

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jennifer Mellon, Administrative Services Manager

DATE: March 22, 2013 (CC Meeting of 4/3/13)

SUBJECT: Consider Professional Services Agreement between City of Moorpark and CivicPlus for Design, Support, Maintenance, and Hosting for a New City of Moorpark Website

BACKGROUND AND DISCUSSION

At the March 20, 2013 meeting, staff brought this item before Council for consideration and stated that the item would be placed on the consent calendar at the next meeting with the Professional Services Agreement attached for consideration.

Staff discussed the Request for Proposal process for the new City of Moorpark Website Design and Hosting project and that after review of proposals and other criteria staff is recommending moving forward with CivicPlus. The CivicPlus solution provides the most functionality for the lowest cost and upon speaking with numerous customer references, CivicPlus clients who were spoken with stated they are very pleased with their experiences both working with CivicPlus through the design process as well as with their continued support.

The CivicPlus proposal includes conceptual design, migration of existing content, website configuration, training, hosting, support, and ongoing maintenance with the option of a redesign after 48 months of continuous service.

FISCAL IMPACT

As previously discussed, the fiscal impact to the General Fund for the recommended four-year Agreement with CivicPlus will be \$53,808.10. Staff is also estimating that up to an additional \$5,000 will be required for related services in FY 2013-14, such as professional photography. The City's current FY 2012-13 approved budget has \$25,000 allocated to the website project. Staff will be requesting a budget allocation in the next FY 2013-14 budget for the additional cost for the CivicPlus Agreement and related services. Future budgets will need to include the ongoing website annual support, maintenance, and hosting costs.

STAFF RECOMMENDATION

1. Authorize the City Manager to execute a Professional Services Agreement with CivicPlus for a four-year term, subject to final language approval by the City Manager and City Attorney; and
2. Authorize staff to include funding in future fiscal year budgets for full funding of the costs of the four-year term for the CivicPlus Agreement and also for the related website development services of up to \$5,000 for the FY 2013-14 budget.

Attachment: Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF
MOORPARK AND ICON ENTERPRISES, INC., DBA CIVICPLUS, FOR CITY
WEBSITE DESIGN, SUPPORT, MAINTENANCE, AND HOSTING

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of this _____ day of _____, 2013, between the City of Moorpark, a municipal corporation ("City") and Icon Enterprises, Inc., a Corporation dba CivicPlus, ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for website design and hosting services; and

WHEREAS, Consultant specializes in providing such services and has the proper work experience, certifications, and background to carry out the duties involved; and

WHEREAS, Consultant has submitted to City a Proposal dated January 18, 2013, which is attached hereto as Exhibit A, and a revised Project Development Estimate, which is attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

1. TERM

The term of this Agreement shall be from the date of execution to completion of the work identified in Exhibits A and B for a four-year term, unless this Agreement is terminated, suspended, or amended pursuant to this Agreement.

2. SCOPE OF SERVICES

City does hereby retain Consultant, as an independent contractor, in a contractual capacity to provide website design and hosting services, as set forth in Exhibits A and B. In the event there is a conflict between the provisions of Exhibits A and B and this Agreement, the language contained in this Agreement shall take precedence. Where Exhibits A and B differ, the language in Exhibit B shall take precedence.

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit B. Compensation shall not exceed the rates or total contract value of fifty-three thousand eight hundred eight dollars and ten cents (\$53,808.10), without a written amendment executed by both parties. Payment by City to Consultant shall be in accordance with the provisions of this Agreement.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, standard of care, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. MANAGEMENT

The individual directly responsible for Consultant's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Consultant shall be _____, and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Consultant and City, shall be the City Manager or the City Manager's designee.

5. PAYMENT

Taxpayer ID or Social Security numbers must be provided, on an IRS 1099 form, before payments may be made to vendors.

The City agrees to pay Consultant in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, based upon completion of mutually agreed upon milestones. This amount shall not exceed fifty-three thousand eight hundred eight dollars and ten cents (\$53,808.10) for the total term of the Agreement unless additional payment is approved in writing as provided in this Agreement.

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. 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.

Consultant shall submit invoices for actual services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. Any expense or reimbursable cost appearing on any invoice shall be accompanied by a receipt or other documentation subject to approval of the City Manager. If the City disputes any of Consultant's fees or expenses it shall give written notice to Consultant within thirty (30) days of receipt of any disputed fees set forth on the invoice.

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least thirty (30) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise.

The Consultant may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination.

In the event this Agreement is terminated or suspended pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination or suspension, provided that the work performed is of value to the City. Upon termination or suspension of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to this Agreement.

Either party may terminate the Annual Support, Maintenance, and Hosting Agreement at any time after the first twelve (12) months of the Agreement Term by providing the other party with sixty (60) days written notice prior to the contract renewal date.

In the event that neither party gives sixty (60) days notice prior to the end of the initial or any subsequent term, this Agreement will automatically renew for an additional twelve (12) month term.

7. DEFAULT OF CONSULTANT

The Consultant's failure to comply with the provisions of this Agreement shall constitute a 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 can terminate or suspend 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.

If the City Manager or the City Manager's designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, designee shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have thirty (30) 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.

8. LIQUIDATED DAMAGES

This section is intentionally deleted.

9. OWNERSHIP OF DOCUMENTS

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 the City's designees at reasonable times to such books and records; shall give the 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. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of five (5) years after receipt of final payment.

Upon full and complete payment of submitted invoices for the project development and launch of the website, City shall own the "Customer Content" and the "Government Content Management System" ("GCMS") software. Upon termination of this Agreement, City shall continue to own all website data and files with relation to this Agreement and Consultant shall make such content available to City in a manner agreed upon by both parties.

10. INDEMNIFICATION AND HOLD HARMLESS

Professional Liability: When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees, or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

Other than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsels fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subconsultant, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this Section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this Section.

City does not and shall not waive any rights that it may have against Consultant by reason of this Section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs, and expenses described in this Section.

11. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by this reference as though set forth in full.

12. INDEPENDENT CONSULTANT

Consultant is and shall at all times remain as to the City a wholly independent Contractor. 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, 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 against City, or bind City in any manner.

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 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.

13. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

14. ANTI DISCRIMINATION

Neither the Consultant, nor any sub-consultant under the Consultant, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or gender of such person, except as provided in Section 12940 of the Government Code. The Consultant shall have responsibility for compliance with this Section [Labor Code Sec. 1735].

15. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Consultant, or any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

17. CONFLICT OF INTEREST

Consultant covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any

manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or sub-consultant.

18. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

To: ICON Enterprises, Inc. dba CIVICPLUS
317 Houston St., Suite E
Manhattan, KS 66502

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

19. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Consultant's legal entity, the Consultant shall first notify the City in order that proper steps may be taken to have the change reflected in the Agreement documents.

20. ASSIGNMENT

Consultant shall not assign this Agreement or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that Consultant is uniquely qualified to perform the services provided for in this Agreement.

21. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

22. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

23. COST RECOVERY

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

24. ARBITRATION

Cases involving a dispute between City and Consultant may be decided by an arbitrator if both sides agree in writing, with costs proportional to the judgment of the arbitrator.

25. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain 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, 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.

26. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, and Exhibits hereof.

27. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by both parties to this Agreement.

28. PRECEDENCE

In the event of conflict, the requirements of the City's Request for Proposal, if any, and this Agreement shall take precedence over those contained in the Consultant's Proposal.

29. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

30. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

31. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of obligations hereunder.

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

CITY OF MOORPARK

ICON ENTERPRISES, INC. dba CIVICPLUS

By: _____

By: _____(Name)

Steven Kueny, City Manager

_____(Title)

Attest:

Maureen Benson, City Clerk

Exhibit A

CivicPlus Proposal for City of Moorpark

Website Design and Hosting Project

January 18, 2013

**(Proposal totaling 99 Pages to be included with
Executed Agreement but not attached to draft Agreement)**

Exhibit B

Revised Project Development Estimate

Exhibit B**CivicPlus Project Development Estimate**

All Quotes are in US Dollars and Valid for 30 Days from March 4, 2013.

| | |
|---|-----------------|
| Project Development | \$39,467 |
| First Year's Annual Support, Maintenance & Hosting | Included |
| <i>Server Storage not to exceed 25 GB; Media Center Storage not to exceed 10 GB</i> | |
| Total Fees Year 1 | \$39,467 |

With CivicPlus, you'll enjoy all the benefits of our Ultimate Service Plan – 24/7 support, software maintenance, unlimited upgrades, recurring training and access to the CivicPlus community. Protecting your investment is important, and our Ultimate Service Plan allows you to receive maximum benefit at minimal cost. Over the course of a year, you'll receive nearly \$500,000 in software upgrades, maintenance and optimization. Additionally, your staff will have full access to our support staff, ensuring that they're always up to date on our latest features and functionality.

With the Ultimate Service Plan, CivicPlus will handle the workload, with redundant hosting services, daily backups and extensive disaster recovery plans. And if the Ultimate Service Plan isn't right for you, the site and software are yours – our websites are as portable as they are powerful.

| | |
|--|----------------|
| Multi-Year Option – Year 2-3 Annual Support, Maintenance & Hosting (\$4,702/year) | \$4,702 |
| <i>Not subject to annual 5% increase</i> | |

The CivicPlus Redesign Option

At CivicPlus, we realize that over time, you might decide that you want to change your design by giving it a visual refresh, so to speak. On average, we have noticed that clients tend to request a redesign about every four or five years in the life of a typical government website.

But instead of starting completely over from scratch with a new website rebuild, CivicPlus has an option that can not only help save you time and effort, but *lots* of money too!

With our CivicPlus Redesign Option, at the end of your fourth year of continuous service with us, you will automatically receive a website redesign with no further out-of-pocket expense. The cost of the redesign is included in your annual fees each year, giving you the knowledge that your website design will never become stale and that you'll never have to build your site from the ground up again!

The CivicPlus Redesign Option Includes:

- New CivicPlus Basic Redesign
- Redevelop banner
- Up to three graphic buttons to promote special services
- Redevelop navigation method (may choose top drop-down or other options)
- Select color scheme to match new graphics
- Design setup – wireframe
- Print this page option
- Email this page option
- Breadcrumbs
- Sitemap
- Redevelop graphic elements of website (Newsflash, FAQs, Calendar, etc.)
- Project management
- Testing
- Review
- Content migration – Includes retouching of all existing pages on the redesigned website to ensure proper formatting, menu structure, and application of new site styles. Note: Content will be rewritten or pages broken up (shortened or resectioned) during this process to reflect best web usability practices.
- Site styles and page layouts will be touched so all pages match the new design and migrate cleanly

Project Development

| | |
|---|-----------------|
| Phase 1: Analysis and Timeline Development <u>Deliverable:</u> Project Timeline and worksheets | \$2,981 |
| Phase 2: Website Design <u>Deliverable:</u> Website Design Composition | \$5,790 |
| Phase 3: Navigation Architecture Development <u>Deliverable:</u> Navigation structure optimized for your website | \$2,066 |
| Phase 4: Modules and Site Setup <u>Deliverable:</u> Set up fully functional site, software that runs the site, and site's statistical analysis. | \$3,559 |
| Phase 5: Content Development Full content migration of existing city website <u>Deliverable:</u> Website content development and module content. | \$8,806 |
| Phase 6: Test and Review, Establish Future Expectations <u>Deliverable:</u> List of items that need to be addressed | \$2,907 |
| Phase 7: 4 Days of Interactive Training/ Consulting for up to 12 employees <u>Deliverable:</u> Train System Administrator(s) on GCMS™ Administration, permissions, setting up groups and users, module administration. Basic User training on pages, module entries, applying modules to pages. Applied use and usability consulting to result in effective communication through your website. | \$4,864 |
| Phase 8: Go-Live and Project Review <u>Deliverable:</u> Final project review report | \$2,007 |
| Phase 9: Marketing <u>Deliverable:</u> Registration of site with all major search engines | \$485 |
| Phase 10: Ongoing Consultation <u>Deliverable:</u> Site review with recommendations for enhancements to improve visitor interaction; layout, design and content recommendations. | Included |
| Additional Functionality | |
| Google Translation Tool | Included |
| Gov 2.0 Upgrades | |
| Blog | Included |
| Facebook Integration | Included |
| Share | Included |
| Twitter Integration | Included |
| Options Included in One-Time Fee | |
| Pre-Implementation: On-Site Kick-Off Meeting Two days of meetings with your website committee to discuss design goals, review audience goals and meet with departments to kick-off with a project overview. <i>Quote includes travel expenses.</i> <u>Deliverable:</u> A document summarizing the meetings, with analysis and recommendations. Design information gathered. | \$6,000 |
| Total Project Development Fee | \$39,467 |
| First Year Annual Support, Maintenance and Hosting Fee Server storage not to exceed 25 GB; Media Center storage not to exceed 10 GB | Included |
| Total Fees Year 1 \$39,467 | |

One-third of the total First Year fee will be billed upon completion of design (\$13,155.66); one-third of the total First Year Fee will be billed upon completion of the content (\$13,155.66). The remainder of the total First Year Fee will be invoiced after the training has been completed (\$13,155.68).

The City shall sign a project completion and acceptance form prior to project go-live. The date may be extended if material system or operations failures are encountered. All parties agree that the website will not go-live until the project is accepted, in writing, by City.

Invoicing for Year 2 Annual Support, Maintenance, and Hosting begins one (1) year from contract signing.

City agrees to be invoiced electronically, through email. Upon request CivicPlus shall mail invoices and charge City a \$5.00 convenience fee for said mailing.

Exhibit C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$2,000,000 per occurrence for all covered losses and no less than \$4,000,000 general aggregate.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, error or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$3,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right to subrogation prior to a loss. Consultant agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at the City's option.
8. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City a thirty (30) day notice of cancellation or nonrenewal of coverage for each required coverage, except for nonpayment for which a ten (10) day notice is required.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon

request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.

11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant 90 days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. 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 limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.