

CITY OF



Request for Qualifications/Proposals

For Providing

On-Call Professional Real Estate Brokerage Services

To the

City of Yucaipa for Fiscal Years 2026/2027, 2027/2028 & 2028/2029

DUE DATE: THURSDAY, JULY 9, 2026 - 5:00 p.m.

I. INTRODUCTION:

The City of Yucaipa (hereinafter referred to as the "CITY") is requesting qualifications/proposals for On-Call Professional Real Estate Brokerage Services as required during the Fiscal Years 2026/2027, 2027/2028 & 2028/2029 with the possibility of one, two-year extension to the Contract.

II. DESCRIPTION/TYPES OF SERVICES:

The City requires the services of one or more firm(s) to provide On-Call Professional Real Estate Brokerage Services to represent and assist the City in the sale of exempt-surplus properties for the City and to support a variety of City real estate sale and acquisition projects and/or programs including, but not limited to, the sale, acquisition, leasing, and development of City-owned or City-interest real property. Selected firms will assist with transactions related to surplus property disposition, redevelopment initiatives, affordable/market rate housing projects on City land, and economic development opportunities.

The sale of City-owned property must comply with California Government Code Sections 54220-54232.

III. PROPOSAL REQUIREMENTS:

The City will accept Qualifications/Proposals for this assignment until **5:00 p.m. on Thursday, July 9, 2026**. Three (3) copies of the Qualifications/Proposals shall be submitted in a sealed envelope plainly marked "On-Call Professional Real Estate Appraisal Services." Proposals shall be addressed to:

Mr. Fermin Preciado, P.E., Director of Development Services/City Engineer
City of Yucaipa
34272 Yucaipa Boulevard
Yucaipa, CA 92399

Refer Questions to:
Todd Gutjahr, Public Works Analyst
City of Yucaipa
34272 Yucaipa Boulevard
Yucaipa, CA 92399
tgutjahr@yucaipa.org
(909) 797-2489 Ext. 289

The Qualification portion of this proposal shall be in one envelope/package, with cost proposals submitted in a separate sealed envelope. Proposals shall indicate the following in a detailed manner:

PLEASE DO NOT INCLUDE PROPOSAL IN 3-RING BINDERS, SPIRAL BINDERS, OR 3-PRONG FOLDERS. STAPLED PROPOSALS ARE ACCEPTABLE.

1. **Experience** – Provide specific information concerning the Consultant's experience with the services specified in this RFP. The Consultant must be a California licensed Real Estate Broker in good standing with the California Department of Real Estate (DRE). Consultant must have a minimum of five years of experience and must have represented buyers and/or sellers in at least ten transactions including transactions when the buyer or seller is a public agency. Provide a list of purchase/sale transactions completed in the past 24 months. The recently sold property list should indicate the party (buyer or seller) that Consultant represented in the transaction, original list price, sales prices and days on market. Also provide a copy of the Consultant's real estate license, and any other relevant certificates or licenses.

Please include specific experiences working with public/government agencies and Surplus Land Act eligible properties.

2. **Project Team** – Provide the names and qualifications of the key individuals that will be responsible for the coordination and production of these services, their respective roles and the organizational structure of the team.

3. **Marketing Plan** – Provide a proposed marketing plan that you believe is appropriate for subject property(ies). For proposed marketing plan, please submit a plan based on a property currently under the State of California’s Surplus Land Act review (A portion of APN 0303-131-05).
4. **Conflict of Interest** – Unless expressly authorized pursuant to the terms of the written listing agreement between the City and Consultant, no person performing services for the City in connection with the establishment of any agreements or any projects resulting from this solicitation may have a financial or other personal interest other than employment or retention by the City in any contract or subcontract in connection with this solicitation or any resulting project. No officer or employee of such person retained by the City may have any financial or other personal interest in the resulting project, unless such interest is openly disclosed upon the public records of the City and such officer, employee, or person has not participated in the acquisition of such property for or on behalf of the City.
5. **Name of Sub-Consultants** - If any, to be used for specific aspects of the assignment, including a summary of previous work arrangements on similar types of work; names of sub-consultants key personnel for the assignment, their professional experience, qualifications, and training which are applicable to this assignment, and the scope of services that will be provided by each sub-consultant, shall be described.
6. **Prohibited Contracts** – The City will not contract with and will reject any Statement of Qualifications submitted by the persons or entities specified below, unless the City Council finds that special circumstances exist which justify the approval of such a contract. The following examples are non-exhaustive, and any award of a contract will be subject to state ethics laws.
 - a. Persons employed by the City, or by any public agency for which the City Council is the governing body, and any City official.
 - b. Former city employees or officials that participated in the making of this RFP.
 - c. For-profit entities in which persons employed by the City (or by any public agency for which the City Council is the governing body) or former city officials serve as officers, principals, partners, or major shareholders.
 - d. For profit entities in which persons formerly employed by the City (or by any public agency for which the City Council is the governing body) or former city officials serve as officers, principals, partners, or major shareholders if the former employee or city official participated in the making of this RFP.
7. **Fee Schedule** – 5 percent brokerage fee, with a 2.5/2.5 percent split if the buyer is represented by his/her/its own agent.
8. This "Request for Qualifications/Proposals" does not commit the City to award a contract,

to pay any costs incurred in the preparation of a proposal in response to this request, or to procure, or contract for any services. Pursuant to Section 2.24.150 of the Yucaipa Municipal Code, this RFP is not subject to competitive bidding. The City reserves the right to accept or reject, in part or in its entirety, the request for qualifications if such action is deemed to be in the City's best interest.

9. Any contract entered into as a result of this proposal shall be considered to include the items of work detailed in the proposal unless specifically deleted at the request of the City.
10. The Consultant is encouraged to contact City staff concerning this RFQ/P and to clarify any information provided herein.
11. All Qualifications/Proposals will be reviewed and ranked on the submitted scope of work, assignment-related work experience, and related assignment team experience by an evaluation panel. Evaluation criteria used to select the Consultant shall include, but not be limited to, the following:
 - a. The Consultant's experience;
 - b. The Consultant's understanding of the assignment requirements;
 - c. The ability of the Consultant to provide the required services in a timely manner; and
 - d. The Consultant's approach to providing the best product for the City.

It is anticipated that this will be the only process necessary to select a consultant to conduct the work; however, the City reserves the right to conduct either a formal interview process or an informal interview process which may be conducted via telephone.

12. Qualifications/Proposals should contain no more than ten (10) pages, excluding the wage and fee schedules and excluding cover letters, exhibits, and resumes. The City is not expecting elaborate qualifications/proposals with expensive graphics, etc.; rather, a concise, direct proposal to complete the work required.
13. Qualifications/Proposals should include, but not be limited to, the following:
 - a. Page numbering.
 - b. Consultant organizational chart with names of personnel to be used for this assignment.
 - c. A concise, complete response to the technical requirements in the "Scope of Work."
 - d. Exceptions to or deviations from the requirements of this RFQ/P. Any alternative approach proposed by the Consultant shall be thoroughly explained and meet the City's objectives.
 - e. Technical Proposal
 - f. Detailed fee schedule and wage rate sheet for employees

V. **SCOPE OF WORK:**

The services to be provided pursuant to this RFP may include, but are not limited to the following:

Task Area 1: Real Estate Planning and Advisory Services

- Evaluate City-owned properties for long term real estate planning
- Evaluate the feasibility of the disposal of City-owned properties in conformance with the Surplus Land Act
- Conduct economic and financial feasibility analysis for development concepts for City facilities and affordable housing on City-owned land

Task Area 2: Real Estate Acquisition Services

- Evaluate the acquisition of new property for the potential relocation sites for City facilities and the development of affordable housing or public uses

Task Area 3: Real Estate Brokerage Services

Property Sales

- Recommend the listing prices of City surplus properties based on their marketability and comparable properties in the area
- Recommend a minimum sale price for the site for the City to consider and a projected timeline for sales at various listing prices
- Development and management of solicitations and marketing processes
- Vetting and evaluation of potential developers and projects
- Coordination with City staff to organize and facilitate buyer site tours
- Coordination with City staff to negotiate land sale prospects and buyers
- Coordinate with City staff relating to the sale of real estate
- Coordination of all customary activities and services associated with real estate transactions

Property Purchase

- Identify and evaluate potential acquisition properties that meet the City's objectives
- Recommend purchase price ranges based on market conditions and comparable properties
- Recommend maximum offer amounts and anticipated acquisition timelines.
- Develop and manage property search and acquisition strategies
- Conduct due diligence and evaluate property suitability and development potential
- Coordinate with City staff to organize property tours and inspections
- Assist City staff in negotiating purchase terms with property owners and brokers
- Coordinate with City staff throughout the acquisition process
- Manage customary activities and services associated with real estate acquisitions, including due diligence, escrow, and closing

VI. MATERIALS FURNISHED BY THE CITY

The City of Yucaipa will provide the following materials and/or services as required:

- Proposed or existing site plan, adjacent street improvement plans, grading plan, existing concept plan, preliminary sketches, material selection, information drawings in paper or electronic file format as available, and preliminary title report(s) for the affected properties.

VII. CONTRACT

The selected Consultant will be required to execute a standard City Agreement for Professional Services in its entirety. A sample copy is included herewith.

VII. INSURANCE REQUIREMENTS:

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if Consultant provides written verification, it has no employees)
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limits of no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Contract of work. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years

after completion of contract work. A copy of the claims reporting requirements must be submitted to the Entity for review.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this Contract, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance.

Waiver of Subrogation

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Consultant, its employees, agents and subconsultants.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Consultant shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subconsultants

Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Entity is an additional insured on insurance required from subconsultants.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

IX. WORK PERFORMANCE:

All work shall be conducted and completed in accordance with all current, applicable state and federal laws, including, but not limited to Labor Code Sections 1770 *et seq.* where applicable; local laws, ordinances, and regulations; and all maps, plans, and specifications on file with City.

X. OWNERSHIP OF REPORTS AND DOCUMENTS:

Originals of all documents, letters, drawings, and other materials and data produced under the Contract Agreement's terms shall become the City's property. The City shall retain all rights in copyright. Copies may be made and retained by the Consultant for its records but shall not be furnished to others without the City's written consent for three (3) years from the date of acceptance, by the City, of all requirements of this assignment.

XI. CHANGES IN PERSONNEL:

All changes in key assignment personnel or sub-consultants shall be submitted to City in writing together with resumes for approval.

XII. COMPENSATION:

Five (5) percent brokerage fee, with a 2.5/2.5 percent split if the buyer is represented by his/her/its own agent.

XIII. FUTURE DESIGN PROJECTS:

The City reserves the right to expand the duties of the Consultant to include other public works projects and City real property transactions and/or request proposals for future similar services from the "short-list" firms selected in this process.

XIV. EXTENSION OF CONTRACT:

- A. This Contract shall remain in effect for Fiscal Years 2026/2027, 2027/2028, & 2028/2029. The City reserves the right to extend this Contract for one additional two-year period, under the same terms and conditions as the original Contract, upon ninety (90) days prior notice in writing of its intention to exercise this option. The Consultant, however, shall have the privilege of rejecting an extension of the contract period. Such rejection shall be made in writing to the City of Yucaipa at least sixty (60) days prior to the expiration of the contract period and shall state his unwillingness to continue under the same terms and conditions.
- B. The City reserves the right to extend this Contract for specific large-scale and/or long-term assignments under the same terms and conditions as the original Contract. These assignments include and are not limited to federal/state-funded flood control and transportation assignments. The duration of such assignments may be up to 24 months and extend beyond the stated contract term.

XV. RFQ/P PROTEST PROCEDURES

The City reserves the right to reject any and all proposals, waive any minor irregularities or informalities in any proposal or in the RFQ/P process, and make an award in the best interest of the City.

Any protest regarding the award recommendation or proposed award of this RFQ/P must be submitted in writing by an actual proposer who submitted a timely proposal in response to this RFQ/P. No person or entity other than an actual proposer shall have standing to protest.

All proposal protests must:

- Be submitted in writing to the City no later than five (5) business days following the issuance of the City's notice of intent to award or recommendation for award;
- Clearly identify the grounds for the protest and include all supporting facts, documentation, and legal authority;
- Be signed by an authorized representative of the protesting proposer; and
- State the specific relief requested.

Protests based on the RFP's content must be submitted no later than five (5) business days before the proposal submission deadline.

Failure to submit a timely protest shall constitute a waiver of any right to protest or challenge the RFQ/P, the proposal process, or the award determination.

The City Manager, Deputy City Manager, or designee shall review the protest and issue a written determination. The City's determination shall be final. The filing of a protest shall not require the City to delay the procurement process, award of contract, or execution of an agreement unless deemed necessary by the City.

**DEVELOPMENT SERVICES DEPARTMENT
SAMPLE AGREEMENT FOR PROFESSIONAL SERVICES**

PROFESSIONAL SERVICES AGREEMENT

BY AND BETWEEN

**THE CITY OF YUCAIPA,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

**[CONSULTANT],
[INSERT ENTITY TYPE AND
STATE OF INCORPORATION]**

VERSION: 2026.01 (SAN BERNARDINO COUNTY)

CITY OF YUCAIPA PROFESSIONAL SERVICES AGREEMENT

PROJECT/SERVICES: [INSERT BRIEF DESCRIPTION, E.G., ACCOUNTING SERVICES]

CONSULTANT: [INSERT FULL LEGAL NAME OF CONSULTANT]

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2026 (“Effective Date”), by and between the CITY OF YUCAIPA, a California municipal corporation (“City”), and [INSERT FULL LEGAL NAME OF CONSULTANT], a [Insert State of Incorporation/Registration] [Insert Entity Type, e.g., Corporation, Limited Liability Company, Sole Proprietorship] (“Consultant”). City and Consultant are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

1. **Selection Process.** City has sought the performance of certain services generally described as [Insert brief description] by [Insert method of solicitation e.g., Request for Proposals No. XXXX / direct negotiation].
2. **Consultant Qualifications.** Consultant represents that it is specially trained, experienced, and possesses the necessary professional qualifications, skills, and any required licenses to perform the Services competently and in a manner consistent with the standards of its profession. City has selected Consultant to perform the Services based on these demonstrated competencies and qualifications.
3. **Mutual Intent.** The Parties now desire to formalize the selection of Consultant and enter into this Agreement to define the specific terms, conditions, and scope of the Services to be provided.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

Subject to the terms and conditions set forth in this Agreement, Consultant shall faithfully and competently perform the services and tasks set forth in Exhibit “A” (the “Services”), which is attached hereto and incorporated by this reference. Consultant shall provide all tasks, deliverables, and services set forth in the Scope of Services, as well as those services that are reasonably necessary to the full and professional completion of the Services. In the event of any conflict or inconsistency between the provisions of Exhibit “A” and the body of this Agreement, the provisions of this Agreement shall take precedence and govern.

SECTION 2. COMPENSATION, INVOICING AND PAYMENT.

- (a) **Total Compensation.** Subject to the terms and conditions of this Agreement, City shall pay Consultant for the Services performed in accordance with the rates and schedule set forth in Exhibit "B." The total compensation for the Services, including any reimbursement for actual and necessary expenses, shall not exceed \$[INSERT AMOUNT] ("Total Compensation"). City shall not be liable for any payments to Consultant in excess of the Total Compensation unless such additional compensation is approved in advance and in writing by the City Manager (within their delegated authority) or the City Council, pursuant to Section 24 (Administration and Implementation) or Section 25 (Amendment).
- (b) **Invoicing Requirements.** On or before the 15th day of each month, Consultant shall submit an invoice to the City for Services performed and expenses incurred during the preceding month. Invoices shall be submitted electronically to the address provided in Section 19 (Notices) and shall include:
- (i) A detailed description of the tasks performed;
 - (ii) If compensated on an hourly basis, the name of the person performing the task, the hourly rate, and the amount of time allocated to the task;
 - (iii) An itemization of any pre-approved expenses; and
 - (iv) Subconsultant charges detailed by the same categories.
- (c) **Payment and Disputes.** City shall review each invoice to ensure compliance with this Agreement. City shall pay all undisputed amounts within forty-five (45) days of receipt of a correct invoice. If City disputes any portion of an invoice, City shall notify Consultant in writing of the dispute. Payment of the undisputed portion shall not be unreasonably delayed. The 45-day period for the disputed portion shall not begin until a revised, corrected invoice is submitted and approved.
- (d) **80% Notification.** Consultant shall provide written notice to the City Manager when total billings reach eighty percent (80%) of the Total Compensation. This notice is a mandatory administrative requirement to allow for budget review and shall include a summary of work completed and the estimated cost to complete the remaining Services.
- (e) **Non-Waiver.** Payment of any invoice shall not constitute an acceptance of the work or a waiver of any defects in the Services performed.
- (f) **Additional Work.** Consultant shall not be compensated for any work outside the Scope of Services unless authorized in writing and in advance by the City. Any such authorized work shall be deemed part of the "Services" and subject to the terms of this Agreement.

- (g) **Rates for Extended Term.** If the Agreement is extended on a month-to-month basis pursuant to Section 3(b), the rates set forth in Exhibit “B” shall remain in effect unless otherwise modified by a written amendment.

SECTION 3. TERM OF AGREEMENT.

- (a) **Term and Commencement.** This Agreement shall commence on the Effective Date and shall continue until [Insert Date, e.g., June 30, 2026] (the “Term”), unless sooner terminated or extended by written amendment in accordance with this Agreement. All references to “days” shall mean calendar days unless otherwise specified.
- (b) **Month-to-Month Extension.** Following the expiration of the Term, the City Manager may, in their sole and absolute discretion, unilaterally extend this Agreement on a month-to-month basis for a period not to exceed six (6) months. Any such extension shall be on the same terms and conditions as set forth herein, including the compensation rates specified in Exhibit “B.” The City Manager shall exercise this option by providing written notice to Consultant at least ten (10) days prior to the expiration of the Term.
- (c) **Fiscal Year Funding Contingency.** Consultant acknowledges that the City is a municipal corporation and is subject to the appropriation of funds by its City Council on a fiscal year basis. If the City Council fails to appropriate or authorize funding for the Services for any subsequent fiscal year, this Agreement shall terminate at the end of the current fiscal year for which funding was appropriated. City shall provide Consultant with written notice of such non-appropriation as soon as practicable. City shall not be obligated to pay Consultant for any Services or expenses incurred after the end of a funded fiscal year.
- (d) **Schedule of Performance.** Consultant shall perform the Services in accordance with the schedule set forth in Exhibit “C” (the “Schedule of Performance”). Time is of the essence in the performance of this Agreement. If Consultant fails to meet the milestones or timelines set forth in Exhibit “C”, such failure may be deemed a material breach and default under this Agreement. In the event of a delay, the City may, at its sole option:
- (i) Allow Consultant to continue performance subject to a revised schedule; or
 - (ii) Exercise its termination rights under Section 21 (Termination of Agreement).

SECTION 4. CONSULTANT’S BOOKS AND RECORDS.

- (a) **Recordkeeping Requirements.** Consultant shall maintain any and all documents and records demonstrating or relating to Consultant’s performance of the Services, including but not limited to ledgers, books of account, invoices, vouchers, electronic data, and other records evidencing expenditures and disbursements charged to City. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently detailed to permit an accurate evaluation of

the Services. All such records shall be maintained for at least four (4) years following the date of final payment under this Agreement, or for any longer period required by law.

- (b) **Inspection and Audit Rights.** Upon reasonable request, City or its designated representative shall have the right to inspect, audit, and copy any records required to be maintained under this Section during regular business hours. Consultant shall provide such records to City in a format requested by City (including electronic formats) when practical; otherwise, such records shall be made available at Consultant's address for notice as set forth in Section 19 (Notices).
- (c) **CPRA Compliance.** Consultant acknowledges that the City is a public agency subject to the California Public Records Act (Gov. Code § 7920.000 *et seq.*) (the "Act"). Consultant shall provide City with any and all records in its possession that are deemed "public records" under the Act within five (5) business days of a request by City, or such shorter time as may be necessary for City to comply with its obligations under the California Public Records Act. Consultant shall defend, indemnify, and hold harmless City for any claims, costs, penalties, or attorney's fees arising from Consultant's failure to provide such records in a timely manner or from Consultant's improper withholding of public records.
- (d) **Transfer of Records.** If City has reason to believe that records may be lost or discarded due to the dissolution or termination of Consultant's business, City may, by written request, require that custody of such records be given to the City.
- (e) **Subconsultant Records.** Consultant shall include the requirements of this Section in any agreement with a subconsultant providing Services under this Agreement.

SECTION 5. OWNERSHIP OF DOCUMENTS.

- (a) **City Ownership of Work Product.** All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, and other documents (including "Native Files" in their original editable format) prepared, developed, or discovered by Consultant in the course of providing the Services (collectively, "Work Product") shall become the sole property of City. City may use, reuse, or dispose of the Work Product without Consultant's prior permission. Upon completion, expiration, or termination of this Agreement, Consultant shall immediately deliver all Work Product to City.
- (b) **Work Made for Hire.** To the extent the Work Product is copyrightable, the Parties intend that all such works be deemed a "work made for hire" as defined in 17 U.S.C. § 101. City shall be considered the author and shall own all rights, including the copyright, in and to the Work Product.
- (c) **Intellectual Property Rights Assignment.** To the extent any Work Product is deemed not to be a "work made for hire," Consultant hereby irrevocably assigns to City all right, title,

and interest in and to the Work Product, including all copyrights, patents, trademarks, and other intellectual property rights. Consultant shall, at City's request and without further compensation, execute any documents (including powers of attorney) necessary to perfect or protect City's ownership. To the extent permitted by law, this assignment includes a waiver of any "moral rights" under California Civil Code § 987 or rights of publicity under California Civil Code § 3344 related to the Work Product.

- (d) **AI and Data Models.** Work Product expressly includes any datasets, metadata, algorithmic models, or artificial intelligence models developed or refined using City-provided data or developed in the course of performing the Services. Consultant shall not use City data or any Work Product to train, develop, or refine any proprietary AI models, machine learning algorithms, or other technologies for use outside of this Agreement without City's prior express written consent. Consultant shall not sell, license, or otherwise commercialize any AI models or algorithms derived from City data.
- (e) **Limitation on Consultant Warranties.** If City utilizes the Work Product for any purpose not related to this Agreement, Consultant's guarantees and warranties in Section 6 (Standard of Performance) shall not extend to such unrelated use.
- (f) **Survival.** The provisions of this Section shall survive the expiration or termination of this Agreement.

SECTION 6. STANDARD OF PERFORMANCE.

- (a) **General Standard.** Consultant represents and warrants that it has the qualifications, experience, and resources necessary to properly perform the Services in a thorough, competent, and professional manner. Consultant shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform the Services.
- (b) **Professional Standard of Care.** In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by professionals providing similar services to California municipal agencies. Consultant shall use such skill, prudence, and diligence as other members of Consultant's profession commonly possess and exercise. All deliverables provided by Consultant shall be free from material errors or omissions.
- (c) **Specific Standards.** In addition to the general standards set forth in this Section, any specific standards of performance or criteria set forth in Exhibit "A" shall apply. In the event of a conflict between a general standard and a specific standard, the more stringent standard or the specific criteria shall govern.
- (d) **Compliance with Professional Ethics.** Consultant shall perform all Services in accordance with the ethical standards and codes of conduct applicable to Consultant's profession and licensure.

- (e) **Re-Performance of Services.** If City determines that any of the Services are deficient or fail to meet the standard of care set forth in this Section, City shall notify Consultant in writing of such deficiency. Consultant shall, at its sole cost and expense and without further compensation, promptly re-perform or correct the deficient Services to the reasonable satisfaction of the City. The City's acceptance of any Work Product shall not be construed as a waiver of the Consultant's obligation to re-perform or correct Services that are later discovered to be deficient or incorrect. If Consultant fails to correct the Services within a reasonable timeframe as determined by the City (which shall be no less than ten (10) business days unless circumstances require more urgent action), City may perform the work or hire a third party to do so, and Consultant shall be liable to City for all resulting costs, including the cost of cover and any price differential. City may offset such costs against any amounts owed to Consultant.

SECTION 7. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

- (a) **General Compliance.** Consultant shall keep itself informed of and comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in effect during the Term, including all Cal/OSHA requirements, conflict of interest laws, and prevailing wage laws (as applicable). If Consultant performs any work knowing it, or reasonably should have known it, to be contrary to such laws, rules, or regulations, Consultant shall be solely responsible for all costs and penalties arising therefrom.
- (b) **Data Privacy and Security.** Without limiting the generality of the foregoing, Consultant represents, warrants, and covenants that all Services shall comply with all applicable laws, regulations, and industry standards related to data protection, privacy, and information security, including but not limited to:
- (i) The California Information Practices Act of 1977 (Cal. Civ. Code § 1798 et seq.);
 - (ii) The California Consumer Privacy Act (CCPA/CPRA), as amended;
 - (iii) The Health Information Portability and Accountability Act (HIPAA);
 - (iv) The CJIS Security Policy promulgated by the FBI; and
 - (v) All applicable digital accessibility standards, including WCAG 2.1 (Level AA) or higher and Section 508 of the Rehabilitation Act.
- (c) **Permits and Licenses.** Consultant shall, at its sole cost and expense, obtain and maintain in full force and effect during the Term all permits, professional licenses, registrations, and certifications required by federal, state, or local law for the performance of the Services. This includes, but is not limited to, maintaining a valid City Business License, as applicable

for the duration of this Agreement. Consultant shall provide proof of all required licenses and permits to City upon request and within five (5) business days of any renewal.

- (d) **Environmental Responsibility.** As applicable, Consultant shall be responsible for all costs of clean-up and/or removal of hazardous or toxic substances spilled, leaked, or released as a result of Consultant's (or its subconsultants') performance of the Services.
- (e) **Compliance Indemnity.** Consultant shall defend, indemnify, and hold City and its Indemnified Parties (as defined in Section 15) harmless from any and all claims, liabilities, or penalties arising out of any failure or alleged failure of Consultant to comply with the laws and regulations referenced in this Section.

SECTION 8. CONFLICT OF INTEREST.

- (a) **Government Code Section 1090.** Consultant represents and warrants that it has no knowledge of any facts that create or would create a violation of California Government Code Section 1090 *et seq.* Consultant represents and warrants that neither it nor any of its principals, owners, officers, employees, agents, or subconsultants (collectively, "Consultant Parties") has participated or will participate in the "making" of this Agreement (as that term is interpreted under California law) while having a financial interest in it, as defined in Government Code § 1090 ("§ 1090"). Consultant shall immediately disclose to the City Attorney any potential or actual § 1090 issues. Consultant acknowledges that any Agreement made in violation of § 1090 is void ab initio, and City may seek full disgorgement of all compensation paid, along with any other remedies available at law or in equity.
- (b) **Political Reform Act and Form 700.** If City determines Consultant is acting in a "decision-making capacity," Consultant Parties may be required to comply with the Political Reform Act (Gov. Code § 87100 *et seq.*) and City's Conflict of Interest Code. This includes:
 - (i) Filing Statements of Economic Interests (Form 700) as required by the City Clerk;
 - (ii) Adhering to all disqualification and recusal requirements; and
 - (iii) Implementing internal screens to ensure no person with a disqualifying financial interest influences a City decision.
- (c) **Levine Act Compliance (Gov. Code § 84308).** Consultant represents that it (including its agents and subconsultants) has not made any campaign contributions to any City official exceeding the then-current threshold established by Government Code § 84308 and Fair Political Practices Commission ("FPPC") regulations within the twelve (12) months preceding the City's action on this Agreement. Consultant shall not make any such

contribution for twelve (12) months following the final decision on this Agreement. Consultant shall disclose in writing to the City Clerk and City Attorney any such contributions made by Consultant or its agents promptly upon learning of the matter.

- (d) **Organizational Conflicts of Interest.** Consultant shall avoid any “Organizational Conflict of Interest” where, because of other activities or relationships, Consultant is unable to render impartial assistance or advice, or Consultant’s objectivity in performing the Services is otherwise impaired. Consultant shall not represent any third party in any matter adverse to the City that is related to the subject matter of this Agreement without City’s prior written consent.
- (e) **Gifts, Gratuities, and Kickbacks.** Consultant Parties shall not offer, give, or arrange any gift, honorarium, or “behested payment” to any City official in violation of the Political Reform Act or FPPC regulations. Consultant warrants it has not paid any contingent fee or kickback to secure this Agreement.
- (f) **Post-Employment Restrictions.** Consultant shall not assign any former City official or employee to perform Services in violation of the "Revolving Door" restrictions set forth in Gov. Code § 87406.3 or local ordinances.
- (g) **Flow-Down and Remedies.** Consultant shall impose these requirements on all subconsultants. A breach of this Section is a material breach permitting City to immediately terminate the Agreement, withhold payment, and seek all legal and equitable remedies, including rescission.

SECTION 9. PROHIBITED INTERESTS.

- (a) **Covenant Against Contingent Fees.** Consultant warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant further warrants that it has not paid, and has not agreed to pay, any person or entity, other than a bona fide employee, any fee, commission, percentage, brokerage fee, or gift contingent upon or resulting from the award of this Agreement.
- (b) **Conflict of Interest.** For the Term of this Agreement, Consultant warrants that no official, officer, or employee of City shall have any direct interest in this Agreement or obtain any present or anticipated material benefit arising therefrom.
- (c) **Remedy for Breach.** For any breach or violation of the warranties in this Section, City shall have the right to rescind this Agreement without liability and, at its discretion, may deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, or gift.

SECTION 10. CALIFORNIA LABOR CODE REQUIREMENTS.

- (a) **Applicability.** Consultant acknowledges and agrees to comply with the requirements of California Labor Code §§ 1720 *et seq.* and 1770 *et seq.* (“Prevailing Wage Laws”). If the Services (or any portion thereof, such as surveying, inspection, or field testing) are deemed a “public work” or “maintenance” project as defined under California law, Consultant shall:
- (i) Pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (“DIR”);
 - (ii) DIR Registration: Maintain a current and valid registration with the DIR for the duration of the project, as required by Labor Code § 1725.5; and
 - (iii) Apprentices and Payroll: Comply with all requirements related to the employment of apprentices and the maintenance/submission of certified payroll records.
- (b) **Indemnification.** Consultant shall defend, indemnify, and hold City and its Indemnified Parties (as defined in Section 15) harmless from any and all claims, demands, causes of action, fines, penalties, stop orders, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs of litigation) arising out of or in any way related to Consultant's failure to comply with Prevailing Wage Laws or DIR registration requirements, including but not limited to claims brought by the Labor Commissioner, DIR, or any affected worker.
- (c) **Duty to Monitor.** Consultant is solely responsible for determining the applicability of Prevailing Wage Laws to the Services. City’s failure to identify a project as a “public work” or “maintenance” does not relieve Consultant of its statutory or contractual obligations.
- (d) **Right to Withhold Payment (Stop Payment).** If City has a reasonable basis to believe that Consultant is in violation of Prevailing Wage Laws, or if Consultant (or any subconsultant) fails to maintain active DIR registration, City may withhold all or any portion of any payment otherwise due to Consultant until Consultant provides evidence of compliance to City’s satisfaction. City may also withhold sufficient funds to cover potential penalties and liabilities. City’s election to withhold payment under this Section shall not constitute a breach of this Agreement and shall not subject the City to any liability for penalties, interest, or consequential damages. Consultant expressly waives any claim for delay damages or lost profits arising from such withholding.

SECTION 11. EQUAL OPPORTUNITY EMPLOYMENT.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, or any other status protected by the state or

federal constitutions or laws. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment, layoff, or termination.

SECTION 12. INDEPENDENT CONSULTANT.

- (a) **Independent Consultant Status.** Consultant is and shall at all times remain a wholly independent Consultant and not an officer, employee, or agent of City. This Agreement is a “business-to-business” contract under California Labor Code § 2776. Consultant represents and warrants that it is a separate business entity that is: (i) free from the control and direction of the City in connection with the performance of the Services; (ii) provides services directly to its own clients; and (iii) maintains a separate business location.
- (b) **No Agency Authority.** Consultant shall have no authority, express or implied, to act on behalf of the City, to bind the City to any contract, or to incur any obligation, debt, or liability against the City. Consultant shall not at any time represent that Consultant or any of its employees or agents are in any manner officials, officers, employees, or agents of the City.
- (c) **Control of Personnel and Conduct.** Consultant shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Services. The personnel performing the Services shall be under Consultant’s exclusive direction and control. Consultant shall provide all facilities, tools, equipment, and resources necessary to perform the Services.
- (d) **No City Employee Benefits / CalPERS.** Neither Consultant nor its officers, employees, or agents shall obtain any rights to retirement (including CalPERS), health care, workers’ compensation, disability, unemployment insurance, or any other benefits which may accrue to City’s employees. Consultant expressly waives any claim to such rights to the fullest extent permitted by law. Consultant acknowledges and agrees that City will not withhold any federal or state income taxes, social security, Medicare, State Disability Insurance (SDI), or other employment-related taxes from payments made under this Agreement. Consultant is solely responsible for all such tax obligations and shall provide City with proof of payment upon request.
- (e) **Reclassification Indemnity.** Should any person or entity (including but not limited to CalPERS, the Employment Development Department (EDD), the Internal Revenue Service, the Division of Labor Standards Enforcement, the Franchise Tax Board, or any private plaintiff in a class action or representative action under the Private Attorneys General Act (PAGA) claim that Consultant or any of its personnel are “employees” of the City or that the City is a "joint employer," Consultant shall defend, indemnify, and hold City and its Indemnified Parties (as defined in Section 15) harmless from and against any and all resulting liabilities, including but not limited to:

- (i) Unpaid employer and employee contributions to CalPERS or other pension systems;
 - (ii) Unpaid employment taxes, social security, and Medicare payments;
 - (iii) Interest, fines, and administrative penalties; and
 - (iv) Attorney's fees and costs incurred by the City in defending such claims.
- (f) **Survival.** The provisions of this Section shall survive the expiration or termination of this Agreement and shall remain in effect for as long as any third-party claim may be brought regarding the status of the relationship.

SECTION 13. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

- (a) **Confidentiality of Information.** All information gained or Work Product produced by Consultant in connection with the Services shall be considered confidential unless it is in the public domain or becomes publicly available through no breach by Consultant. Consultant shall not release or disclose any such information to third parties without prior written authorization from the City Manager, except as required by law or court order. Consultant shall promptly notify City of any legal requirement to disclose confidential information and shall cooperate with City's efforts to obtain a protective order or other appropriate relief.
- (b) **CPPRA Compliance and Personal Devices.** Consultant acknowledges that City is subject to the California Public Records Act (Gov. Code § 7920.000 *et seq.*).
- (i) **Duty to Search:** Consultant shall, at City's request, conduct a thorough search of its servers, cloud storage, and the private devices/accounts of any personnel used to perform the Services to identify responsive records.
 - (ii) **Redaction Cooperation:** Consultant shall assist City in identifying and segregating information it believes is exempt from disclosure. City shall make the final determination on disclosure.
- (c) **Data Breach Notification (SB 446).** If Consultant discovers or is notified of a "breach of the security of the system" (as defined in Cal. Civil Code § 1798.82) involving City data, Consultant shall:
- (i) **Immediate Notice:** Notify the City Attorney and City Manager in writing within twenty-four (24) hours of discovery or when Consultant reasonably should have discovered the breach, whichever is earlier.

- (ii) **30-Day Mandatory Clock:** Ensure all affected California residents are notified within thirty (30) calendar days of discovery, pursuant to the strict deadlines of SB 446.
 - (iii) **AG Notification:** If the breach affects more than 500 residents, Consultant shall notify the California Attorney General within fifteen (15) calendar days of notifying the individuals.
 - (iv) **Notice Format:** Any notice must be titled “Notice of Data Breach,” use at least 10-point type, and include the mandatory headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.”
 - (v) **Cost of Notification:** Consultant shall bear all costs associated with the investigation, notification, and provision of at least twelve (12) months of credit monitoring services to affected individuals.
- (d) **Restrictions on Voluntary Statements.** Consultant shall not voluntarily provide declarations, testimony, or letters of support concerning the Services to any third party without prior written authorization from the City Manager or City Attorney.
- (e) **Notice of Legal Process.** If Consultant is served with a subpoena or discovery request regarding this Agreement, Consultant shall notify the City Attorney within two (2) business days and provide City at least ten (10) business days to seek a protective order before disclosing any information.
- (f) **Whistleblower Protection.** Nothing in this Section shall prohibit Consultant or its employees from reporting suspected unlawful acts to a government agency pursuant to California Labor Code § 1102.5.
- (g) **Indemnification for Disclosure.** Consultant shall defend, indemnify, and hold City and its Indemnified Parties (as defined in Section 15) harmless from any damages, costs, or attorney’s fees, including regulatory fines and class-action settlements, arising from Consultant’s unauthorized disclosure or data breach.

SECTION 14. NON-EXCLUSIVITY AND COOPERATION.

- (a) **Non-Exclusivity.** City reserves the right to employ other consultants or City personnel in connection with the Services or other projects. This Agreement is non-exclusive, and nothing herein shall prevent City from providing for itself or obtaining from third parties any services similar or identical to those performed by Consultant.

- (b) **Duty of Cooperation.** Consultant acknowledges that City may have other consultants or City employees performing work related to the Services. Consultant shall provide active and professional cooperation to City and any third-party providers. This duty includes, but is not limited to:
- (i) Timely participation in joint project meetings;
 - (ii) Sharing of Work Product, data, and information in native, open, and machine-readable formats (e.g., .csv, .dwg, .xlsx) as necessary for integration; and
 - (iii) Providing reasonable access to Consultant's personnel to resolve technical "interfacing" issues.
- (c) **Integration Disputes.** In the event of a conflict or technical "interface" issue between Consultant and another City service provider, the City Manager shall have the final authority to determine the appropriate resolution. Consultant shall implement the City Manager's decision at no additional cost to the City, provided such resolution is within the general Scope of Services.
- (d) **No Compensation for Interference.** Consultant shall not be entitled to additional compensation or a "delay claim" arising from the City's exercise of its right to employ other consultants, except as specifically provided under Section 22 (Delays in Performance).

SECTION 15. INDEMNIFICATION AND DEFENSE.

- (a) **Definitions.** For purposes of this Section 15, the following definitions apply:
- (i) **"Indemnified Parties"** means the City and its elected and appointed officials, officers, employees, agents, representatives, and volunteers.
 - (ii) **"Claims"** means any and all claims, demands, causes of action, proceedings (whether at law or equity, administrative or judicial), orders, judgments, losses, injuries (including injury to or death of any person), liabilities, damages, costs, and expenses (including reasonable attorney's fees, expert witness fees, and costs of litigation and investigation).
- (b) **General Indemnity.** To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the Indemnified Parties from and against any and all Claims that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the performance of the Services by Consultant, its officers, employees, agents, representatives, or subconsultants. This includes Claims arising from the active or passive negligence of the Indemnified Parties, excluding only those Claims arising from the sole negligence or willful misconduct of the Indemnified Parties.

- (c) **Immediate Duty to Defend.** Consultant acknowledges that the duty to defend is a separate and distinct obligation from the duty to indemnify. This duty shall (i) arise immediately upon the tender of a Claim; (ii) be provided at Consultant's sole cost and expense; and (iii) exist regardless of whether the Consultant is ultimately found liable or negligent.
- (d) **Defense and Settlement.** City reserves the absolute right to conduct and control its own defense, including the selection of counsel (including the City Attorney's Office). Consultant remains liable for all costs and fees. Notwithstanding any other provision, no Claim shall be settled, compromised, or otherwise resolved without the prior written consent of the City. City has the right to withhold consent to any settlement that: (i) involves an admission of liability or wrongdoing by the City; (ii) imposes non-monetary obligations on the City; or (iii) is deemed by the City Attorney to create an adverse legal precedent for the City. Any settlement entered into by Consultant or its insurer without the City's express written approval shall not release Consultant from its duty to continue the defense or to fully indemnify the City for any subsequent judgment or costs.
- (e) **Design Professional Exception.** Pursuant to Civil Code § 2782.8, if Consultant is a "Design Professional," the duty to indemnify and defend (including defense costs) shall be limited to the extent that the Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.
- (f) **Subconsultant Flow-Down.** Consultant shall require all subconsultants to execute an indemnity and defense agreement identical to this Section, naming the Indemnified Parties as additional indemnitees.
- (g) **Survival.** The provisions of this Section shall survive the expiration or termination of this Agreement.

SECTION 16. INSURANCE.

- (a) **Maintenance of Insurance.** Consultant shall, at its sole cost and expense, procure and maintain for the duration of this Agreement (and for any extended period required herein) the insurance coverages set forth in Addendum "1". All insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved in writing by the City Manager or their designee.
- (b) **Evidence of Coverage.** On or before the Effective Date, Consultant shall deliver to City original certificates of insurance and amendatory endorsements (including the "Additional Insured" and "Primary/Non-Contributory" endorsements) effecting coverage required by this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.

- (c) **Primary and Non-Contributory.** All insurance required of Consultant shall be primary to any insurance or self-insurance maintained by the City, and the City's insurance shall be non-contributory. Any other insurance provisions in Consultant's policies shall be amended or superseded by this Agreement to ensure the Consultant's coverage responds first.
- (d) **Notice of Cancellation.** Consultant shall provide City with at least thirty (30) days' prior written notice of any cancellation, non-renewal, or material reduction in coverage. If a policy is cancelled for non-payment of premium, Consultant shall provide at least ten (10) days' notice. Failure to maintain required insurance shall be a material breach permitting City to immediately terminate this Agreement or withhold payment.
- (e) **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the Indemnified Parties (as defined in Section 15) for losses arising from the Services. Consultant shall ensure all policies include a waiver of subrogation endorsement in favor of the City.
- (f) **No Limitation of Liability.** The requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under this Agreement, including the indemnity obligations in Section 15 (Indemnification and Defense).
- (g) **Subconsultants.** Consultant shall ensure that all subconsultants maintain insurance meeting the same requirements set forth in this Section and Addendum "1", unless a lower limit is approved in writing by the City Manager.

SECTION 17. CONTINUITY OF PERSONNEL.

- (a) **Designation of Key Personnel.** The Services shall be performed or directly supervised by the individuals designated in Consultant's proposal as "Key Personnel" or similar. Consultant represents that these individuals possess the specific professional qualifications and experience upon which the City relied in awarding this Agreement.
- (b) **Stability of Staffing.** Consultant shall make every reasonable effort to maintain the stability and continuity of the Key Personnel throughout the Term. Consultant shall not remove or reassign any Key Personnel from the Services without providing at least fourteen (14) days' prior written notice to the City, unless such individual has left Consultant's employ or is unable to work due to illness or disability.
- (c) **Substitution of Personnel.** If any Key Personnel must be replaced, Consultant shall propose a substitute with equivalent or superior qualifications.
- (d) **City's Right to Object.** While Consultant retains the sole right to hire and direct its employees, City shall have the right to object to a proposed substitute if the City

determines, in good faith, that the substitute lacks the qualifications or experience necessary to perform the Services.

- (e) **Effect of Objection.** If the City objects to a substitute, Consultant shall propose an alternative until a qualified individual is identified. Failure to provide qualified Key Personnel shall be considered a failure to meet the Standard of Performance under Section 6.
- (f) **Independent Consultant Distinction.** Nothing in this Section shall be construed as giving the City the right to control the means or methods of Consultant's work or to manage Consultant's internal human resources. The City's interest is limited solely to ensuring that the professional expertise and qualifications promised in the proposal are delivered throughout the project.

SECTION 18. ASSIGNMENT.

- (a) **Restriction on Transfer and Assignment.** The expertise, experience, and reputation of Consultant are material considerations for this Agreement. Consultant shall not assign, transfer, or convey this Agreement, any portion hereof, any performance required hereunder, or any "monies due" or to become due hereunder, without the prior written consent of the City. Such consent may be given or withheld in the sole and absolute discretion of the City Manager.
 - (i) **Change of Control.** A sale, merger, or transfer of a majority interest in Consultant's business shall be deemed an "assignment" requiring City consent under this Section.
 - (ii) **Effect of Violation.** Any attempted assignment without prior written consent shall be null, void, and a material breach, entitling City to all remedies, including immediate termination.
- (b) **Use of Subconsultants.** Consultant shall not sub consult any portion of the Services without the prior written approval of the City Manager. Before retaining any Subconsultant, Consultant shall provide City with:
 - (i) **Identity and Qualifications:** The name, license number (if applicable), and professional qualifications of the proposed Subconsultant.
 - (ii) **Contractual Flow-Down:** A copy of the proposed subconsultant agreement that must expressly incorporate the indemnity, defense, insurance, and audit requirements of this Agreement, naming the Indemnified Parties (as defined in Section 15) as third-party beneficiaries.
 - (iii) **Insurance Evidence:** Certificates and endorsements showing the Subconsultant carries insurance equal to the limits required in Addendum "1".

- (c) **Consultant's Responsibility.** The use of subconsultants shall not relieve Consultant of its primary obligations under this Agreement. Consultant shall be jointly and severally liable to City for the acts, errors, and omissions of its subconsultants. Consultant shall be solely responsible for the timely payment of its subconsultants.
- (d) **No Contractual Relationship.** Nothing in this Agreement shall create a contractual relationship between the City and any subconsultant, and no subconsultant shall have any claim against the City for payments due to Consultant.

SECTION 19. NOTICES.

- (a) **Method of Delivery.** All notices, demands, or communications required under this Agreement shall be in writing and shall be deemed "given" and "received" when:
- (i) Personal Delivery: Delivered in person to the recipient;
 - (ii) Reputable Courier: Delivered by a recognized overnight delivery service (e.g., FedEx, UPS) with a receipt showing date and time; or
 - (iii) Certified Mail: Three (3) business days after deposit in the U.S. Mail, postage prepaid, certified, return receipt requested.

(b) **Address of Record.**

To City: City of Yucaipa

Attn: City Manager

34272 Yucaipa Blvd

Yucaipa, CA 92399

To Consultant:

[Consultant Name]

Attn: [Contact Person and Title]

[Address Line 1]

[City], [State], [Zip]

- (c) **Courtesy Email Copies.** While the formal notice must be sent via the methods in subsection (a) above, the Parties shall endeavor to provide a courtesy copy via email to the representatives listed above. Email notice alone shall not constitute "formal notice" for purposes of termination or breach.

- (d) **Change of Address.** Consultant shall provide written notice to City of any change of address within five (5) business days.

SECTION 20. INSPECTION AND FINAL ACCEPTANCE.

- (a) **Right to Inspect.** City shall have the right to inspect and review Consultant's work in progress at any time. Consultant shall cooperate with City and provide reasonable access to all draft Work Product, notes, and data to ensure the Services are progressing in accordance with this Agreement.
- (b) **Review and Rejection.** City shall have sixty (60) days from the date of receipt of a final deliverable to accept or reject the work. Any rejection shall be in writing and shall specify the reasons the work fails to meet the Scope of Services (Exhibit A) or the Standard of Performance (Section 6).
- (c) **Tolling of Time.** If City requests clarification, additional data, or minor revisions, the 60-day review period shall be "tolled" (paused) until Consultant provides the requested information.
- (d) **Opportunity to Cure.** If City rejects any Work Product, Consultant shall have fourteen (14) days from the date of the rejection notice (the "Cure Period") to correct the deficiencies at no additional cost to the City.
- (e) **Extension of Cure Period.** The City Manager may, in their sole discretion, extend the Cure Period if the Consultant demonstrates that a longer period is required for a professional correction.
- (f) **Failure to Cure.** If Consultant fails to cure the deficiencies within the Cure Period, City may: (i) declare a material breach and terminate the Agreement under Section 21 (Termination of Agreement); or (ii) perform the work or hire a third party to do so, with all reasonable costs deducted from any amounts due to Consultant, provided that City shall provide Consultant with a detailed accounting of such costs within thirty (30) days of completion of the corrective work.
- (g) **Final Acceptance.** City's "Final Acceptance" of the Services shall be conclusive as to the work performed, except for:
- (i) Latent Defects: Errors or omissions in the Work Product that were not reasonably discoverable by City at the time of acceptance;
 - (ii) Fraud or Gross Mistake: Any willful concealment or mistakes so gross as to amount to fraud; and

(iii) **Surviving Warranties:** Any breach of the professional standard of care warranties set forth in Section 6 (Standard of Performance).

(h) **No Waiver.** Neither Final Acceptance nor Final Payment shall constitute a waiver of any of the City's rights under Section 13 (Confidential Information; Release of Information), Section 15 (Indemnification and Defense), or Section 16 (Insurance).

SECTION 21. TERMINATION OF AGREEMENT.

(a) **Termination by City (Convenience).** City may terminate this Agreement, in whole or in part, at any time and for any reason, with or without cause, by providing written notice to Consultant.

(i) **Effect of Notice:** Upon receipt of notice, Consultant shall immediately cease all work, except as specifically directed by the City for an orderly "wind-down."

(ii) **Liability Limit:** City's sole liability shall be to pay for Services satisfactorily performed up to the date of the notice, plus reasonable costs incurred by Consultant in winding down the Services as specifically directed by City under subsection 21(a)(i) above. City shall not be liable for lost profits, unabsorbed overhead, anticipated profits on unperformed services, or any other consequential damages arising from such termination.

(b) **Termination by City (Cause).** City may terminate this Agreement immediately for cause if Consultant: (i) materially fails to perform the Services within the time specified and such failure is not excused under Section 22 (Delays in Performance); (ii) fails to cure a deficiency under Section 20 (Inspection and Final Acceptance); (iii) materially breaches the Conflict of Interest provisions in Section 8 (Conflict of Interest); or (iv) becomes insolvent or files for bankruptcy. In such event, City may complete the work by other means and Consultant shall be liable for any reasonable excess costs actually incurred by City, meaning the difference between the cost to complete the work and the amount that would have been paid to Consultant for the same work under this Agreement.

(c) **Termination by Consultant.** Consultant may only terminate this Agreement for cause (e.g., City's material failure to pay undisputed invoices) upon thirty (30) days' prior written notice. If City cures the breach within that 30-day period, the notice shall be deemed rescinded.

(d) **Obligations Upon Termination.** Within seven (7) days of any termination:

(i) Consultant shall deliver to City all Work Product (including native and editable files) and all City-owned property;

- (ii) Consultant shall provide a final itemized invoice for work performed through the termination date; and
 - (iii) Consultant shall waive and release any claims to “mechanic's liens” or other encumbrances against the City or City property.
- (e) **Suspension of Performance.** City may, at its sole option, suspend all or any portion of the Services.
- (i) **Resumption:** City may rescind the suspension by written notice. Consultant shall be entitled to an extension of time equal to the suspension period.
 - (ii) **Extended Suspension:** If the suspension exceeds ninety (90) days, the Parties shall meet in good faith to determine if a compensation adjustment is required due to the delay.

SECTION 22. DELAYS IN PERFORMANCE.

- (a) **Excusable Delay.** Neither Party shall be in default of this Agreement for delays in performance caused by circumstances beyond their reasonable control that were unforeseeable at the time of contracting and could not have been avoided by the exercise of due diligence (a “Force Majeure Event”).
- (b) **Included Events.** Force Majeure Events include, but are not limited to: acts of God (fire, flood, earthquake); acts of the public enemy; war; riots; civil disturbances; and unforeseeable acts of federal, state, or local government (such as new embargoes or judicial restraints).
- (c) **Excluded Events.** Notwithstanding the above, the following shall not constitute a Force Majeure Event:
 - (i) **Financial Hardship.** Increased costs of labor or materials, or the Consultant’s general financial inability to perform.
 - (ii) **Labor Disputes.** Strikes or slowdowns involving the Consultant's own employees or subconsultants.
 - (iii) **Cyber Events.** Data breaches, ransomware, or system failures caused by Consultant's failure to maintain reasonable cybersecurity measures, unless such events were part of a widespread regional infrastructure failure beyond Consultant's reasonable control.
 - (iv) **Foreseeable Risks.** Any event (including public health orders) that was known or reasonably foreseeable as of the Effective Date.

- (d) **Mandatory Notice and Mitigation.** To claim a Force Majeure Event, the non-performing Party must:
- (i) Provide written notice to the other Party within two (2) business days of the commencement of the event;
 - (ii) Provide a detailed explanation of the impact on the Schedule of Performance (Exhibit C); and
 - (iii) Exercise comprehensive and active diligence to mitigate the delay and resume performance as soon as possible.
- (e) **Termination for Extended Delay.** If a Force Majeure Event delays performance for more than thirty (30) days, City may terminate this Agreement for convenience immediately upon written notice, pursuant to Section 21(a), without further liability except for payment for work satisfactorily performed prior to the event.

SECTION 23. AUTHORITY TO EXECUTE.

- (a) **Representation of Authority.** The person or persons executing this Agreement on behalf of Consultant represent and warrant that:
- (i) Consultant is a duly organized and validly existing entity under the laws of the State of its formation;
 - (ii) The execution of this Agreement has been authorized by all necessary corporate, partnership, or limited liability company action; and
 - (iii) The signatory has the actual authority to bind Consultant to all terms and conditions of this Agreement.
- (b) **Personal Liability of Signatory.** If the person executing this Agreement is unauthorized to bind the Consultant, such signatory shall be personally and individually liable for all obligations, performances, and liabilities set forth in this Agreement. This personal liability includes, but is not limited to, the obligation to defend and indemnify the City under Section 15 in the event the Consultant entity disclaims the Agreement.
- (c) **Proof of Authority.** Upon request of the City Attorney or City Clerk, Consultant shall provide written evidence of the signatory's authority to bind the entity. Such evidence may include a certified copy of a corporate resolution, a Secretary's Certificate, or relevant excerpts from an operating agreement or bylaws.

- (d) **California Corporations Code Compliance.** If Consultant is a corporation, Consultant shall endeavor to have this Agreement executed in accordance with California Corporations Code § 313, utilizing the signatures of two (2) authorized officers (one from the “Operational” tier and one from the “Financial/Secretarial” tier), unless a single signatory provides proof of dual-authority.

SECTION 24. ADMINISTRATION AND IMPLEMENTATION.

- (a) **City Representative.** This Agreement shall be administered and implemented by the City Manager or their designated representative (the "City Representative").
- (b) **Administrative Authority.** The City Manager shall have the authority to:
- (i) Issue written interpretations of this Agreement;
 - (ii) Approve minor “field changes” or adjustments to the Schedule of Performance (Exhibit C) that do not exceed the overall Term; and
 - (iii) Authorize minor modifications to the Scope of Services (Exhibit A), provided such changes do not increase the total compensation beyond the City Manager’s authorized contracting limit under the City Municipal Code.
- (c) **Fiscal Limitations.** Notwithstanding any other provision, any amendment or modification that increases the Total Compensation set forth in Section 2 beyond the amount previously authorized by the City Council, or beyond the City Manager’s current purchasing authority, shall require a formal written amendment approved by the City Council.
- (d) **Documentation.** Any interpretation or administrative adjustment issued under this Section must be in writing and signed by the City Manager to be effective. Consultant shall not be entitled to rely on oral representations or "informal" approvals from City staff that deviate from the terms of this Agreement.

SECTION 25. AMENDMENT.

- (a) **Formal Requirements.** No amendment, modification, or variation of the terms of this Agreement shall be valid or relevant unless made in writing and executed by the authorized representatives of both Parties.
- (b) **Approval Authority.**
- (i) **City Manager Authority.** The City Manager shall have the authority to approve and execute an amendment to this Agreement only if the Total Compensation, as amended, remains within the City Manager’s formal contracting and purchasing authority as established by the City Municipal Code.

- (ii) City Council Authority. Any amendment that increases the Total Compensation beyond the City Manager's purchasing authority in the City Municipal Code must be approved by the City Council.
- (c) **Non-Waiver of Writing Requirement.** The Parties specifically agree that the requirement for a "writing" to amend this Agreement is a material term and cannot be waived through oral representations, course of performance, or course of dealing. Any attempted oral amendment or waiver of this Section shall be void ab initio.
- (d) **Execution of Amendments.** Amendments shall be numbered sequentially (e.g., "First Amendment to Professional Services Agreement") and shall clearly identify the specific sections of the original Agreement being modified.

SECTION 26. WAIVER.

- (a) **No Implicit Waivers.** No waiver of any provision of this Agreement shall be effective unless it is made in writing and signed by the authorized representative of the waiving Party. No delay or omission by the City in exercising any right or remedy shall operate as a waiver of that right or any other right.
- (b) **Sequential Breaches.** A waiver by either Party of a breach of any term, condition, or covenant of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term, condition, or covenant. The City's failure to enforce a strict performance of any provision shall not waive the City's right to demand strict performance in the future.
- (c) **Acceptance of Performance.** The City's payment for or acceptance of any Work Product or Services shall not constitute a waiver of any of the City's rights or the Consultant's obligations under this Agreement, including but not limited to the Standard of Performance Section 6 (Standard of Performance), Section 15 (Indemnification and Defense), and Section 16 (Insurance).
- (d) **Cumulative Remedies.** All rights and remedies of the City under this Agreement are cumulative and are in addition to any other rights or remedies provided by law or in equity.

SECTION 27. LAW TO GOVERN; VENUE.

- (a) **Governing Law.** This Agreement shall be interpreted, construed, and governed according to the laws of the State of California, without regard to its conflict of laws principles.
- (b) **Venue.** In the event of litigation between the Parties:
 - (i) State Court: Venue shall lie exclusively in the Superior Court of California for the County of San Bernardino.
 - (ii) Federal Court: Venue shall lie exclusively in the United States District Court for the Central District of California.

SECTION 28. ATTORNEY’S FEES, COSTS AND EXPENSES.

Except as expressly provided otherwise in Section 15 (Indemnification and Defense), the Parties agree that in any action to enforce or interpret this Agreement, each Party shall bear its own attorney’s fees and litigation costs, regardless of who is the prevailing party.

SECTION 29. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties.

SECTION 30. INCORPORATION AND ORDER OF PRECEDENCE.

(a) **Incorporated Documents.** The following documents are hereby incorporated into and made a part of this Agreement by this reference:

- (i) Funding Restrictions. Any laws, regulations, or restrictions applicable to the specific funding source(s) used by City (e.g., FEMA, ARPA, or State Grant requirements);
- (ii) Amendments. Any written amendments executed pursuant to Section 25;
- (iii) Addenda. Addendum “1” (Insurance Requirements) and, if applicable, Addendum “2” (Federal Funds);
- (iv) Exhibits. Exhibit “A” (Scope of Services), Exhibit “B” (Compensation), and Exhibit “C” (Schedule of Performance); and
- (v) Consultant’s Proposal. Consultant’s proposal, but only as to the description of the Services and the technical specifications contained therein.

(b) **Order of Precedence.** The documents listed in subsection (a) above, together with the body of this Agreement, shall be referred to collectively as the “Agreement Documents.” The Agreement Documents are intended to be complementary. In the event of any conflict, inconsistency, or ambiguity between the Agreement Documents, they shall be given effect in the following order of priority:

- (i) Funding Restrictions (highest priority);
- (ii) Amendments (most recent takes precedence);
- (iii) The Body of this Agreement;
- (iv) Addendum “1” (Insurance Requirements);

- (v) Exhibits “A”, “B”, and “C”; and
 - (vi) Consultant’s Proposal (lowest priority).
- (c) **Limitations on Proposal.** Notwithstanding any language to the contrary in the Consultant’s proposal, no “standard terms and conditions,” “limitations of liability,” “indemnity carve-outs,” or “proprietary rights” contained in the Consultant’s proposal shall have any force or effect, even if the proposal is attached as an Exhibit.
- (d) **Stringency Rule.** If an obligation is addressed in multiple Agreement Documents at the same priority level, the more stringent requirement, in the reasonable determination of the City Attorney, shall govern.

SECTION 31. SEVERABILITY.

- (a) **General Severability.** If any term, condition, or covenant of this Agreement is declared or determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.
- (b) **Judicial Reformation.** In the event any provision is held to be invalid or unenforceable, the Parties agree that the court should “reform” such provision to the minimum extent necessary to make it valid and enforceable, while maintaining the original intent of the Parties.
- (c) **Essential Purpose.** If the removal or reformation of any provision under this Section would effectively defeat the “essential purpose” of the Agreement (e.g., the limitation on total compensation or the standard of care), the Parties shall meet in good faith to amend the Agreement to restore such purpose. If no agreement can be reached, the City may terminate the Agreement for convenience under Section 21.

SECTION 32. ENTIRE AGREEMENT.

- (a) **Final and Exclusive Expression.** This Agreement, including all incorporated Agreement Documents (as defined in Section 30), constitutes the entire, complete, final, and exclusive expression of the Parties with respect to the subject matter hereof.
- (b) **Integration and Merger.** All prior or contemporaneous agreements, understandings, negotiations, representations, or statements, whether oral or written, are hereby merged into and superseded by this Agreement. No Party has relied on any promise, representation, or inducement that is not expressly set forth in this Agreement.
- (c) **Independent Investigation.** Consultant represents and warrants that it has conducted its own independent investigation of the facts and circumstances material to the performance

of the Services. Consultant has not relied on any oral or written information provided by City personnel that is not expressly incorporated into Exhibit “A” (Scope of Services).

- (d) **Preemption of Standard Terms.** The Parties agree that no “standard terms and conditions,” “shrink-wrap,” “click-through” or “browse-wrap” terms provided by Consultant (including those found on Consultant’s website, invoices, or data-transfer portals) shall have any force or effect, and the terms of this Agreement shall govern exclusively.

SECTION 33. TIME OF ESSENCE.

Time is of the essence for each and every provision of this Agreement.

SECTION 34. FEDERAL FUNDS.

- (a) **Automatic Incorporation.** In the event the Services are funded, in whole or in part, by federal funds (including but not limited to grants, reimbursements, or loans from FEMA, HUD, ARPA, or the Department of Transportation), the provisions of Addendum “2” (Federal Funds) and the remainder of this Section 34 shall be deemed automatically incorporated into this Agreement and shall have the highest priority in the Order of Precedence (Section 30).
- (b) **Consultant’s Duty of Inquiry.** Consultant acknowledges that it is a “subrecipient” or “Consultant” for purposes of federal law (e.g., 2 C.F.R. Part 200). Consultant has an affirmative duty to inquire with the City Representative as to the funding source of this Agreement. The absence of a specific reference to federal funds in Exhibit “B” shall not relieve Consultant of its duty to comply with Addendum “2” if federal funds are, in fact, utilized.
- (c) **Conflict of Terms.** In the event of a conflict between the requirements of Addendum “2” and any other provision of this Agreement, the federal requirements shall govern to the extent necessary to ensure the City’s eligibility for such funds.
- (d) **Immediate Compliance.** Upon notice from the City that federal funds are being utilized, Consultant shall immediately:
- (i) Provide any required federal certifications (e.g., Debarment and Suspension, Byrd Anti-Lobbying);
 - (ii) Adjust its recordkeeping to comply with federal audit standards; and
 - (iii) Ensure all subconsultants are bound by the same federal flow-down requirements.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY OF YUCAIPA:

CONSULTANT:

By: _____
Dr. Sean Moore, City Manager

By: _____
Name, Title

ATTEST:
CITY CLERK

By: _____
Ana Sauseda, MMC

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Steven Pacifico, City Attorney

EXHIBIT “A”
SCOPE OF SERVICES

**EXHIBIT “B”
COMPENSATION**

The total compensation for the Services set forth in this Agreement shall not exceed **[INSERT AMOUNT]**.

[INSERT RATES AND SCHEDULE]

EXHIBIT “C”
SCHEDULE OF PERFORMANCE

ADDENDUM "1"

INSURANCE REQUIREMENTS

- (a) **Maintenance of Insurance.** Consultant shall, at its sole cost and expense, procure and maintain in full force and effect for the duration of this Agreement (and for any extended "tail" or "discovery" periods required herein) the insurance coverages set forth in this Addendum.
- (b) **General Standard.** These policies shall protect the Consultant and the Indemnified Parties (as defined in Section 15) from any and all Claims (as defined in Section 15) which may arise from or in connection with: (i) the performance of the Services; (ii) the acts, errors, or omissions of the Consultant, its officers, employees, agents, or subconsultants; or (iii) any person or entity for whom the Consultant is legally responsible.
- (c) **Acceptability of Insurers.** All insurance required by this Agreement shall be placed with insurers authorized to transact business in the State of California with a current A.M. Best's rating of no less than A:VII. If an insurer's rating falls below A:VII during the Term, Consultant shall immediately notify the City Manager and replace the coverage with a qualified insurer within ten (10) business days.
- (d) **Verification of Scope and Limits.** Consultant shall maintain the following minimum types and limits of insurance, which shall be deemed the "floor" of coverage. The procurement of these limits shall in no way limit or qualify the Consultant's broader indemnification and defense obligations under Section 15.

General Liability Insurance. Consultant shall maintain Commercial General Liability (CGL) insurance with coverage at least as broad as Insurance Services Office (ISO) Form CG 00 01, covering CGL on an "occurrence" basis.

Minimum Limits: Coverage shall be in an amount not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate for bodily injury, personal injury, and property damage.

Contractual Liability: The policy must include broad-form contractual liability coverage. Any endorsement restricting or deleting standard ISO "insured contract" language (including, but not limited to, ISO Endorsement CG 21 39 or similar) is strictly prohibited and shall not be accepted.

Scope of Coverage: Coverage shall include, but not be limited to: (i) Products-Completed Operations (to be maintained for at least three (3) years following completion of the Services); (ii) Personal and Advertising Injury; (iii) Independent Consultants; and (iv) Cross-Liability/Severability of Interests.

No Professional Services Exclusion for BI/PD: The policy shall not contain any "Professional Services Exclusion" that would bar coverage for bodily injury (BI) or property damage (PD) arising out of the Consultant's general operations or project site activities.

Automobile Liability Insurance. Consultant shall maintain Automobile Liability insurance at least as broad as ISO Form CA 00 01, covering Symbol 1 (any auto).

Minimum Limits: Coverage shall be in an amount not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage.

Scope of Coverage: Coverage shall apply to all “autos” (as defined in the policy) used in connection with the Services, including but not limited to: (i) all owned vehicles; (ii) hired or rented vehicles; and (iii) non-owned vehicles (such as employees’ personal vehicles used for City business).

MCS-90 Endorsement: If the Services involve the transportation of hazardous materials (as defined by the DOT), the policy shall be endorsed with an MCS-90 endorsement and a CA 99 48 (Pollution Liability - Broadened Coverage for Business Automobile) endorsement.

Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain Professional Liability insurance appropriate to the Consultant’s profession and the Services to be provided.

Minimum Limits: Coverage shall be in an amount not less than \$2,000,000 per claim and \$2,000,000 in the annual aggregate.

Retroactive Date: The policy inception date, continuity date, or retroactive date must be prior to the Effective Date of this Agreement. Consultant warrants that continuous coverage will be maintained, or an extended reporting period will be purchased, in accordance with the “Tail” requirements below.

Extended Reporting Period ("Tail"): Because this coverage is typically provided on a “claims-made” basis, Consultant shall maintain such insurance (or purchase an extended reporting period endorsement) for a period of no less than five (5) years after the final “Acceptance” of the Services by the City.

Scope of Coverage: The policy shall not contain any exclusions for: (i) vicarious liability for the acts or omissions of subconsultants; (ii) "contractual liability" (unless such coverage is provided by the CGL policy as required herein); or (iii) any specific Services identified in Exhibit “A”.

Workers Compensation Insurance. Consultant shall maintain Workers’ Compensation Insurance as required by the State of California, with Statutory Limits.

Employer’s Liability: Consultant shall maintain Employer’s Liability Insurance with limits of no less than \$2,000,000 per accident or disease.

Waiver of Subrogation: The policy shall be endorsed with a Waiver of Subrogation in favor of the City and the Indemnified Parties (as defined in Section 15). Consultant shall submit this endorsement to the City along with the certificate of insurance.

Alternate Employer Endorsement: If Consultant provides “leased” or “temporary” employees, the policy shall include an Alternate Employer Endorsement naming the City.

Sole Proprietor / Officer Exemption: If Consultant is a sole proprietor or a corporation with no employees (other than the officers), Consultant shall provide a signed Declaration of Exemption in a form acceptable to the City Attorney. Notwithstanding such exemption, the indemnity and defense obligations in Section 15 shall remain in full force and effect.

Umbrella or Excess Liability Insurance. Consultant may utilize an Umbrella or Excess Liability Insurance policy to meet the minimum limits required by this Agreement, provided that such coverage is at least as broad as the underlying primary policies (CGL, Automobile, and Employer’s Liability).

Follow Form Requirement: The Umbrella or Excess policy shall “follow form” to the underlying primary policies. Any exclusion or limitation in the primary policy that has been modified or deleted to comply with this Agreement (such as the “Contractual Liability” or “Additional Insured” requirements) must be reflected in the Umbrella or Excess policy.

Drop-Down Feature: The policy shall include a “drop-down” provision requiring the insurer to respond if the primary insurance is exhausted or proves to be uncollectible.

Pay on Behalf of: The policy shall use “Pay on Behalf of” wording as opposed to “Indemnity” or “Reimbursement” wording, ensuring the insurer pays the City directly for covered losses rather than requiring the Consultant to pay first and seek reimbursement.

Concurrency and Insureds: Effective dates shall be concurrent with the primary policies, and all Indemnified Parties (as defined in Section 15) shall be included as additional insureds under the Umbrella or Excess policy to the same extent as in the primary policies.

Primary and Non-Contributory: The Umbrella or Excess policy shall be endorsed to state that it is primary and non-contributory to any insurance or self-insurance maintained by the City.

(e) **Other Provisions.** Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

(f) **Other Requirements.** Consultant agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Upon request from the City, Consultant shall furnish certificates and endorsements from each subconsultant identical to those Consultant provides.
2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
3. The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.
4. Coverage provided by Consultant shall be primary and non-contributory, and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
5. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
6. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used)

Primary Coverage

For any claims related to this Contract, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers,

officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance.

Waiver of Subrogation

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Consultant, its employees, agents and subconsultants.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Consultant shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subconsultants

Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Entity is an additional insured on insurance required from subconsultants.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ADDENDUM “2”
FEDERAL FUNDS

If Consultant is selected/authorized to perform work on a project with federal funding and related requirements, an Agreement Addendum may be required at that time to incorporate federal requirements into the Agreement.