

**CITY OF PACIFIC GROVE  
VENDOR SERVICES AGREEMENT**

This VENDOR SERVICES AGREEMENT (“Agreement”) is made and effective \_\_\_\_\_, by and between the City of Pacific Grove, a municipal corporation (“City”), and \_\_\_\_\_ (“VENDOR”).

City wishes to retain the services of an experienced and qualified VENDOR to provide [Describe services to be provided] (“Services”). VENDOR represents and warrants that it is qualified to perform those Services. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

Unless terminated in accordance with Section 8 below, the AGREEMENT will continue in full force and effect from the Effective Date through [Insert Date]. Upon mutual written AGREEMENT, the term of this AGREEMENT can be extended annually for an additional one (1) year period, or longer as the parties agree.

2. SCOPE OF SERVICES

VENDOR will provide the Services listed in the Scope of Services attached hereto as Exhibit A. VENDOR warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

3. PERFORMANCE

- a. VENDOR shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks described herein. VENDOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of VENDOR hereunder in meeting its obligations under this Agreement.
- b. VENDOR shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.
- c. VENDOR shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by VENDOR or in any way affect the performance of its Services pursuant to this Agreement. VENDOR shall at all times observe and comply with all such laws and regulations. City, and its officers, employees, and agents shall not be liable at law or in equity occasioned by failure of VENDOR to comply with this Section.

- d. VENDOR agrees that in the performance of this Agreement or any sub-agreement hereunder, neither VENDOR nor any person acting on VENDOR's behalf shall refuse to employ or refuse to continue in any employment any person or discriminate on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, genetic information, marital status, sexual preference, sex, gender identity, gender expression, military or veteran status or age. Harassment in the workplace is not permitted in any form. VENDOR further agrees to comply with all laws with respect to employment when performing this Agreement.
- e. VENDOR shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this Agreement.
- f. VENDOR declares and warrants that no undue influence or pressure is used against or in concert with any officer, employee or agent of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial agreement or financial inducement. No officer, employee, or agent of City will receive compensation, directly or indirectly, from VENDOR, or from any officer, employee or agent of VENDOR, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

#### **IF RFP ADD: CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

VENDOR is bound by the contents of City's Request for Proposal on file hereto and incorporated herein as Exhibit D, and the contents of the proposal submitted by VENDOR, available on file at the [insert location ], hereto and incorporated herein as Exhibit E. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in VENDOR's Proposal.]

#### **4. CITY MANAGEMENT**

The City Manager, or designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by VENDOR, but not including the authority to enlarge the Scope of Work or change the compensation due to VENDOR. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change VENDOR's compensation, subject to Section 6 hereof.

#### **5. PAYMENT**

- a. For Services rendered pursuant to this AGREEMENT, VENDOR shall be paid in accordance with the Payment Schedule attached hereto as Exhibit B, provided, however, that in no event will the total amount of money paid the VENDOR, for the

Services initially contemplated by this AGREEMENT, exceed the sum of [Insert amount], unless otherwise first approved in writing by the City.

- b. The City Manager's contract authority is limited to \$39,999.99, which includes all costs. Contracts, including any contract amendments that exceed the total threshold, require City Council approval. Any contracts, including contract amendments that exceed the total threshold, which do not have City Council approval, shall be void.
- c. VENDOR shall submit invoices monthly for actual Services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for Services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If City disputes any of VENDOR's fees, it shall give written notice to VENDOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

#### 6. INSPECTION

City shall at all times have the right to inspect the work and materials. VENDOR shall furnish all reasonable aid and assistance required by City for the proper examination of the work and all parts thereof. Such inspection shall not relieve VENDOR from any obligation to perform said work strictly in accordance with the specifications or any modifications thereof and in compliance with the law.

#### 7. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- a. City may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon VENDOR at least thirty (30) days prior written notice. Upon receipt of said notice, VENDOR shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- b. In the event this Agreement is terminated pursuant to this Section, City shall pay to VENDOR the actual value of the Services performed up to the time of termination, provided that the Services performed are of value to the City. Upon termination of the Agreement pursuant to this Section, VENDOR shall submit an invoice to City pursuant to Section 6.c.

#### 8. DEFAULT OF VENDOR/FORCE MAJEURE

- a. VENDOR's failure to comply with the provisions of this Agreement shall constitute a default. In the event that VENDOR is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating VENDOR for any Services performed after the date of default and can terminate this Agreement immediately by written notice to the VENDOR. If such failure by the VENDOR to make progress in the performance of Services hereunder arises out of causes beyond the

VENDOR's control, and without fault or negligence of the VENDOR, it shall not be considered a default.

- b. If the City Manager or designee determines VENDOR is in default in the performance of any of the terms or conditions of this Agreement, they shall cause to be served upon VENDOR a written notice of the default. The VENDOR shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event VENDOR fails to cure its default within such period of time or fails to present City with a written plan for the cure of the default, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## 9. OWNERSHIP OF DOCUMENTS

- a. VENDOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of Services under this Agreement. VENDOR shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. VENDOR shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records at VENDOR's office; shall permit City to make copies and transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. If there is a substantial billing deviation adverse to City, then the cost of an audit shall be borne by VENDOR. Such records, together with supporting documents, shall be maintained at City Hall for a minimum period of five (5) years after receipt of final payment.
- b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of VENDOR. With respect to computer files, VENDOR shall make available to City, at City's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## 10. RECORD AUDIT

In accordance with Government Code, Section 8546.7, for expenditures of greater than \$10,000, records of both City and VENDOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

## 11. INDEMNIFICATION

VENDOR shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, employees, agents, and volunteers (collectively, City) from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with VENDOR's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and VENDOR, or should City otherwise find VENDOR's legal counsel unacceptable, then VENDOR shall reimburse the City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The VENDOR shall promptly pay any final judgment rendered against the City (and its officers, employees, agents and volunteers) with respect to claims determined by a trier of fact to have been the result of the VENDOR's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

VENDOR obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by City. However, without affecting the rights of City under any provision of this agreement, VENDOR shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of VENDOR will be for that entire portion or percentage of liability not attributable to the active negligence of City.

No City officer, employee or agent shall be personally liable to VENDOR, in the event of any default or breach by City or for any amount that may become due to VENDOR.

## 12. INSURANCE

Without limiting VENDOR's indemnification of City, and prior to commencement of work, VENDOR shall obtain, provide, and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described in **Exhibit C** and in a form that is satisfactory to City.

## 13. INDEPENDENT CONTRACTOR

- a. VENDOR is and shall at all times remain as to City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of VENDOR

shall at all times be under VENDOR's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of VENDOR or any of VENDOR's officers, employees, or agents, except as set forth in this Agreement. VENDOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. VENDOR shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

- b. No employee benefits shall be available to VENDOR in connection with the performance of this Agreement. Except for the fees paid to VENDOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to VENDOR for performing services hereunder for City. City shall not be liable for compensation or indemnification to VENDOR for injury or sickness arising out of performing services hereunder.
- c. Any and all employees or sub-contractors of VENDOR under this Agreement, while engaged in the performance of any work or services required by VENDOR under this Agreement, shall be considered employees or sub-contractors of VENDOR only and not of City. Any and all claims that may arise under the Workers' Compensation Act on behalf of said employees or sub-contractors, while so engaged and all claims made by a third party as a consequence of any negligent act or omission on the part of the VENDOR's employees or sub-contractors, while so engaged in any of the work or services provided for or rendered herein shall not be City's obligation.

#### 14. SUBCONTRACTORS

Before Vendor retains or hires a subcontractor to provide any work, labor, or services relative to this AGREEMENT, VENDOR must:

- a. Present the name and identifying information of the subcontractor that will provide any work, labor, or services to City.
- b. Present to the City the form of subcontract that will be used with the subcontractor for City's approval, which approval will not be unreasonably withheld. Such subcontract AGREEMENT must include an indemnity agreement that is generally in accord with the indemnity obligations contained in Section 11 of this Agreement and must specifically name the City as an indemnified party; and
- c. Secure from the subcontractor evidence of insurance coverage that meets with this Agreement including naming the City as an additional insured as required by this Agreement, unless such requirement is waived in writing by the City.

#### 15. NO BENEFIT TO ARISE TO CITY OFFICERS AND EMPLOYEES

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

16. CONFLICT OF INTEREST

VENDOR shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement, and shall comply with the City's conflict of interest code.

If City determines VENDOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), VENDOR shall complete and file and shall require any other person performing Services under this Agreement to complete and file a "Statement of Economic Interest" with City disclosing VENDOR's and/or such other person's financial interests.

17. NO WAIVER OF BREACH/TIME

The waiver by City of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

18. CONFIDENTIAL INFORMATION/RELEASE OF INFORMATION

- a. All information gained by VENDOR in performance of this Agreement shall be considered confidential and shall not be released by VENDOR without City's prior written authorization. VENDOR, its officers, employees, agents, or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided VENDOR gives City notice of such court order or subpoena.
- b. VENDOR shall promptly notify City should VENDOR, its officers, employees, agents, or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the Services performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent VENDOR and/or be present at any deposition, hearing, or similar proceeding. VENDOR agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by VENDOR.

However, City’s right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

19. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: (City Employee/Department)  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950

To Vendor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice is effective on the date of personal service, or 5 days following deposit in a United States mailbox, or date of postmark. The parties may agree to notice by email.

20. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

21. ASSIGNMENT

VENDOR shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City. Subject to the foregoing, all terms of the Agreement will be binding upon, enforceable by and inure to the benefit of the parties and their successors and assigns.

22. GOVERNING LAW



City and VENDOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in Monterey County, or the federal district court with jurisdiction over the City. VENDOR agrees not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

23. DISPUTE RESOLUTION; ATTORNEY'S FEES

VENDOR shall continue to perform under this Agreement during any dispute. VENDOR and City hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of VENDOR warrants and represents that they have the authority to execute this Agreement on behalf of the VENDOR and the authority to bind VENDOR to the performance of its obligations hereunder.

25. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to their obligations described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

26. AMENDMENT

- a. Any modification or amendment to this Agreement must be in writing.
- b. Neither City nor VENDOR shall be deemed to have waived any obligation of the other, or to have agreed to any modification to this Agreement unless it is in writing, and signed by the party giving the waiver.
- c.

27. INTERPRETATION OF CONFLICTING PROVISIONS

In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control

28. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

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

CITY OF PACIFIC GROVE

VENDOR

By: \_\_\_\_\_  
Department Director

By: \_\_\_\_\_  
Vendor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager or Mayor

By: \_\_\_\_\_  
City Administrative Services Department

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

Attachments:      Exhibit A      Scope of Services  
                         Exhibit B      Payment Schedule

Exhibit C Insurance Requirements  
[Exhibit D Request for Proposal]  
[Exhibit E Vendor's Proposal]

**Exhibit A**

Scope of Work/Services

**Exhibit B**

Payment Schedule

## Exhibit C

### Insurance Specifications

**General liability insurance.** VENDOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

**Automobile liability insurance.** VENDOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the VENDOR arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Umbrella or excess liability insurance.** [Optional depending on limits required] VENDOR shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer’s liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall “follow form” to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

**Workers’ compensation insurance.** VENDOR shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).

VENDOR shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

## **Other provisions or requirements**

**Proof of insurance.** VENDOR shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** VENDOR 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 VENDOR, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by VENDOR shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**Agency's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by VENDOR or City will withhold amounts sufficient to pay premium from VENDOR payments. In the alternative, City may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, employees and volunteers or shall specifically allow VENDOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. VENDOR hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** VENDOR acknowledges and agrees that any actual or alleged failure on the part of the City to inform VENDOR of non-compliance with any requirement imposes no additional obligations on the AGENCY nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the VENDOR maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the VENDOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**Notice of cancellation.** VENDOR agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that City and its officers, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that VENDOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** VENDOR agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the project who is brought onto or involved in the project by VENDOR, provide the same minimum insurance coverage and endorsements required of VENDOR. VENDOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. VENDOR agrees that upon request, all AGREEMENTS with consultants, subcontractors, and others engaged in the project will be submitted to City for review.



**Agency's right to revise specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the VENDOR ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the VENDOR, the City and VENDOR may renegotiate VENDOR's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

**Timely notice of claims.** VENDOR shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from VENDOR's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** VENDOR shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

**Cyber Technology Errors and Omissions.** VENDOR shall procure and maintain insurance with limits in an amount not less than \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- Liability arising from the unauthorized release of information for which an entity has the legal obligation to keep private, such as personally identifiable information (PII) and protected health information (PHI).
- Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- Liability arising from the failure of technology products (software and hardware) required under the contract for VENDOR to properly perform the intended services.
- Claims alleging the failure of computer security that result in the transmission of malicious code, deletion, destruction or alteration of data, or the denial of service.
- Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- Liability arising from the rendering, or failure to render, professional services.
- Defense costs in regulatory proceedings (state and federal) involving a violation of privacy laws or intellectual property rights.
- Crisis management and other expert services.

If coverage is maintained on a claims-made basis, the VENDOR shall maintain such coverage for an additional three (3) years following termination of the contract.

**Cyber liability insurance.** VENDOR shall procure and maintain Cyber Security and Privacy Liability insurance in an amount of no less than \$1,000,000 per occurrence/loss which shall include the following coverage:

- Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.
- Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
- Liability arising from the failure of technology products (software) required under the contract for VENDOR to properly perform the services intended.
- Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- Liability arising from the failure to render professional services

If coverage is maintained on a claims-made basis, VENDOR shall maintain such coverage for an additional period of three (3) years following termination of the contract.