

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jennifer Mellon, Administrative Services Manager 

DATE: May 15, 2015 (CC Meeting of 6/3/15)

SUBJECT: Consider Agreement with Reel Life Pictures for Video Production and Operation Services

BACKGROUND AND DISCUSSION

On November 26, 2008, the City entered into a two year Agreement with Reel Life Pictures for video production and operation services which expired on August, 31 2010. The City was without a video production Agreement from August 31, 2010 until September 21, 2011, when the City entered into a two year Agreement with Reel Life Pictures for video production and operation services. This Agreement consisted of providing video control and recording services for public meetings as well as production of special events footage as pre-approved by the City Manager. The Agreement provided for two additional one year terms and Amendments were approved to extend the Agreement through July 30, 2015.

The City wishes to continue to have Reel Life Pictures provide services for video control and recording of public meetings, production of special events as approved, and add the scope of services that Reel Life Pictures will assist the City during emergency events when the City activates their Emergency Operations Center by making updates to the Moorpark Cable Television Channel (MPTV) as directed.

Currently, the Agreement with Reel Life Pictures is not to exceed \$25,000 annually. The scope of work is split as follows: not to exceed \$20,000 for video control and recording of public meetings and not to exceed \$5,000 for other special programming as approved by the City Manager each year. The cost for services remains the same in this Agreement as it has been in the prior Agreement. The Term of the new Agreement is two years with two optional one year extensions by Amendment.

FISCAL IMPACT

The fiscal impact for this agreement is not to exceed \$25,000 annually and is budgeted within in the Information Systems Cable Television Division budget. The standard rate for operation services remains the same as the previous Agreement at \$50.00 per hour/per operator with a two hour minimum. Special production services and filming are \$100.00 per hour/per operator and must be pre-approved.

STAFF RECOMMENDATION

Authorize the City Manager to sign the Agreement with Reel Life Pictures subject to final language approval by the City Manager.

Attachment: Agreement

PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MOORPARK AND ROBERT SCHWIEGER DBA REEL LIFE PICTURES
FOR VIDEO PRODUCTION AND OPERATIONS SERVICES

THIS AGREEMENT, is made and effective as of this ____ day of _____, 2015, between the City of Moorpark, a municipal corporation ("City") and Robert Schwieger dba Reel Life Pictures, a video production and operations company ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for video production and operations 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 May 15, 2015, which is attached hereto as Exhibit A, Scope of Services.

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 for two (2) years or until terminated by the City or Consultant pursuant to the written provisions of this Agreement. At the City's sole discretion, and the Consultant's mutual consent, the term of this Agreement may be extended for two (2) additional one (1) year periods.

2. SCOPE OF SERVICES

City does hereby retain Consultant, as an independent contractor, in a contractual capacity to provide video production and operations 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 tasks 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 the cost proposal set forth in Exhibit A. Compensation shall not exceed the rates or total contract value not to exceed twenty five thousand dollars (\$25,000.00) annually 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 Robert Schwieger, 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 monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, based upon actual time spent on the above tasks. This amount shall not exceed twenty five thousand dollars (\$25,000) annually unless additional payment is approved as provided in this Agreement. 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 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. The City Manager, if authorized by City Council, may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

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 ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

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.

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. 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.

All original productions, audio and video recordings, documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall be the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

9. INDEMNIFICATION AND HOLD HARMLESS

Indemnity for 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 City 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 counsels' 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 sub-consultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

Indemnity for 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 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 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 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 sub-consultant, 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.

10. 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.

11. 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.

12. 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.

13. 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 Section 1735].

14. 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.

15. 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.

16. 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..

17. 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: Robert Schwieger
dba Reel Life Pictures
14275 Peach Hill Road
Moorpark, California 93021

Either party may, from time to time, by written notice to the other, designate a different address or contact person, who 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

REEL LIFE PICTURES

By: _____
Steven Kueny, City Manager

By: _____
Robert Schwieger, Chief Executive Officer

Attest:

Maureen Benson, City Clerk

Exhibit A
Scope of Services

This Agreement is not to exceed \$25,000 annually; \$20,000 for operations of the Moorpark Public Cable Television Channel (MPTV) and \$5,000 designated for Special Programming/Production Services to be pre-approved by the City Manager or Designee.

MPTV Operations: Regular Monthly Services.

Consultant agrees to manage the scheduling of MPTV broadcasts as authorized by the City; to check the broadcast schedule on a quarterly basis; send the schedule of current broadcasts to the City Designee quarterly or upon request; and to make changes to the schedule when authorized to do so by the City Designee.

Consultant agrees to manage and run the public meeting broadcasts that consist of City Council, Planning Commission, Parks and Recreation Commission, Arts Commission, Library Board, Oversight Board and other special public meetings as called throughout the year at the published rates below:

Item	Description	Hourly Rate	Exceptions / Conditions
1.	Video Operator – Public Meetings	\$50.00 per operator	Two (2) hour minimum guarantee. Costs beyond six (6) hours per meeting qualify as extended meeting rate. Two (2) operators provided per meeting. A third operator may be utilized for certain meetings with written City approval. One (1) hour set-up time per meeting.
2.	Video Operator Trainee – Public Meetings	\$25.00	Two (2) hour minimum guarantee. Trainees shall not be used as the second operator during City Council Meetings or Planning Commission Meetings and City pre-authorization, in writing, is required.
3.	Extended Meeting Rate	\$75.00	
4.	Bulletin Board System (BBS) Scheduling or Programming	\$50.00	Pre-approval, in writing, by City is required prior to any scheduling or programming.
5.	Additional Services	\$50.00 per operator	This includes any as needed services upon the written request by the City during normal hours. Examples: creating additional graphics; assisting with MPTV operations.

Consultant shall also order supplies for the Video Control Room as needed, and with pre-approval of City Designee, including but not limited to, CDs and DVDs. Consultant

shall include the invoices for these supplies along with their standard services invoice as submitted per the Agreement for payment by City.

Special Programming / Production Services

Consultant agrees to provide proposals upon request for special programming and/or production services. Examples: creating a 10 minute promotional piece for the Arts Festival including filming footage of the event; or, filming the State of the City. Production Services for on-site filming of an event or production shall be \$100.00 per operator, per hour. Video Editing and studio work associated with special programming or production services shall be charged at \$75.00 per hour. There is a two (2) hour minimum for special programming or production services.

Emergency Broadcasting

When the City Emergency Operations Center (EOC) is activated at any level of response, Consultant may be utilized to update the MPTV BBS with emergency messages approved by the City. If Consultant is requested to provide these emergency services, the BBS updates will be done from the City's Video Control Room, unless the City provides the internet access connection and password through a virtual protected network (VPN) connection that would allow Consultant to provide the services from a remote location. Consultant shall be on call for emergency broadcasting and shall respond by phone and speak live to a City designee within two (2) hours of receiving notice from a City designee via phone call or email communication that an emergency response by Consultant is needed. Consultant shall be available to provide emergency broadcasting services for MPTV and the BBS from the time of response and until the EOC has been deactivated. The City designee responsible for directing the work of Consultant in an emergency shall be any City employee so designated by the City Manager or by the operating City EOC Director.

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 per occurrence for all covered losses and no less than \$2,000,000 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 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.

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 \$1,000,000 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.

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. 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.