

RESOLUTION NO. 2014-017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING THE CONTRACT FOR INDEPENDENT AUDIT SERVICES WITH MACIAS GINI AND O'CONNELL LLP

WHEREAS, the City currently undergoes a complete audit of its annual financial statements by an outside independent auditing firm; and

WHEREAS, the current independent audit contract ended with the completion of the June 30, 2013 audit; and

WHEREAS, the City of Rohnert Park Municipal Code Title 3 Chapter 3.04 provides that the city's purchasing functions shall be governed by the city's purchasing policy; and

WHEREAS, consistent with City of Rohnert Park Purchasing Policy Section 3.6.6(D), the City staff solicited proposals for Independent Audit Services, and seven (7) proposals were received of which four (4) firms were interviewed; and

WHEREAS, staff recommended Macias Gini and O'Connell LLP (MGO) based on their professional skill and qualifications, the scope of work included in their proposal and other factors identified in the staff report presented to the City Council on February 25, 2014; and

WHEREAS, contract will cover audit services for three (3) audit years, with the possibility of a two year extension: and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve a contract by and between Macias Gini and O'Connell and the City of Rohnert Park for independent audit services in the following amounts:

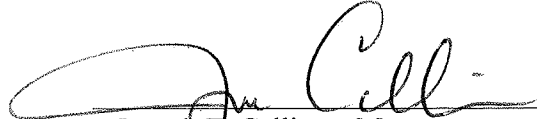
<u>Contractor Name</u>	<u>Audit Year 2013-2014</u>	<u>Audit Year 2014-2015</u>	<u>Audit Year 2015-2016</u>
Macias Gini and O'Connell Walnut Creek, CA	\$71,055	\$73,188	\$75,383

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute documents pertaining to same for and on behalf of the City of Rohnert Park, including the agreement for services in substantially similar form as shown in Exhibit A, subject to minor modification by the City Manager or City Attorney.


DULY AND REGULARLY ADOPTED this 25th day of February, 2014.



CITY OF ROHNERT PARK


Joseph T. Callinan, Mayor

ATTEST:


JoAnne M. Buerger, City Clerk

Attachments: Exhibit A

BELFORTE: ABSENT MACKENZIE: AYE STAFFORD: AYE AHANOTU: AYE CALLINAN: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)



Exhibit A

**City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928**

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the 25th day of February, 2014 by and between the CITY OF ROHNERT PARK ("City"), a California municipal corporation, and Macias Gini and O'Connell LLP ("Consultant")

RECITALS

WHEREAS, City desires to obtain professional Audit Services to perform examination of the City's financial records; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The Accounting Supervisor is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign David Bullock, CPA to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence upon receipt of a written notice to proceed from City, but in no event prior to receiving a fully executed agreement from City and obtaining and delivering the required insurance coverage, and satisfactory evidence thereof, to City. Bound copies of the Comprehensive Annual Financial Report, and the Rohnert Park Financing Authority financial statements are to be completed no later than December 15 for each consecutive year 2014, 2015 & 2016. All additional work is to be completed by March of the following year.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed for the years 2013/2014 \$71,055, 2014/2015 \$73,188, & 2015/2016 \$75,383. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

A. Timing of Payment. Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

B. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

C. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

D. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it is in the form of sick leave, administrative leave, or for any other form of absence.

E. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate

Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution by both parties and shall continue for three years with the option to renew the agreement for two (2) additional years upon mutual agreement of both parties. Contract shall remain in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all work papers compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. (Except as stated in paragraph 19. D. regarding Consultant not being liable for such use.). Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law. Consultant's working papers, including audit programs, analytical review schedules, and statistical sampling results, analyses and schedules are the Consultant's property.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest

shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, elected official, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, elected officials, employees, agents, and volunteers from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement. This indemnification shall be regardless of and not in any way limited by the insurance requirements of this contract. This indemnification is for the full period of time allowed by law and shall survive the termination of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor,

Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's sub-consultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's office of the City Clerk.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment

without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance. Without limiting consultant's indemnification provided herein, Consultant shall comply with the requirements set forth in Exhibit C to this Agreement.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately copies of studies, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant shall be entitled to retain copies of such documents and shall not be required to erase all electronic backup copies or data. As stated above in section 8, Consultant's working papers remain the property of Consultant. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work

B. Exhibit B: Compensation

C. Exhibit C: Insurance Requirements

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and sub-consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

37. STATEMENT OF ECONOMIC INTEREST. If City determines Consultant comes within the definition of Consultant under the Political Reform Act (Government Code §87100), Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Clerk of the City of Rohnert Park disclosing Consultant and/or such other person's financial interests.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF ROHNERT PARK

CONSULTANT

By: _____
City Manager

Date: _____

By: _____
Title: _____

Date: _____

Per Resolution No. 2014-__ adopted by the
Rohnert Park City Council at its meeting of
February 25, 2014 .

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
City Clerk

EXHIBIT A

Scope of Work

The City Council and Finance Department requires outside auditing services to audit all of the City funds. In addition the audit firm is to issue the required opinion letters in order for the City to satisfy the requirements to issue a “single audit” edition of its General Purpose Financial Statement.

The audits of the General Purpose Financial Statements shall be made in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States, and will include tests of the accounting records and such other auditing procedures as the auditor considers necessary in the circumstances in order to allow for an expression of an opinion of the General Purpose Financial Statements being audited. Audits to be performed include:

- Comprehensive Annual Financial Report (CAFR)
- Single Audit Financial Statements if required
- Report on the City’s GANN Appropriations Limit calculations
- Rohnert Park Financing Authority Financial Report (RPFA)
- Transportation Development Act (TDA) Compliance Report if required

The auditors will be required to observe the adequacy of the system of internal control, and if weaknesses are noted, make appropriate recommendations. The auditor’s comments shall be included in a separate management letter.

The scope of the audit shall comply with all the general law provisions, code regulations and bond requirements of all the funds of the City of Rohnert Park. All state and federal regulations regarding audit requirements shall be included in the scope of the audit. It shall be the auditor’s responsibility to assist the City in observation of and compliance with the necessary GFOA requirements for the Certificate of Achievement for Excellence in Financial Reporting.

It shall be the auditor’s responsibility to have their department print all the reports.

Auditors shall provide in-house client training on new standard’s and government auditing and financial reporting as is warranted.

EXHIBIT B Compensation

Fees and Billing Schedule				
Service	Estimated Hours	2013/14	2014/15	2015/16
City Comprehensive Annual Financial Report (including preparation)	440	\$ 61,920	\$ 63,778	\$ 65,691
Single Audit Financial Statements (One Major Program)	35	4,065	4,208	4,334
Report on City's Gann Appropriations Limit Calculations	5	890	917	945
Total City	480	\$ 66,895	\$ 68,903	\$ 70,970
Financing Authority Financial Report	20	2,660	2,740	2,822
Transportation Development Act (TDA) Compliance Report	10	1,500	1,545	1,591
Total Estimated Hours (All-Inclusive Maximum Price)	510	\$ 71,055	\$ 73,188	\$ 75,383

Schedule of Rates and estimated hours of Each Labor Class For Fiscal 2013/2014 Professional Audit Services				
Labor Class	Standard Hourly Rate	Quoted Hourly Rate	Total Hours	Total
Partner-in-Charge	\$ 380	\$ 266	35	\$ 9,310
Technical Reviewer	380	266	15	3,990
Engagement Director	300	210	80	16,800
Supervising Auditor	165	116	180	20,790
Staff Auditors	125	88	180	15,750
Administrative Assistants	90	63	20	1,260
Total				\$ 67,900
Out-of-Pocket Expenses				\$ 3,155
Total All-Inclusive Price for 2013/14 Audit				\$ 71,055
Total All-Inclusive Price for 2014/15 Audit				\$ 73,188
Total All-Inclusive Price for 2015/16 Audit				\$ 75,383

Schedule of Estimate Hours of Each Labor Class						
Labor Class	City	Single Audit	GANN Calculation Review	Financing Authority	TDA Compliance	Total Hours
Partner-in-Charge	30	2	1	1	1	35
Technical Reviewer	10	3	-	1	1	15
Engagement Director	70	2	2	4	2	80
Supervising Auditor	170	1	2	5	2	180
Staff Auditors	145	23	-	8	4	180
Administrative Assistants	15	4	-	1	-	20
Total Estimated Hours	440	35	5	20	10	510

EXHIBIT C

INSURANCE REQUIREMENTS for Consultant Services Agreement

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

Consultant shall provide the following types and amounts of insurance:

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

Business Auto Coverage on ISO Business Auto Coverage form CA 0001 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 (One Million Dollars) per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

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

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage's. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, sub-consultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 (One Million Dollars) per claim and in the aggregate. The policy must "pay on behalf of" the

insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insured's the City, its officers, elected officials, employees, agents, and volunteers using standard ISO endorsement No. CG 20 10 or an approved equivalent. If completed operations coverage is excluded, the policy must be endorsed to include such coverage. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. The worker's compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, elected officials, employees, agents, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.
4. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
5. None of the coverage's 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.
6. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
7. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
8. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverage's required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or

in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

9. Certificate(s) are to reflect that the insurer will provide 30 days' notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
10. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self-insurance available to City.
11. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
12. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. 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 Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
14. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
15. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.