

**CONSULTANT SERVICES AGREEMENT  
BETWEEN THE CITY OF COLUSA AND  
WYATT PAXTON CONSULTING**

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**THIS AGREEMENT** (hereinafter referred to as “Agreement”) is made by and between the CITY OF COLUSA, a municipal corporation, having its principal place of business at 425 Webster Street, Colusa California 95932, (herein “City”) and Wyatt Paxton CONSULTING, a California Sole Proprietorship having a principal place of business at P.O Box 493412 Redding, CA, (herein “Consultant”), wherein Consultant agrees to provide the City and City agrees to accept the services specified herein.

**WHEREAS**, the City proposes to retain the services of Consultant to serve as Building Official Consultant, Building Inspector and plan checker for City of Colusa, and

**WHEREAS**, Consultant is qualified and experienced to perform those services.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**1. SCOPE OF SERVICES.**

Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary for completion of the services described in the Description of Scope of Services, attached hereto and incorporated herein by reference to Exhibit A, subject to the direction of the City Contract Administrator, as provided from time to time. Consultant shall provide no legal advice or legal services.

**2. CONTRACT ADMINISTRATOR.**

City Manager at telephone number (530) 458-4740 will administer this Agreement on behalf of City (herein “**Contract Administrator**”). Wyatt Paxton at telephone number (530) 784-8000 is the authorized representative for Consultant and shall administer this Agreement on behalf of Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

**3. EXHIBITS.**

Attached to this Agreement are the following Exhibits. Said Exhibits shall be initialed by Consultant. Said Exhibits are incorporated herein by reference:

Exhibit A. Description of Scope of Services to be performed by Consultant (“**Services**”)

Exhibit B. A listing of Consultant’s fee schedule.

Exhibit C. Insurance Requirements.

**4. TIME OF PERFORMANCE.**

Consultant shall commence performance after the approval and execution of this Agreement, and receipt of written notice to proceed by the Contract Administrator, and shall thereafter diligently complete the Services in a prompt and timely manner, unless otherwise directed by City.

**5. COMPENSATION OF CONSULTANT.**

A. Pursuant to the Fee Schedule incorporated herein as Exhibit B, Consultant shall be paid for actual fees, expenses, time, and materials required for completion of the services outlined in this Agreement.

B. Consultant shall submit monthly invoices during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall reflect the phase or task to which the request for payment is being invoiced in accordance with Exhibit A and contain a detailed description of the services provided, the amount of time expended in providing such services, and the person providing such services, and other information as the Contract Administrator may request. City shall make payment of undisputed amounts within thirty (30) days of receipt of invoices, for services satisfactorily performed and for authorized reimbursable costs incurred.

C. Consultant agrees to provide all Services for the amount specified in this Agreement without compensation in excess of such amount, unless otherwise specified. Consultant shall not provide additional Services until Consultant has received authorization from the City

D. If the work is halted at the request of the City, City shall compensate Consultant for all outstanding costs and reimbursable expenses reasonably incurred for work satisfactorily completed as of the date of the written notice of termination.

E. 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 Consultant to correct such work or billings or seek any other legal remedy.

**6. INDEPENDENT CONTRACTOR.**

Consultant shall perform the Services as an independent contractor as defined in Labor Code 3353, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Except as City may specify in writing, Consultant shall have no power or authority under this Agreement, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever. All employees and agents hired or retained by the Consultant are employees and agents of the Consultant and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services

under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

In the event Consultant or any employee, agent, or subcontractor of a Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is limited to Consultant's actual costs billed pursuant to Exhibit B. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond the compensation required under this Agreement.

## **7. TERMINATION AND BREACH.**

This Agreement may be terminated, without cause, at any time by the City or Consultant upon thirty (30) days' written notice. Upon receipt of such notice, Consultant shall cease all work under this Agreement. In the event of any such termination, the Consultant shall be compensated as provided for in this Agreement. Upon such termination, the City shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimated performed to that date in accordance with Section 9 hereof. The obligations of section 16 of this Agreement relating to Consultant's obligations to defend and indemnify the City shall survive any termination of this Agreement.

Notwithstanding any provision of this Agreement, Consultant shall not be relieved of liability to the City for damages sustained by the City from any breach of this Agreement by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined.

If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

- A. Immediately terminate the Agreement;
- B. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- C. Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

D. Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had complete the work.

**8. TIME AND EXTENSION OF TIME.**

Time is of the essence in the performance of this Agreement. All Services performed by Consultant under this Agreement shall be completed in accordance with the time schedules set forth by the Contract Administrator. Consultant may, for good cause, request reasonable extensions of time to perform the Services required hereunder.

**9. PROPERTY OF CITY.**

All materials prepared by the Consultant under this Agreement shall become the property of the City, and the Consultant shall have no property rights in them whatsoever. Immediately upon termination, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant in performing this Agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information.

**10. CONFIDENTIAL MATERIALS.**

All materials, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

**11. COMPLIANCE WITH LAW AND WARRANTY.**

A. Consultant shall (and shall cause its agents and contractors), at its sole cost and expense, to comply with all City, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the provision of Services and this Agreement. Permits and/or licenses shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement.

B. Consultant represents that it is qualified to properly provide the services set forth in Exhibit A in a manner which is consistent with the generally accepted standards of Consultant's profession, and has the skills, expertise, licenses and permits necessary to perform the Services. Consultant shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Consultant is engaged. All products of whatever nature which Consultant delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

**12. ASSIGNABILITY.**

Consultant shall not assign or transfer any interest in this Agreement without the prior written consent of the City, which shall not be unreasonably withheld. Consultant shall promptly furnish notice of any assignment or transfer, whether voluntary or involuntary, in writing to the City.

**13. INTEREST IN CONTRACT.**

A. Consultant covenants that neither it, nor any of its employees, agents, contractors, and 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. Consultant may serve other clients, but none whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

C. The City has determined, based on the Scope of Services in Exhibit A, that the Consultant (and its principal employees) working for the City under this Agreement:

XX Is required to file a Form 700 because he/she is involved in the making or participating in making of a decision which may foreseeable have a material effect on any financial interest, as further described in the Political Reform Act and implementing regulations.

\_\_\_\_\_ Is not required to file a Form 700 because he/she is not involved in the making or participating in making of a decision which may foreseeable have a material effect on any financial interest, as further described in the Political Reform Act and implementing regulations.

If it is determined that Consultant is covered by the City’s Conflict of Interest Code at any time after the execution of this Agreement City determines and notifies Consultant in writing that Consultant’s duties under this agreement warrant disclosure by Consultant, Consultant agrees to make all disclosures required by the City’s conflict of interest code in accordance with the Category designated by the City.

**14. RECORDS AND AUDITS.**

A. Consultant shall establish and maintain records pertaining to this Agreement. Consultant's accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, utility bills, invoices and vouchers.

B. Consultant shall permit City and its authorized representatives to inspect and examine Consultant's books, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Consultant pursuant to this Agreement and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Agreement; and Consultant shall in no event dispose of, destroy, alter, or

mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Agreement.

**15. LIABILITY OF CONSULTANT-NEGLIGENCE.**

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of the Consultant'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 Consultant or its employees, agents, contractors or subcontractors.

**16. MUTUAL INDEMNIFICATION.**

A. **General Requirement.** To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, costs and fees of litigation, (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of City.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall be determined to apply.

B. **PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

C. Such obligation to defend, indemnify, and hold harmless CITY Indemnitees shall not apply to the extent that any claim is premised on the negligence or willful act or omission of one or more CITY Indemnitees. To the extent claims, demands, or causes of action related to the performance of this agreement are premised, in whole or in part, upon the negligent or willful acts or omissions of one or more CITY Indemnitees, City shall indemnify and hold harmless CONSULTANT Indemnitees, and therefore take full responsibility for the liability, defense, and defense costs, including damages and attorney's fees, of any such City Indemnitee.

D.

E. It is further agreed that City does not, and shall not, waive any rights against Consultant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Consultant's deposit with City of any of the insurance policies described in this Agreement.

F. This indemnification shall arise immediately upon tender of any matter or claim potentially covered by the obligations listed above.

G. The provisions set forth in this Section shall survive termination of this Agreement.

H. Consultant's compliance with the insurance requirements does not relieve Consultant from the obligations under this Section, which shall apply whether or not such insurance policies are applicable to a claim or damages.

## **17. INSURANCE.**

Consultant shall provide insurance in accordance with the requirements of Exhibit C, which is attached hereto and incorporated herein by reference. Consultant agrees to have and maintain the policies set forth in Exhibit C entitled "Insurance Requirements" attached hereto and incorporated herein by reference. All policies, endorsements, certificates, and/or binders shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing, in advance, by City. A lapse in any required insurance coverage during this Agreement shall be breach of this Agreement.

## **18. PERSONNEL.**

A. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such services.

B. Consultant shall make every reasonable effort to maintain stability and continuity of Consultant's Key Personnel assigned to perform the Services. Key Personnel for this contract are defined to include the following people: Wyatt Paxton. Consultant shall provide City with a minimum twenty (20) days prior written notice of any changes in Consultant's Key Personnel assigned to the provide Services, provided that Consultant receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

## **19. NOTICES.**

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: City of Colusa  
425 Webster Street  
Colusa, CA 95932  
ATTN: CITY MANAGER

Consultant: Wyatt Paxton Consulting  
P.O Box 493412  
Redding Ca 95049  
ATTN: Wyatt Paxton

**20. CITY NOT OBLIGATED TO THIRD PARTIES.**

City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

**21. MISCELLANEOUS PROVISIONS.**

**A. NON-DISCRIMINATION.**

Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

**B. UNAUTHORIZED ALIENS.**

Consultant hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**C. SECTION HEADINGS.**

The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**D. SEVERABILITY.**



If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**E. REMEDIES NOT EXCLUSIVE.**

No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**F. NO WAIVER OF DEFAULT.**

No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

**G. ENTIRE AGREEMENT AND AMENDMENT.**

This document represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral. This document may be amended only by written instrument signed by both City and Consultant.

**H. SUCCESSORS AND ASSIGNS.**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**I. APPLICABLE LAW; VENUE.**

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 the County of Colusa, if in state court, or in the federal court nearest to the City of Colusa, if in federal court.

**J. AUTHORITY.**

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Consultant is obligated, which breach would have a material effect hereon.

**K. CONFLICTING TERMS.**

This Agreement and its Exhibits shall be known as the “Contract Documents.” Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

**L. CONFLICT OF INTEREST**

Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

**M. SOLICITATION**

Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**N. ATTORNEYS’ FEES**

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by City.

**CITY OF COLUSA**

**CONSULTANT**

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

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

Jesse Cain City Manager

Wyatt Paxton, Consultant

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

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

**CERTIFICATE OF COMPLIANCE WITH LABOR CODE §3700**

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that Code. I will comply with such provisions before commencing the performance of this work under this Agreement, and my method of compliance is further described below.

With the above understanding, I certify the following:

\_\_\_\_\_ Consultant is insured against liability for workers' compensation.

\_\_\_\_\_ Consultant is self-insured for workers' compensation. I will provide a copy of Certificate of Consent to Self-Insure issued by the State of California Department of Industrial Relations.

XX Consultant is a sole proprietor or partnership. I am the owner of the organization or a partner, and Consultant is exempt from the State workers' compensation requirements because we have no employees.

CONSULTANT

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

Title:

## **EXHIBIT A**

### **SCOPE OF SERVICES:**

The Scope of Work for this Agreement includes, without limitation, the following tasks:

- Under the direction of the City Council, in coordination with the City Manager, serving as the City's Building Inspector and Plan Checker,

#### **Building Inspections Services**

- To provide inspections of building and/or other structures to determine compliance with applicable section of the currently adopted editions of the California Building Standards Code, City ordinances, and City approved plans for which a Building Permit has been issued by the City and falling within the purview of the City Building Official.
- Building inspector will, as requested, review plan sets, calculations, specifications, soil reports, and other support documents for structural, life safety, plumbing, electrical, mechanical, Title 24 Energy, and Title 24 handicap compliance as required by the City's Land Use and Development Code and other relevant State laws for Residential or Commercial Projects. All plan review shall be performed by a licensed civil or structural engineer, registered architect, or International Conference of Building Official's certified plans examiner.
- Will complete the initial review of Commercial, multi-family, or single family residential applications within 5 working days of receipt in most cases. Completion time for extremely large projects will be agreed upon between Building inspector and the Building Official or designee prior to start should scheduling differ from above
- Provide direct plan check corrections letters specifying plan locations of non-complying items plus specific code section involved. Correction letter will be sent to the project architect/designer of record with a copy to the applicant and the Building Official or designee.
- Must be available by phone or e mail to assist the applicant in responding to the plan review comments. When justified and necessary Building Inspector will meet the applicants at City offices or other agreed upon location to discuss potential solutions to the problem areas.
- Be able to work Tuesdays and Thursdays depending on scheduling

**EXHIBIT B**  
**FEE SCHEDULE**

Building Inspector and Plan Checker Rate: \$100.00 Per hour and \$65.00 per hour for staff under his direction.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS TO**  
**CONSULTANT SERVICES AGREEMENT**

- A. During the term of this Agreement, CONSULTANT shall carry, maintain, and keep in full force and effect, at its sole cost and expense, the following insurance policies or, if Consultant chooses, policies providing equal or greater coverage:
- i. **Commercial General Liability Insurance:** \$2,000,000.00 per claim and \$4,000,000.00 general aggregate. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.
  - ii. **Automobile Liability Insurance:** \$500,000.00 and Umbrella Policy - \$500,000.00 (Combined \$1,000,000.00 coverage).
  - ii. **Professional Liability Insurance:** \$1,000,000.00 per occurrence or claim covering the Consultant’s errors and omissions. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
    - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
    - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
    - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
    - d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
  - iv. **Workers’ Compensation Insurance:** Consultant shall maintain Statutory Workers’ Compensation Insurance and Employer’s Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers’ Compensation and Employer’s Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

- B. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
- i. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
  - ii. The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming CITY and its officers, employees, agents and volunteers as additional insured's for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
  - iii. CONSULTANT agrees to provide thirty (30) days prior written notice to CITY of any failure to renew any such policies of insurance or to replace them with equal or better coverage. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.
  - iv. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
  - v. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- C. CONSULTANT agrees that if it does not keep the aforesaid insurance (or equal or better coverage) in full force and effect, and reinstate such insurance within fifteen (15) days of receiving written notice from CITY of CITY's plan to exercise its rights under this Section, CITY may either
- (i) immediately terminate this Agreement; or
  - (ii) take out the minimum insurance necessary to rectify the lapse and pay the premium(s) thereon at Consultant's expense.
- D. At all times during the term of this Agreement, CONSULTANT shall maintain on file with CITY's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts. CONSULTANT shall file with CITY's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- E. CONSULTANT shall provide proof to the CITY's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverage's.

- F. If CONSULTANT does not have any employees, Workers' Compensation insurance shall not be required. However, CONSULTANT shall be required to execute CITY's "Workers' Compensation Waiver" form.
- G. The insurance policies required by this Section may not contain language which prohibits additional insured's. In addition, any deductibles or self insured retentions must be declared on the certificate of insurance.
- H. The following requirements apply to all policies required by this Agreement:
- i. **Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:
    - a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
    - b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.
  - ii. **Acceptability of Insurers.** All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.
  - iii. **Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.
  - iv. **Wasting Policies.** No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
  - v. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.
  - vi. **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.
  - vii. **Excess Insurance.** If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.



- viii. **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.