



**AS SUCCESSOR AGENCY TO THE DISSOLVED ARROYO GRANDE
REDEVELOPMENT AGENCY**

***REQUEST FOR PROPOSAL
FOR
REAL ESTATE BROKER SERVICES***

GENERAL INFORMATION

The ***City of Arroyo Grande*** acts as the Successor Agency to the dissolved Arroyo Grande Redevelopment Agency. The Successor Agency seeks proposals from real estate brokers/firms to sell real property owned by the former Redevelopment Agency. It is the intent of this Request for Proposal (RFP) to have the successful broker/firm, enter into an Agreement for Consultant services with the City of Arroyo Grande and/or the Successor Agency to supply real estate services as outlined herein.

PROPERTY AVAILABLE

Faeh Avenue Property APN 006-151-027 – the former Redevelopment Agency acquired a vacant parcel at Faeh Avenue and El Camino Real. The sale of this property, as well as the approval of the agent, is subject to approval by the California Department of Finance (DOF) and the Oversight Board for the former Redevelopment Agency. The property is zoned Highway Mixed Use.

Pearwood Avenue Property APN 007-462-001 – this property is owned by the City and is not governed by the same requirements for sale as the Faeh property. No additional approvals by the DOF or Oversight Board are necessary for the City to sell the property. The Pearwood property has received Planning Commission approval of a Tentative Tract Map in June 2010 that subdivided the 7.16-acre parcel into four (4) residential lots and one (1) open space lot for drainage. The property is zoned Residential Rural.

PROPOSAL OVERVIEW

The following information is required and must accompany your proposal:

1. **COVER LETTER:** Provide a cover letter indicating your interest in serving as the City's real estate agent/firm to sell land in the City of Arroyo Grande and advise on other real property issues as needed. Indicate what property/properties you are proposing to sell. You are not required to make a proposal for both properties.
2. **BACKGROUND INFORMATION:** For example, list year in business with a description of your firm, including size of firm, location, number and nature of the professional staff to be assigned to this contract, with a brief resume for each key person listed.
3. **EXPERIENCE SUMMARY:** Describe your firm's pertinent real estate experience (minimum five years previous experience with proven effectiveness).
4. **MARKETING METHODS:** Describe the methods of identifying target user groups and a description of the marketing materials and the strategy for presenting the site to a regional and national marketplace (when appropriate).
5. **ADDITIONAL SERVICES:** Describe additional relevant/unique services offered through your firm.

6. FEE SCHEDULE:

- a. State your commission rate for listing and selling of properties and for advising on miscellaneous real property matters.
- b. State your proposed method of compensation for representing the City of Arroyo Grande in negotiations for purchasing properties.
- c. State any other costs the City of Arroyo Grande should anticipate relating to the real estate services to be provided.
- d. State any required 'carry-over compensation' for your firm – meaning, compensation after real estate service agreement expires.

NOTE: Quoted fees shall be valid for a minimum of 90 days upon receipt.

7. REFERENCES: Provide a list of three applicable references. Include name, title, and contact information for each reference as well as a brief description of the specific services provided.
8. CONFLICT OF INTEREST: In order to avoid a conflict of interest, or the appearance of a conflict of interest, your firm should not engage in any outside activities that are inconsistent, incompatible, or appear to conflict with your ability to exercise independent/objective judgment in the best interest of the City of Arroyo Grande. Please outline all conflicts of interest that may exist for your firm in relation to providing real estate services for the City of Arroyo Grande.
9. GOOD STANDING: Your firm must be in compliance with Federal, State, County and local units of government; which specifically includes good tax payment status and good corporate registration status.

GENERAL INSTRUCTIONS

1. **Proposal Submission:** Proposals must be submitted directly to the Administrative Services Department no later than **3:00 pm, February 22, 2016**. Late submissions after the deadline or proposals delivered via fax will not be accepted. A total of **four (4)** identical proposals must be submitted and labeled as follows:

City of Arroyo Grande
Attention: Debbie Malicoat, Director of Administrative Services
Real Estate Services RFP
300 East Branch Street
Arroyo Grande, CA 93420

2. Proposals will be forwarded to a Selection Committee established by the City of Arroyo Grande. The Selection Committee will review the proposals and develop a list of finalists to interview.
3. To be considered, firms must submit a complete response to the RFP in the form requested. Firms not responding to items requested in the RFP or indicating exceptions to such items may have their submittals rejected.

4. The City of Arroyo Grande reserves the right to reject any and all proposals, or any parts thereof, or to waive any informality or defect in any proposal if it is in the best interest of the City. All proposals, plans, and other documents submitted shall become the property of the City of Arroyo Grande. Responses to this RFP are considered public information and are subject to discovery under the Public Records Act.
5. Respondents are responsible for their own expense in preparing, delivering or presenting a proposal, and for subsequent negotiations with the City of Arroyo Grande, if any.
6. All questions may be directed to the following contact person: Debbie Malicoat, Director of Administrative Services, phone (805) 473-5432, email dmalicoat@arroyogrande.org.

SCOPE OF SERVICES

The successful firm shall agree to a contract with the City of Arroyo Grande in substantially the same form as provided in Attachment 1 to provide the following:

1. Develop strategies for sale of designated City-owned properties (such as conducting a study of comparable properties).
2. Develop marketing materials (electronic and/or hard copy) to advertise sites for sale, distribute the materials to potential buyers via the appropriate form(s) of media and report the results to the City of Arroyo Grande on an agreed upon frequency.
3. Advise the City of Arroyo Grande related to strategies to promote and sell the designated sites. Public presentations may be required.
4. Participate in site tours of City-owned property that is for sale for potential buyers.
5. Analyze offers from potential buyers and advise the City of Arroyo Grande with respect to negotiations.
6. Represent the City in negotiations with a prospective buyer from the time of offer until closing.
7. Coordinate real estate transaction closings.
8. Handle all other customary activities and services associated with real estate transactions.
9. Provide as-needed advising on miscellaneous real estate matters.

TERM OF CONTRACT

The contract period for the successful agent(s)/firm(s) will be nine months from the date of award. The contract may be renewed for additional terms upon satisfactory performance by the broker/firm and at a negotiated rate agreed to in writing by both the agent/firm and the City of Arroyo Grande. Alternate contract periods may be considered.

EVALUATION AND AWARD PROCESS

Issuance of this RFP and receipt of proposals does not commit the City of Arroyo Grande to award a contract. The City reserves the right to postpone receipt date, accepting or rejecting any or all proposals received in response to this RFP, or to negotiate with any of the brokers/firms submitting an RFP, or to cancel all or part of this RFP.

SELECTION CRITERIA

Selection of a broker/firm will be made based on the following criteria:

1. Ability of the contractor(s) to meet or exceed the requirements defined in the RFP;
2. Experience, qualifications, references;
3. Knowledge of regional real estate market and ability to market to prospects beyond the region;
4. Regional reputation and local presence/experience;
5. Fee schedule; and
6. Willingness to think “outside the box” and present innovative ideas for marketing the specific City owned properties designated for sale.

ORAL PRESENTATION/INTERVIEWS

Firms submitting a proposal in response to this RFP may be required to give an oral presentation of their proposal. Additional technical and/or cost information may be requested for clarification purposes, but in no way change the original proposal submitted. Interviews are optional and may or may not be conducted.

If an interview is conducted, it is essential that the consultant’s personnel to be assigned to the work, as well as key representatives, be present at and participate in the interview. A recommendation of the selected consultant will be made to the Arroyo Grande City Council and other required regulatory bodies. The selected consultant and City of Arroyo Grande representatives will negotiate a mutually acceptable contract. The negotiated contract shall be approved by the Arroyo Grande City Council, and if required, the California Department of Finance and the Oversight Board to the Dissolved Arroyo Grande Redevelopment Agency.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, is made and effective as of _____ 2015, between _____ (“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 _____, 2016 and shall remain and continue in effect until _____, 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”, 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 _____ shall represent City in all matters pertaining to the administration of this Agreement. _____ 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 “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
Debbie Malicoat
300 E. Branch Street
Arroyo Grande, CA 93420

To Consultant:

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. **CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

Consultant is bound by the contents of the City's Request for Proposal, Exhibit "D", attached hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "E", attached hereto and incorporated herein by this reference. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

23. **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.

24. **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.

25. **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.

ATTACHMENT 1

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:

Heather Whitham, City Attorney

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

PAYMENT SCHEDULE

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.

ATTACHMENT 1

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 coverage 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 coverage 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 coverage.

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.