

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Maureen Benson, City Clerk *MB*

DATE: July 1, 2014 (CC Meeting of (9/17/14))

SUBJECT: Consider Agreement with Quality Code Publishing for Research, Editing, Codification, and Publishing Ordinances of the City of Moorpark

BACKGROUND

The City has need for Municipal Code research, editing, codification, and publishing services. Quality Code Publishing (QCP) has been serving as the City's codification company since 2007. The original Agreement with QCP did not contain language allowing for any future increase in compensation.

DISCUSSION

The current Agreement with QCP is approaching a cumulative billing total that requires the City Council to approve a new Agreement. QCP has submitted a new proposal to increase compensation for their services and the City and QCP now desire to enter into a new Agreement increasing the compensation for services to be performed. This is the first request for an increase in compensation since the original agreement was executed in 2007.

The new Agreement authorizes the City Manager to approve on behalf of the City, any written Amendment to the Agreement to adjust the Scope of Services and payment rates as contained in Exhibit A to the Agreement, as long as such an adjustment does not exceed a three percent (3%) increase in any fiscal year. Any adjustment to the payment rates that exceeds a three percent (3%) increase in any fiscal year would require City Council approval. The City has spent on average, \$3,500 with QCP per year.

FISCAL IMPACT

The only change to the previous pricing is a change in the cost for the Municipal Code Supplement per page (50 copies) from \$19.50 to \$21.50. There is no need for a budget adjustment.

STAFF RECOMMENDATION

Approve the Agreement between the City of Moorpark and Quality Code Publishing, subject to final language approval by the City Manager, and authorize the City Manager to sign the Agreement.

Attachment Draft Agreement

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MOORPARK AND QUALITY CODE PUBLISHING
FOR RESEARCH, EDITING, CODIFICATION, AND PUBLISHING ORDINANCES
OF THE CITY OF MOORPARK**

THIS AGREEMENT, is made and effective as of this _____ day of _____, 2014, between the City of Moorpark, a municipal corporation ("City") and Quality Code Publishing, a limited liability corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for Municipal Code research, editing, codification, and publishing 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 for Scope of Services received on 8/11/14, which is attached hereto as Exhibit A; and

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 begin on the day and year first written above, and shall continue in effect until terminated by the City or Consultant pursuant to the written provisions of this Agreement.

2. SCOPE OF SERVICES

City does hereby retain Consultant, as an independent contractor, in a contractual capacity to provide research, editing, codification, and publishing services, as set forth in Exhibit A. In the event there is a conflict between the provisions of Exhibit A and this Agreement, the language contained in this Agreement shall take precedence.

Consultant shall perform the services as described and set forth in Exhibit A. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

Compensation for the services to be performed by Consultant shall be in accordance with rates for service set forth in Exhibit A. Compensation shall not exceed the rates as stated in Exhibit A, without a written Amendment to the Agreement executed by both parties. Payment by City to Consultant shall be in accordance with the provisions of Section 5 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 Nancy L. Helmer, President, 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 by Consultant on an IRS W-9 form before payments may be made by City to Consultant.

The City agrees to pay Consultant, in accordance with the Scope of Services and the payment rates set forth in Exhibit A. The City Manager shall be authorized to approve on behalf of the City a written Amendment to the Agreement to adjust the Scope of Services and payment rates set forth in Exhibit A, so long as such adjustment to Consultant's payment rates does not equal or exceed a three percent (3%) increase in any fiscal year. Any such adjustment to the Consultant's rates that equals or exceeds a three percent (3%) increase in any fiscal year shall require prior approval of the City Council.

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 and compensation are authorized, in advance, in a written amendment to this Agreement executed by both parties.

Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, 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. 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 or the City Manager's designee. If the City disputes any of Consultant's fees or expenses, City 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, 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.

The Consultant may terminate this Agreement only by providing City with written notice no less than sixty (60) days in advance of such termination or suspension.

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.

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 his/her designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she 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 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.

Upon completion of, or in the event of termination or suspension or notice of default of this Agreement, all original documents, computer files, notes, 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, upon reasonable written request by the City, Consultant shall make available to the City the necessary computer software and hardware for purposes of accessing, compiling, and copying computer files. Consultant shall upon written request, mail an electronic copy of all computer files, including, but not limited to, text and image municipal code files within five (5) business days of receipt of such request, and the City will provide compensation in accordance with Exhibit A.

10. INDEMNIFICATION AND HOLD HARMLESS

To the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, 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 counsel 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 agency 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 B 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 or employees, or agents of the City except as set forth in this Agreement. 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, including but not limited to the Americans with Disabilities Act and Occupational Health and Safety Administration 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 subconsultant 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 Section 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 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 subconsultant.

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, CA 93021

To: Nancy L. Helmer, President
Quality Code Publishing
7701 15th Avenue NW
Seattle, WA 98117

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, including attorneys' fees, 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. 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.

29. 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.

30. 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

QUALITY CODE PUBLISHING

By: _____
Steven Kueny, City Manager

By: _____
Nancy L. Helmer, President

Attest:

Maureen Benson, City Clerk

Exhibit A

Quality Code Publishing Scope of Work

PART I - SCOPE OF SERVICES

1. **SUPPLEMENT SERVICES.** QCP will provide ongoing updates for the City, on a regular schedule, as directed by the City. Ordinances will be forwarded to QCP as they are adopted. Prior to beginning a regularly scheduled supplement, QCP will contact the City to confirm that QCP has received all the necessary ordinances. QCP's editors will prepare each supplement by completing the following steps:
 - 1.1. **Editing.** QCP will organize the new ordinances by subject and will insert all amendments into their proper places in the code text. Provisions that have been repealed shall be deleted from the code text. New ordinances shall be codified to match the style of the code. Any conflicts, inconsistencies, duplications or discrepancies created by the new material shall be brought to the attention of the City.
 - 1.2. **Proofreading.** The revised pages will be proofread against the applicable ordinance to insure accuracy of content. QCP is responsible for the typographical correctness of the supplemented material. Any errors attributable to QCP will be corrected at no charge to the City. QCP will correct the error and ship the replacement pages to the City within five (5) working days of notification of the error, unless the City requests the errors be corrected, at no charge, in the next regularly scheduled supplement.
 - 1.3. **Update Related Parts.** All history notes, tables, cross-references and index entries will be updated to reflect the new material.
 - 1.4. **Publish Supplement Pages.** The revised pages will be typeset to match the style and format of the code and printed on 20 lb. white bond paper (or equivalent) matching the existing code stock. The supplement will be printed in the quantity specified by the City.
 - 1.5. **Insertion Guide.** Each supplement will include a page with instructions for inserting the new pages and removing obsolete ones.
 - 1.6. **Frequency.** The City may choose to supplement the code quarterly, semi-annually, annually, or on an "as-needed" basis. The City may change the supplement interval at any time. Frequency of supplementation does not affect the supplement rate.
 - 1.7. **Termination.** The City may terminate the supplement service by canceling in writing at least 60 days prior to the editorial cutoff date for any regularly scheduled supplement.
2. **ELECTRONIC PUBLISHING & INTERNET SERVICES.** QCP will create a searchable Internet database for posting on QCP's website with a link to the City's site. As the code is updated, QCP will post the changes to your code on the Internet at the same time that QCP sends the City its printed supplements. QCP's online codes feature a robust full-text search engine utilizing advanced Boolean operators, wildcards, exact-phrase searching, and allow control over how results are ranked. Search results are displayed by code section, and search results feature search-term highlighting. A simplified user interface is also provided to allow the less-advanced user to easily create and combine "and," "or," and phrase search expressions. QCP's on-line service provides the user with the option of viewing and printing the code by either

chapter or section. An example of QCP's Internet services can be viewed at www.qcode.us/codes/sacramento/. No license is required for the browse and search options.

QCP's Internet search facility, as well as our Web storage and delivery system, is custom-tailored to municipal code publication. The software is built upon the MySQL database server, the world's most popular open-source database software. MySQL is installed on more than 5 million web servers worldwide, and is used by organizations such as The Associated Press, Google and NASA. MySQL is renowned for its high speed, reliability, and compliance with industry standards.

- 2.1. **CODEALERT (Optional).** CodeAlert is an on-demand updating service that is designed to work in conjunction with the Internet copy of the City's Code. CodeAlert notifies the code user that a code section has been amended and provides a list of ordinances that have been passed, but not yet incorporated into the code. Sections of the code that have been affected by an adopted ordinance will contain a warning at the beginning of the section with a link to both the ordinance and the CodeAlert page. This service assures the viewer the most accurate, up-to-date version of the code, no matter how frequently you choose to supplement. An example of our CodeAlert services can be viewed at www.qcode.us/codes/sacramento/.
- 2.2. **Code on CD-ROM.** Subscribers to our electronic publishing services will receive an electronic copy of the code on CD. The CD will contain the entire code in MS-Word format, as well as a version that can be searched directly from the CD. At present, QCP uses Adobe PDF for this purpose, which can be viewed, searched, and printed using the freely available Adobe Reader software. File format and software are subject to change to allow for improved technology, but no additional software licenses will be required to use the CD.

PDF files containing the exact images of both the entire updated code and supplement pages from the latest supplement published by QCP are also included on the CD. QCP-published pages may be reproduced by printing these files from Adobe Reader. Familiarity with creating 2-sided documents on your printer may be needed to duplicate actual code pages.

PART II - PRICES AND PAYMENT TERMS

SUPPLEMENT SERVICES

3. Supplement charge per page (50 copies) \$21.50

4. **ELECTRONIC PUBLISHING SERVICES.**

Initial data conversion N/C
Initial creation of PDF file of the entire code \$200.00
Updating PDF file after each supplement, charge per supplement page \$0.50
Internet database updating, per supplement (up to 50 pages) \$75.00
Additional cost per page, if any, over 50 pages..... \$1.00
First copy of the Code on CD-ROM..... \$25.00
Additional copies of Code on CD-ROM \$10.00

5. **INTERNET SERVICES.**

One-time Set-up Fee..... N/C
Monthly Storage and Maintenance Fee \$40.00ⁱ

6. **CODEALERT (Optional).**

Monthly updating..... \$25.00
Charge per ordinance..... \$30.00

7. Shipping and handling will be prepaid by QCP and invoiced to the City upon delivery.

8. If a sales tax is applicable to this work, the amount of such tax will be added to the costs quoted in this contract.

9. Payment Schedule: Balance due upon delivery of products and services to the City. Balances which remain unpaid more than 45 days after delivery are subject to a late charge of 1.5% per month.

¹ Fee is charged in advance of service, annually March – February of each year.

Exhibit B

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 \$1,000,000 (\$1 million) per occurrence for all covered losses and no less than \$2,000,000 (\$2 million) general aggregate.

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 (\$1 million) 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 (\$1 million) per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Consultant, subconsultants, or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 (\$1 million) per occurrence.

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 or equivalent form. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. THIS SECTION INTENTIONALLY DELETED.
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. Certificate(s) are to reflect that the insurer will provide thirty (30) days' notice to the City of any cancellation or reduction of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
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 ninety (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. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to 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.