

CITY OF COACHELLA
SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

This Software License and Professional Services Agreement ("Agreement") is made by and between the City of Coachella, a municipal corporation organized under the laws of the State of California with its principal place of business at 53990 Enterprise Way, Coachella, CA 92236 ("City") and ClearGov, Inc., a Delaware Corporation, with its principal place of business at 2 Mill & Main Place, #630, Maynard, MA 01754 ("Provider") on this 1st day of July, 2026 ("Effective Date"). City and Provider may be individually referred to as "Party" and collectively as the "Parties".

RECITALS

A. Provider is the owner of its proprietary software that the City has selected to use for the City's budgeting and financial reporting processes ("Software").

B. Provider desires to grant to City and City desires to obtain from Provider a nonexclusive license to use the Software and obtain the services in accordance with the terms and on the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Use of the Software. Provider shall provide City with the Software and Services, which are described in the Provider's Proposal and attached hereto as Exhibit "A" and incorporated herein by reference. The specifications, performance and functionality of the Software shall comply in all respects with the requirements set forth in the Provider Proposal and any documentation for the Software. The City shall have a fully paid license to use the Software for its operations, subject to the payment of the license fees set forth in Exhibit "A."

2. Services. Provider shall further provide City with implementation, installation, project management, and training services in connection with the implementation of the Software as further described in Exhibit "A."

3. Document Format and Accessibility Requirements. ClearGov acknowledges the importance of providing accessible technology to public sector users and is actively working toward substantial conformance of the ClearGov Service with the applicable Level AA success criteria and conformance requirements of the Web Content Accessibility Guidelines version 2.1 ("WCAG 2.1 AA"). Upon request, ClearGov shall provide Customer with a current Voluntary Product Accessibility Template ("VPAT") or similar accessibility conformance documentation describing the accessibility features and status of the ClearGov Service.

ClearGov maintains an accessibility program that includes periodic review and evaluation of the ClearGov Service for accessibility improvements. If ClearGov becomes aware of a material accessibility issue affecting the ClearGov Service, ClearGov will use commercially reasonable efforts to evaluate and address such issue in accordance with its severity, technical feasibility, and product development roadmap. Nothing in this section shall be construed as a representation or warranty that the ClearGov Service is fully conformant with WCAG 2.1 AA at all times, nor shall any accessibility issue constitute a material breach of this Agreement unless otherwise expressly stated herein. ClearGov will prioritize remediation of accessibility issues that materially impair use of core functionality by end users.

The City retains responsibility for ensuring that its web functionality, web pages, mobile applications, and web-accessible documents comply with WCAG 2.1 AA or higher. Provider

agrees to indemnify and defend the City against all claims, lawsuits, complaints, challenges, and legal action against the City as a result of Provider's failure to ensure its products meet compliance of ADA accessibility standards, including, at minimum, WCAG 2.1 AA or the required accessibility standard as amended by the U.S. Department of Justice.

4. Project Schedule. Provider shall provide the Software in a prompt and timely manner. Any delays or changes in implementing the Software shall be subject to the terms of Section 8.

5. Compensation.

a Subject to paragraph 5(b) below, the City shall pay for the Software, including the related Services, in accordance with the 3-year license subscription schedule set forth in Exhibit "A."

b In no event shall the total amount paid for the Software, including related services, rendered by Provider under this Agreement exceed the sum of Two Hundred Ninety-Six Thousand Two Hundred and Seventeen Dollars and 00/100 (\$296,217.00) unless there is a change in the scope of the Services and such change is reflected in the execution of a written amendment pursuant to Section 7 of this Agreement.

c Payment to Provider shall be considered as full compensation for all personnel, materials, supplies, and equipment used in performing the Services.

d City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Provider to correct such work or billings or seek any other legal remedy.

6. Maintenance and Support Services. Following the warranty period for the Software, Provider has agreed to make maintenance and support services for the Software available to City in accordance with the terms of the Provider Proposal, which is attached hereto as Exhibit "A." The Software Support and Maintenance Provisions contain mutually agreed upon pricing for such services, which pricing shall remain in effect for so long as City makes the payments set forth in Exhibit "A."

7. Contract Documents. The following documents shall govern the performance of the Scope of Work and the terms and conditions for the provision of the Software and Services (collectively, the "Contract Documents"):

a This Agreement;

b Provider Proposal (Exhibit "A"); and

c City Insurance Requirements (Exhibit "B").

In the event of any conflict between the terms and conditions of the Contract Documents, the Contract Documents shall govern in accordance with the foregoing order of priority with this Agreement acting as the master agreement.

8. Additional Work. If changes in the Project and the Contract Documents seem merited by Provider or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Provider with a statement of the estimated changes in the Provider Proposal. An amendment to the Agreement shall be prepared by the City and executed by both

parties before any change becomes binding upon City. Provider acknowledges that any material amendment to the Contract Documents, particularly with respect to the schedule of charges in the Provider Proposal, may be subject to approval by the City Council. Such amendment shall not render ineffective or invalidate unaffected portions of the Contract Documents.

9. Maintenance of Records. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Provider and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement for inspection by the City.

10. Notice to Proceed. The obligations of Provider to commence performance shall be triggered by Provider's receipt of notice from the City to proceed. Thereafter, Provider shall proceed in accordance with the Project Schedule. The Notice to Proceed shall set forth the date of commencement of the Project Schedule.

11. Delays in Performance.

a Neither the City nor Provider shall be considered in default of the Contract Documents for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to: abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance under the Contract Documents. It is not intended by the parties that any such delay shall extend for a period in excess of sixty (60) days.

12. Confidentiality. Provider understands and agrees that, in the performance of the work or services under this Agreement may involve access to City data or information that is Confidential Information. Provider agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Provider and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information and only as necessary in the performance of this Agreement. Provider's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. Provider agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Provider will not disclose any Confidential Information of City except as compelled by a court or administrative body or required by any law or regulation. Provider will give notice if any disclosure request is received for City's Confidential Information, so City may file an objection with the relevant court or administrative body.

13. Compliance with Law.

a In carrying out its obligations under the Contract Documents, Provider shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local

government, including but not limited to Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

b If required, Provider shall assist the City, as requested, in obtaining and maintaining all permits required of Provider by federal, state and local regulatory agencies.

14. Warranty

- a. Software Warranty. Provider warrants that the Software will conform in all material respects to the Functional Requirements for a period of twenty-four (24) months ("Warranty Period") following the date upon which the Software has completed user acceptance testing and is placed in use by City in a live production environment ("Go-Live"). Provider agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the Warranty Period. In addition, Provider warrants that any customization and/or error correction to the Software will conform in all material respects to the Functional Requirements. This warranty is void if the City or any other third party intentionally changes or modifies the Software without the permission of Provider.
- b. Malware. Provider warrants that the Software shall not contain any lock, counter, CPU reference, virus, worm, or other malware or device capable of halting operations or erasing or altering data or programs. Provider further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the Software (or any hardware) or Services.
- c. Service Warranty. Provider warrants that all Services provided under this Agreement will be performed in a professional, competent and workmanlike manner in accordance with the requirements of the Project Schedule. City shall notify Provider in writing of any breach of this warranty no later than ninety (90) days following Go-Live. Provider shall further provide a sufficient number of properly trained and competent staff to carry out the Services in a skilled and professional manner consistent with the best practices in the software industry and in compliance with the Project Schedule.
- d. Remedies. Provider covenants that it will make corrections of program malfunctions or errors which are reported in writing to Provider during the Warranty Period and which are necessary for the Software to conform to the warranties set forth in Section 13 of this Agreement. City agrees to allow Provider the opportunity to make repeated efforts within a thirty (30) day time period to correct programming errors or malfunctions as warranted in this Agreement. Provider agrees that program malfunctions that result in an inoperable system resulting in a financial impact to the City, or inefficient work-around, will be given its highest priority with the problem corrected as soon as practicably possible, consistent with a high priority item under the Software Support and Maintenance Provisions, using its most experienced and knowledgeable resources. Provider will strive to have any and all malfunctions resolved within no more than five calendar days.

15. Acceptance Testing; Final Acceptance. All Software and Services shall be subject to acceptance testing by City to verify, to its reasonable satisfaction, that each deliverable conforms to the requirements of a particular phase or milestone as set forth in the Exhibit "A" hereto or with respect to the Software, that it conforms to the Functional Requirements in all material respects

and does not contain errors. City and Provider will agree on a reasonable testing methodology for the Software. Acceptance testing will not begin for any deliverable until sufficient data, as reasonably determined by City, has been converted and loaded into the Software or component thereof to enable City to test the functionality of the Software or any component thereof in a test environment that approximates a live production environment. If City determines that any Software deliverable or Services do not conform with the foregoing requirements, City shall promptly deliver to Provider a notice of non-conformity, and Provider shall work diligently to correct all nonconformities free of charge to City by issuing one or more error corrections or re-performing the defective Services. Each error correction shall be subject to additional acceptance testing by City. Notwithstanding the acceptance of any deliverable by City, such deliverable shall remain subject to the warranty obligations of Provider for the entire Warranty Period. "Final Acceptance" shall occur ninety (90) days after Go-Live provided that the Software is operating properly in accordance with all of the Functional Requirements and there are no material warranty issues that adversely impact the ability of City to operate the Software.

16. Assignment and Subcontractors. Provider shall not subcontract, assign or transfer this Agreement or any rights under or interest in the Contract Documents without the written consent of the City, which may be withheld for any reason at the sole discretion of the City. Nothing contained herein shall prevent Provider from employing independent contractors, as well as employees, to provide Services as Provider may deem appropriate, provided, however, that Provider shall remain fully responsible for such independent contractors.

17. Independent Contractor.

a Provider enters into this Agreement as an independent contractor and not as an employee of the City. The Provider shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Provider are employees, agents, contractors or subcontractors of the Provider and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Provider by any such employees, agents, contractors subcontractors, or any other person resulting from performance of this Agreement.

b Provider agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.

18. Integration. The Contract Documents represent the entire understanding of the City and Provider as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

19. Title to Software. Provider represents and warrants that it is the sole owner of the Software or, if not the owner, that it has received all legally required authorizations from the owner to license the Software as contemplated herein, has the full power to grant the rights required by this Agreement, and that neither the Software, nor its use in accordance with the Contract Documents, will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or City.

20. Infringement and Performance Breach Remedies. If it is claimed that any work furnished by Provider, whether first developed by Provider for the City or not, infringes any intellectual property right or is otherwise unlawful, Provider agrees to defend or settle any such claim or suit

at Provider's expense and to indemnify and hold the City harmless from any losses, damages or harm, including attorney's fees and legal expenses, incurred as a result of such claim. Without the City's prior written approval, Provider shall not accept any liability on the City's behalf for the infringement, nor shall Provider reach a settlement that from the City perspective impairs the value or usefulness of the work that is the subject of the infringement claim. Provider will also pay all damages and costs that by final judgment, settlement or other resolution are assessed against the City due to such alleged or proven infringement and reimburse the City for any direct damages suffered by the City as a result of the infringement claim, including but not limited to attorney's fees. Should Provider find, or be found, to have infringed on any intellectual property rights, Provider will procure; (i) a right for the City to continue using the applicable Software or Work Product, (ii) a solution to mitigate the infringement, or (iii) a product to replace the infringing product that provides the functionality and complies with the specifications contained in the Contract Documents. The City shall not incur any additional costs related to the aforementioned remedies.

21. Termination

- a. Termination for Default. Subject to the right to cure contained in Section 21.b., the City may terminate this Agreement in whole or in part, at any time that the City determines that Provider is in material default of its obligations under the Contract Documents. Termination for default is effective on the date specified in the City's written notice of default. Should Provider fail to cure a default, then in addition to any other remedies provided by law or the Contract Documents, Provider shall compensate the City's actual costs to obtain substitute performance. A termination for default shall be deemed a termination for convenience if the termination for default is later found to be without justification.
- b. Cure. Provider shall have a period of thirty (30) days following a written notice of default to either cure such default or if such default cannot be cured within such period, to provide evidence satisfactory to City, in its sole discretion, that Provider is taking action to cure such default.
- c. Non-Renewal. City may terminate this Agreement by providing written notice to Provider of such termination thirty (30) days prior to the commencement of the next annual billing cycle.
- d. Termination for Non-Appropriation. City's payment obligation under this Agreement extends only to funds appropriated annually by City's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, City's applicable department responsible for this Agreement agrees to include in its budget request appropriations sufficient to cover the annual financial obligations under this Agreement. However, City's governing body has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. If City is appropriated insufficient funds to continue annual payments under this Agreement, City may terminate this Agreement effective upon the last day of the fiscal year for which funds were appropriated. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to the effective termination date. Provider's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This Section controls against any and all other provisions of the Agreement.
- e. Software License. If there is a termination for any reason, the City shall have the right to elect to (i) retain and use any Software for which City has paid the license fee to

Provider; or (ii) return and discontinue use of such Software in exchange for a refund of such license fee.

22. Indemnification. Provider shall indemnify, defend (with counsel approved by City), and hold harmless the City, its officers, officials, agents, and employees (collectively, the "Indemnitees") from and against any and all claims, damages, demands, liability, costs, losses and expenses, (all of the foregoing collectively "Claims"), including without limitation court costs and reasonable attorneys' fees, which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, Provider's performance of services pursuant to this Agreement, including without limitation, Claims arising on account of injury to or death of persons or damage to property. City does not and shall not waive any rights against Provider which City may have pursuant to this Section because of Provider's provision of insurance policies required by this Agreement. Provider's obligations to defend and indemnify the City shall survive the expiration or termination of this Agreement. Provider shall not be required to indemnify City for Claims arising from the sole negligence or willful misconduct of the Indemnitees.

23. Conflicts of Interest.

- a. Provider covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any present interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its Services hereunder.
- b. Provider shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City's Contract Administrator determines in writing that Provider's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Provider also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Agreement, City determines and notifies Provider in writing that Provider's duties under this Agreement warrant greater disclosure by Provider than was originally contemplated. Provider shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

24. Liability of Contractor. Provider shall be responsible for performing the services under this Agreement in a manner which is consistent with the generally-accepted standards of the Provider's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Provider or its employees, agents, contractors or subcontractors.

25. Insurance.

- a. Provider will comply with the "Insurance Requirements" of City which are attached hereto as Exhibit "B" and included as a part of this Agreement.
- b. No limitation on liability contained in the Contract Documents shall apply to any third party claim for personal injury or wrongful death arising from the negligent acts or willful misconduct of either party, its agents or assigns. Furthermore, no limitation on liability applicable to Provider shall apply to any third party claim that the Software infringes upon the intellectual property rights of another party, nor to the obligation

of Provider to deliver the Software and Services in accordance with the Scope of Work and Provider's warranty obligations.

26. Laws, Venue, and Attorneys' Fees. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in a state or federal court situated in the County of Riverside, State of California.

27. Documents. Provider shall deliver to City no less than one (1) full set of documentation, manuals, and training materials for the Software. City shall have the right to copy such documents and materials for its own internal use of the Software.

28. Project Manager. Provider shall assign a qualified Project Manager prior to or upon commencement of implementation. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

29. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered in person or sent via commercial overnight delivery or by certified mail, addressed to each party at the address set forth below or such other address for which a party has given notice in accordance with this section. Notice will be effective upon receipt, or within five (5) days of delivery.

City:

City of Coachella
53990 Enterprise Way
Coachella, CA 92236
ATTN: Finance Director

Provider:

ClearGov, Inc.
2 Mill & Main Place, #630
Maynard, MA 01754
ATTN: Project Manager

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

31. Non-Discrimination. Provider shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

32. Prohibited Interests. Provider maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement. Further, Provider warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Provider, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

33. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

34. Counterparts. This Agreement and any exhibits, amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other

counterpart signatures, is treated as if executed upon one original of this Agreement or any amendment or renewal. A signature by any party to this Agreement provided by facsimile or electronic mail is binding upon that party as if it were the original.

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

CITY OF COACHELLA

CLEARGOV, INC.

APPROVED BY:

APPROVED BY:

Gustavo J. Romo
City Manager

Michael Mattson
Chief Revenue Officer

ATTESTED BY:

City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney

EXHIBIT A
SOFTWARE SERVICES

Provider's Proposal, dated May 6, 2026 is hereby incorporated into this Agreement by reference. The Proposal is on file with the City for inspection.

EXHIBIT B INSURANCE REQUIREMENTS

1. Insurance. Provider shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Provider shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Additional Insured

The City of Coachella, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Provider's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

b. Commercial General Liability

(i) The Provider shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

Insurance Services Office Commercial General Liability coverage
(Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Contractual Liability with respect to this Contract
- (7) Broad Form Property Damage
- (8) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its elected and appointed officials, officers, employees, agents, and City-designated volunteers additional insured status using ISO endorsement forms CG 20 10 11 85, CG 20 10, or CG 20 26, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

c. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Provider shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its elected and appointed officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

d. Workers' Compensation/Employer's Liability

35. Provider certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

36. To the extent Provider has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Provider shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Provider shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

e. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Provider shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Provider. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

f. Privacy/Network Security (Cyber)

At all times during the performance of the work under this Agreement, the Provider shall maintain privacy/network security insurance for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and the (4) introduction, implantation or spread of malicious software code, in a form and with insurance companies acceptable to the City.

g. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$2,000,000 per claim and aggregate (errors and omissions)
Cyber Liability	\$1,000,000 per occurrence and aggregate

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

h. Evidence Required

Prior to execution of the Agreement, the Provider shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

i. Policy Provisions Required

(i) Provider shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Provider shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of the premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Provider shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration. If such coverage is cancelled or reduced, Provider shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Provider's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the Effective Date of this Agreement. Provider shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Provider shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the Effective Date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Provider or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Provider hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Provider from liability in excess of such coverage, nor shall it limit the Provider's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

j. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

k. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Provider, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Provider pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, 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 Provider or City will withhold amounts sufficient to pay premium from Provider payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Provider to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

I. Subconsultant Insurance Requirements. Provider shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Provider, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.