVS property) could fulfill the need for a studio theatre, offers the best possible interim or long-term solution, and is worth further study.
- Preliminary estimate for the building renovation in the “Bridging the Future” option is \$8-11 million.

At the March 26, 2024 City Council meeting, the Council decided that further exploration of the potential site is needed, as well as an evaluation of the fundraising potential within the community to support such an endeavor.

There is not currently a dedicated non-profit fundraising partner for this effort. Community members have expressed an interest in forming a 501(c)3 for this purpose, or another local nonprofit may be willing to act as a fiscal agent for the campaign.

## **II. GOALS**

- a. Recommend the best approach: determine ideal structure and approach for a fundraising organization within the community.

- b. Test basic planning assumptions with potential donors: How do potential donors view the project and do they see it as important enough to place on their priority giving list?
- c. Set a realistic campaign goal: What is reasonable and realistic given lack of current fundraising infrastructure?
- d. Estimate for success: What is a realistic timeline for potential campaign success?
- e. Identify next steps: Based on the study's findings and the consultant's expertise in campaign fundraising, determine necessary next steps and infrastructure to achieve success. Provide an outline identifying the recommended fundraising campaign plan and process.

### **III. SCOPE OF WORK**

The consultant will conduct a feasibility study to determine the amount of capital that could realistically be raised from all sectors and available sources to support the renovation of an existing building to create a performing arts theatre; and to gauge potential for ongoing operational support of such a facility. With support from staff, the consultant will:

- a. Conduct materials review, infrastructure audit and needs assessment.
- b. Assess current fundraising capability, based on past and current fundraising efforts as well as untapped opportunities within the community.
  - i. Situation analysis focused on potential funders that builds on but does not duplicate the environmental scan done by TheatreDNA as part of the Theatre Feasibility and Market Study, utilizing various methods and based on stakeholder research (e.g. interviews, surveys, audience mapping, etc.). Determine inventory of assets, and identify challenges and opportunities related to the campaign. Ensure that government and foundation representatives are included in interviews.
  - ii. Evaluate internal capacity and partnerships for campaign readiness.
- c. Evaluate best fundraising organization/mechanism(s) to achieve fundraising goals for a capital campaign as well as for ongoing operational support once a facility has been established, e.g. partnership with existing non-profit; establishment of new Foundation; etc.
  - i. Identify potential partners/leadership for fundraising efforts and evaluate their fundraising capabilities; assess efforts needed to recruit additional leadership for campaign efforts.

- ii. Provide recommendations to the City as to the form and focus of a non-profit support group.
- d. Identify potential funding sources, including individual donors, grant opportunities, corporate partners, private foundations, etc. to support the project.
  - i. Determine potential donors' current interest in supporting a campaign, as well as potential for ongoing operational support after the capital campaign is complete.
  - ii. Build and test support case to maximize appeal to potential donors.
- e. Identify strategies and resources necessary to conduct a successful campaign.
  - i. Set a realistic campaign goal.
  - ii. Provide a realistic timeline estimate for the organization and partners' ability to reach the recommended goal, taking into account the need to build donor base from the ground up.
  - iii. Provide benchmark examples for comparable campaigns.
- f. Present written findings and recommendations for a strategic fundraising plan to City leadership.
- g. Provide cost breakdown for each stage of the study.

**IV. OPTIONAL ADDITIONS**

- a. Estimate cost and timeline to evaluate potential for full \$114,000,000 Performing Arts Center
- b. Estimate cost to provide consulting services to conduct capital campaign, if approved.

**V. CONSULTANT QUALIFICATIONS**

- a. Describe your experience with the development of fundraising feasibility studies for cultural arts facilities. Include your individual years of experience and the number of such projects your firm has conducted in the last three years. (If more than one individual will be providing services to the City of Mission Viejo, please include the same information for each individual.
- b. List all individuals by name and title to be assigned to the City of Mission Viejo for this project and provide their resumes.
- c. Provide a copy of a fundraising feasibility study for a cultural arts facility prepared by your firm within the last three years.
- d. Identify any other information that you would like considered with respect to your firm's experience and capabilities.
- e. Include a reference list of government clients for whom you have created fundraising feasibility studies during the past five years. Include on your list

the name of the agency, and the name, title, and telephone number for each contact person.

**VI. METHOD OF COMPENSATION**

The City wishes to negotiate a fixed price contract for the project with a “not to exceed” dollar total based on a clearly defined scope of work.

- a. Provide an estimated budget for the services your firm would provide to this project, including labor costs and expenses for the scope of work and deliverables.
- b. Provide a schedule of flat fees, hourly rates and all incidental expenses for which separate reimbursement would be requested for each individual who may assigned to this project.

**VII. 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., company size, location of office(s), years in business, organization chart, number and position titles of staff).
- c. Qualifications of staff proposed for the assignment.
- d. Details of experience in providing fundraising feasibility study consulting services for municipalities. Include the individual years of experience for each proposed staff member and the number of such projects your firm has conducted in the last three years.
- e. Include a reference list of government clients for whom you have created a fundraising feasibility study during the past five years. Include on your list the name of the agency, and the name, title, and telephone number for each contact person.
- f. Detailed description of the consultant's understanding of the City's needs and a detailed plan demonstrating how the consultant will satisfy these needs.
- g. Description of the services the consultant proposes to provide.
- h. Fees will be paid by the City monthly. Consultant will submit monthly progress reports and invoices for approval.

**VIII. 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 timely. The candidates will be evaluated on the following criteria:

- a. Experience in the same or similar position.
- b. Ability to understand and perform the tasks efficiently and in accordance with the requirements of City and State codes.
- 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 projects in a manner which 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 projects or litigation by the Consultant on previous contacts to disqualify any Consultant.

The City reserves the right to reject any or all proposals, or to request and obtain, from one or more consulting firms, supplementary information as may be necessary for City staff to analyze the proposal pursuant to the consultant selection criteria. Upon completion of the evaluation phase, City staff will select those consultants for interviews whose proposals and qualifications most closely conform to the requirements of this RFP. The consultant, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP. The City may choose to interview one or more of the firms responding to this RFP.

The selected consultant will be required to enter into a “Consulting Services Agreement” for the consultant services with the City. The Agreement will include a detailed scope of work and payment of services schedule. The City of Mission Viejo City Council is the authorizing entity to issue a contract award to the top-ranked consultant. Upon receipt of the executed Agreement, it will be submitted to the City Council for approval.

**IX. 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.

**X. 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.



**XI. RESERVATIONS**

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

**XII. CLIENT REFERENCES**

Consultant shall submit three (3) fundraising feasibility study 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.

**XIII. INSTRUCTIONS AND QUESTIONS**

City representative from whom the Consultant will receive instructions:

Sarah Stimson  
Cultural Services & Library Manager  
City of Mission Viejo  
200 Civic Center  
Mission Viejo, California 92691  
sstimson@cityofmissionviejo.org

Questions regarding this Request for Proposal should be directed to Sarah Stimson at the above email. Do not contact any other City employee, City official or City consultant regarding this RFP.

**XIV. WITHDRAWAL OF PROPOSAL**

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

**XV. FIRM COMMITMENT OF AVAILABILITY OF SERVICE**

The City shall have 90 days 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.

**XVI. 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.

**XVII. 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.

**XVIII. 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.

**XIX. LIABILITY INSURANCE REQUIREMENTS FOR CONSULTANT**

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

**XX. TERM**

The term for the agreement will expire on June 30, 2025. The agreement will have a 30-day termination clause. The contract may be extended for two years.

**XXI. SCHEDULE OF EVENTS**

The anticipated schedule of events is as follows:

Receipt of Proposal back to City: 9/3/2024

Consultant Interviews: week of 9/16/2024

Consultant recommendation at City Council meeting: 10/8/2024

Start of Services (approx.) 10/15/2024

**XXII. PROPOSAL SUBMISSION**

An e-mailed, non-scanned PDF of the proposal must be received by the City no later than:

- 4:00 P.M. on 9/3/2024
- Non-Scanned PDF
- E-mail submittal only
- No faxed or mailed copies
- Mark e-mail containing proposal "RFP – PERFORMING ARTS THEATER FUNDRAISING FEASIBILITY STUDY"

E-mail all proposals to: [sstimson@cityofmissionviejo.org](mailto:sstimson@cityofmissionviejo.org) with copy to [kruef@cityofmissionviejo.org](mailto:kruef@cityofmissionviejo.org)

**XXIII. ATTACHMENTS & LINKS**

Exhibit A - Insurance requirements

[Link to Cultural Arts Master Plan](#)

[Link to Core Area Vision & Theatre Feasibility Study Documents](#)

## EXHIBIT A

### 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 general liability insurance policy against any and all claims arising out of or in connection with the work performed for this project. Coverage provided shall be at least as broad as ISO form No. 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. The 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 for this project, 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 for this project.

**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

project, 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/subconsultants. 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/ subconsultants 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. 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.
25. 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.