



MEMORANDUM

TO: CITY COUNCIL

FROM: KELLY WETMORE, DIRECTOR OF LEGISLATIVE AND INFORMATION SERVICES/CITY CLERK

BY: WALT CUZICK, INFORMATION TECHNOLOGY MANAGER

SUBJECT: CONSIDERATION OF AN AGREEMENT FOR CONSULTANT SERVICES FOR IMPLEMENTATION OF A VIRTUALIZED SERVER ENVIRONMENT AND CITYWIDE DISASTER RECOVERY SOLUTION AT THE POLICE DEPARTMENT

DATE: MARCH 10, 2015

RECOMMENDATION:

It is recommended the City Council approve and authorize the Mayor to execute an Agreement for Consultant Services with CIO Solutions for implementation of a virtualized server environment and Citywide disaster recovery solution at the Police Department.

IMPACT TO FINANCIAL AND PERSONNEL RESOURCES:

The total project cost is \$47,816. On February 24, 2015, the Council approved a project budget of \$50,000 with funding from the Local Sales Tax Fund as part of the Fiscal Year 2014-15 Mid Year Budget Report. City Information Technology (IT) staff will assist with implementation and provide coordination for the project.

BACKGROUND:

In November 2013, the City completed implementation of a virtualized server environment at City Hall to replace aging physical server hardware, and create efficiencies in server performance, administration, and data integrity. This environment provides data and application services to all City Departments and the Five Cities Fire Authority to include email, file storage, accounting, public safety, and phone system services. The virtualized server environment ensures the City is utilizing current technology, and reduced the number of physical server installations. This has resulted in cost savings and increased efficiency in multiple areas including reduced power consumption, hardware replacement costs, phone costs and system administration. The proposed project was planned to be included as part of the Fiscal Year 2015-16/2016-17 Biennial Budget process as the second phase of the server virtualization

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project in order to provide critical disaster recovery and redundancy needs for the City's server and network infrastructure.

ANALYSIS OF ISSUES:

The current virtualized server environment at City Hall is sufficient to provide necessary services to the City; however, recovery options are limited due to all associated hardware being located in a single physical location at City Hall. The project was intended to be implemented as the first phase of a long-term goal to create an off-site disaster recovery site at the Police Department, and provide complete redundancy of the City's server environment by replicating data between sites. The City Hall project (phase 1) was designed to utilize a data storage model that would support the proposed phase 2 implementation by including a dedicated storage device for the Police Department location. The dedicated storage model, when included in a separate virtual environment like what is being proposed in phase 2, will provide complete server and data replication between sites, and create a recovery path in the case of a disaster affecting either one of the disaster recovery sites (City Hall or Police Department).

Due to current construction activity related to the Police Department remodel project, it has been determined that adjusting the timeline to coincide with that project would allow City staff to leverage engineering and consulting labor that currently exist on site.

The City has been utilizing CIO Solutions for strategic support of the City's IT environment and limited staff augmentation since 2014. CIO Solutions has proven to be an effective and efficient IT strategic partner for the City following successful design and implementation of the City Hall SAN (storage area network) and server virtualization project. They have been instrumental in support of the Police Department relocation project, and have also implemented ShoreTel Voice over IP (VoIP) digital phone systems for both the Police Department and City Hall.

Equipment for the project will be purchased by CIO Solutions under the Western States Contract Alliance (WSCA). The WSCA program ensures competitive pricing for states through a cooperative purchasing contract. Bids will be obtained for any equipment not included in the WSCA contract to ensure competitive pricing throughout the project.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve the Consultant Services Agreement with CIO Solutions;
2. Do not approve the Consultant Services Agreement; or
3. Provide direction to staff.

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ADVANTAGES:

Implementing a virtualized server environment at the Police Department will provide critical disaster recovery and redundancy needs for the City's server and network infrastructure and will lessen the risk of data loss in the event of failure and/or a catastrophic event affecting the City IT environment. Implementing the project at this time, while resources are currently on-site and involved in the network planning and design phases associated with the Police Department remodel project, will minimize future downtime affecting staff productivity, as well as travel, engineering, and consulting costs that would otherwise be incurred should the project be implemented in the future after the building is occupied. Increased server availability will also be realized as part of the project solution.

DISADVANTAGES:

There are no identified disadvantages.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in front of City Hall on Thursday, March 5, 2015. The Agenda and staff report were posted on the City's website on Friday, March 6, 2015.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, is made and effective as of March 10, 2015, between **CIO SOLUTIONS** ("Consultant"), and the **CITY OF ARROYO GRANDE**, a Municipal Corporation ("City"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on March 11, 2015 and shall remain and continue in effect until March 11, 2016, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and comply with all terms and provisions set forth in "Exhibit A-B", attached hereto and incorporated herein by this reference.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **AGREEMENT ADMINISTRATION**

City's Information Technology Manager, Walt Cuzick, shall represent City in all matters pertaining to the administration of this Agreement. Eric Egolf, President, shall represent Consultant in all matters pertaining to the administration of this Agreement.

5. **PAYMENT**

The City agrees to pay the Consultant in accordance with the payment rates and terms set forth in "Exhibit A-B", attached hereto and incorporated herein by this reference.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise.

If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5.

7. TERMINATION ON OCCURRENCE OF STATED EVENTS

This Agreement shall terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of any party;
- (b) Sale of Consultant's business; or
- (c) Assignment of this Agreement by Consultant without the consent of City.
- (d) End of the Agreement term specified in Section 1.

8. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

9. LAWS TO BE OBSERVED. Consultant shall:

(a) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Consultant under this Agreement;

(b) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Consultant's performance under this Agreement, or the conduct of the services under this Agreement;

(c) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(d) Immediately report to the City's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

(e) The City, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

10. **OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subContractors or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subContractors of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subContractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

12. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit "C" attached hereto and incorporated herein as though set forth in full.

13. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and

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

(b) No employee benefits shall be available to Consultant in connection with performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. **UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was or is used against or in concert with any officer or employee of the City of Arroyo Grande in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Arroyo Grande will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

15. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

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

16. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subContractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subContractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

17. **NOTICES**

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

To City: City of Arroyo Grande
Walt Cuzick, Information Technology Manager
300 E. Branch Street
Arroyo Grande, CA 93420

To Consultant: CIO Solutions
Eric Egolf, President
150 Castilian Drive #100
Goleta CA 93117

18. **ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, without the prior written consent of the City.

19. **GOVERNING LAW**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior or federal district court with jurisdiction over the City of Arroyo Grande.

20. **ENTIRE AGREEMENT**

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

21. **TIME**

City and Consultant agree that time is of the essence in this Agreement.

22. **CONSTRUCTION**

The parties agree that each has had an opportunity to have their counsel review this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

23. **AMENDMENTS**

Amendments to this Agreement shall be in writing and shall be made only with the mutual written consent of all of the parties to this Agreement.

24. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

CITY OF ARROYO GRANDE

CONSULTANT

By: _____
Jim Hill, Mayor

By: _____

Attest:

Its: _____
(Title)

Kelly Wetmore, City Clerk

Approved As To Form:

Timothy J. Carmel, City Attorney

EXHIBIT A-B

City of Arroyo Grande
Walt Cuzick

Virtual Hosts, VMWare and Switches

150 Castilian Dr. Suite 100
Goleta, CA 93117
phone: [805] 692.6700
fax: [805] 692.6701



Proposal	2/6/2015					Eric Engmyr
purchase order / status	date quoted	date ordered	date requested	ship via	project	salesperson

description	qty	price ea	price ext
HP ProLiant DL360p G8 1U Rack Server, 2 x Intel Xeon E5-2670 v2 2.50 GHZ, 32 GB Standard Serial ATA/600 RAID Supported, 6Gb/s SAS Controller - Gigabit Ethernet, Dual Power Supply 750W, HP Standard Limited Warranty 3 Years Next Business Day	2	5,699.00	11,398.00
SMART BUY 16GB DR X4 PC3-14900R-13	20	260.00	5,200.00
BGB SDHC EM FLASH MEDIA KIT	2	51.10	102.20
SMART BUY 3YR 24X7 DL36X P WITH IC FC SVC	2	746.40	1,492.80
Vmware UPG VSPHERE ESS+ TO VSPHERE W/ OPS-MGMT STD AK FOR 6 PROC	1	6,050.00	6,050.00
Vmware Production Support SNS VSPHERE W/ OPS MGMT STD AK FOR 6 PROC	1	3,866.00	3,866.00
VMware vSphere v.5.0 with Operations Management Standard - License - 1 Processor	2	1,745.00	3,490.00
VMware Support and Subscription Production - 1 Year - 24 x 7 x 30 Minute - Technical - Electronic Service	2	436.00	872.00
Juniper EX3300-24T Layer 3 Switch, 24 x RJ-45, 4 x Expansion Slots - 10/100/1000Base-T	1	2,019.00	2,019.00
Juniper Care - 1 Year Extended Service - 12 x 5 Next Business Day - Replacement - Parts	1	172.00	172.00
Juniper EX3300-48T Layer 3 Switch, 48 x RJ-45, 4 x Expansion Slots 10/100/1000Base-T	1	3,214.00	3,214.00
Juniper Care - 1 Year Extended Service - 12 x 5 Next Business Day - Replacement - Parts	1	310.00	310.00

engineering & labor estimates	estimate type	price
Installation and Configuration	*Time and Materials	7,875.00

** Estimated price only. This phase may take less or more time than the estimate.
All labor estimates include any after-hours rates, as specified in the Needs Analysis Document.*

-Prices quoted are subject to change.

-Product availability is dependent on vendor/manufacturer supply.

-Return acceptance is at the discretion of CIO Solutions; a restocking fee may apply.

-A deposit may be required prior to order placement.

Parts Subtotal:	21,933.20
8.00% Tax:	1,754.66
Non Taxable Support:	16,252.80
Installation and service estimates:	<u>7,875.00</u>
Total:	47,815.66

EXHIBIT C

INSURANCE REQUIREMENTS

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:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy from 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 \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 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 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 per accident or disease.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designated 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 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 insurer that are admitted carriers in the state 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 insureds City, its officials employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all Consultants, 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 Consultants and subContractors to do likewise.

3. All insurance coverage and limits provided by Consultant 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.

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

5. 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 Consultant or subcontractor.

6. 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.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages 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.

8. 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.

9. 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.

10. 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.

11. 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 Consultant, 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 the 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.

12. 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 increase benefit to City.

13. 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.

14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirements

in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

16. Consultant shall provide proof 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. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

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