

CITY of CARPINTERIA, CALIFORNIA



NOTICE OF REQUEST FOR PROPOSALS Regarding Environmental Consultant Services to Prepare an Environmental Impact Report (EIR) for the Surfliner Inn Project, Project #23-2254-DP/CUP/CDP

The City of Carpinteria Community Development Department (CDD) is seeking proposals from qualified environmental consulting firms (Environmental Consultants) to prepare an EIR to evaluate the potential impacts of the Surfliner Inn Project. The Project would require a Development Plan (DP), Conditional Use Permit (CUP), and Coastal Development Permit (CDP). Based upon a preliminary review of the submitted application materials, CDD determined that an EIR should be prepared for the Project. Accordingly, the CDD, as the Lead Agency, is requiring the preparation of an EIR pursuant to the California Environmental Quality Act (CEQA) Statutes and Guidelines (see Guidelines Sections 15060-15064 and 15081). The information below provides Project information and an outline of the proposal submittal requirements, selection process, budgets, and scope of work.

This Request for Proposals (RFP) is being distributed on **January 22, 2025** and the deadline to submit a proposal is **Thursday, February 20, 2025 by 5:00 pm PDT**.

Project Description Summary

The Project would involve the construction of a new 36-room hotel at 499 Linden Avenue (City Parking Lot #3), a reconfiguration of the remainder of City Parking Lot #3, and construction of a new surface public parking lot on the vacant City-owned lot between the Union Pacific Railroad (UPRR) corridor and Amtrak Carpinteria Train Station to the north and The Spot restaurant and unpaved parking area to the south (Parking Lot #4). The hotel would be located nearest the Linden Avenue/Fifth Street intersection with the remainder of the parcel consisting of 46 parking spaces. The new 93-space public parking lot (Parking Lot #4) would be accessed from Linden Avenue with emergency access provided from Elm Avenue.

The Project consists of the following primary components:

- A 36-room hotel
- Café/restaurant, back of house, office and break room areas
- Rooftop lounge(s), bar, event space, pool, and spa
- Visitor center
- Manager's unit
- Bicycle storage
- 46-space public parking lot
- New 93-space public surface parking lot with public restrooms and coastal trail improvements
- New landscaping
- "Tier 4" Stormwater Plan
- Total grading of approximately 1,160 cubic yards of cut, 360 cubic yards of fill, and 800 cubic yards of export.
- Water service would be provided by the Carpinteria Valley Water District. Sewer service would be provided by the Carpinteria Sanitary District.

Additional Project information is available on our website at <https://carpinteriaca.gov/city-hall/community-development/linden-inn-project>. The applicant has also provided technical studies and reports, which can be found in the application packet included in [Dropbox Here](#). To review/access the Phase I Archaeological Resources Report, contact me at mindyf@carpinteriaca.gov.

Issue Areas for Analysis

The Environmental Consultants selected for this Project will be required to prepare an Environmental Impact Report that evaluates the potential impacts on the environment that would result from Project implementation. The EIR must evaluate potential environmental impacts related to: Aesthetics, Agriculture / Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Geology / Soils, Greenhouse Gas Emissions, Hazards & Hazardous Materials, Hydrology / Water Quality, Land Use / Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation, Tribal Cultural Resources, Utilities/Service Systems, Wildfire, and any other issue areas that may arise during the CEQA review. The EIR must be prepared in accordance with the State CEQA Guidelines and the Environmental Thresholds Manual set forth in the City of Carpinteria Environmental Review Guidelines https://carpinteriaca.gov/wp-content/uploads/2020/03/cd_Environmental-Review-Guidelines.pdf.

Responding consultants must submit technical qualifications and separate cost proposals no later than **Thursday, February 20, 2025 by 5:00pm PDT** to:

Mindy Fogg, Principal Planner
mindyf@carpinteriaca.gov

Based on a preliminary evaluation of qualifications by CDD, your firm has been selected to receive this Request for Proposal. It is anticipated that one firm will be selected to prepare the required EIR. Environmental consultant selection will be based on qualifications, understanding of the Project and issues, proposed scope, responsiveness, cost, and proof of required insurance.

If you have any questions concerning this Project, please contact me at mindyf@carpinteriaca.gov or 805-755-4408. I look forward to receiving your proposal.

Sincerely,



Mindy Fogg, Principal Planner

Enc. Request for Proposal - Instructions
Sample Standard Services Contract

REQUEST FOR PROPOSALS

Regarding
Environmental Consultant Services to Prepare an Environmental Impact Report
(EIR) for the
Surfliner Inn Project,
Project #23-2254-DP/CUP/CDP

DEADLINE FOR SUBMISSION: February 20, 2025 no later than 5:00 pm PDT.

Mindy Fogg, Principal Planner
mindyf@carpinteriaca.gov

City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

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I. PROPOSED PROJECT DESCRIPTION

The Applicant is requesting approval of a Development Plan, Conditional Use Permit, and a Coastal Development Permit to construct a 36-room hotel with manager's unit and associated amenities on a portion of an existing public parking lot, and a new surface public parking lot on a vacant parcel. The Project site is located at 399 & 499 Linden Avenue, comprised of a 1.15-acre parcel (APN 004-105-011) and a 1.27-acre parcel (APN 004-105-026).

Surfliner Inn Hotel

The proposed hotel would be a two-story contemporary cottage-style hotel with rooftop deck and would have a building footprint of approximately 15,500 square feet, not including patios, walkways, terraces, and landscaping. The interior floor space is proposed to be 28,290 square feet in size and contain 36 guest rooms, a manager's unit, café, visitor center, and a roof-top bar/lounge/event space and swimming pool areas.

The hotel would be located on the eastern portion of existing City Parking Lot #3 (commonly known as the Amtrak Lot), which currently contains a total of 113 parking spaces and a public restroom. The area designated for the hotel would encompass the easternmost 30,000 square feet of the approximately 50,094 square foot site which is currently developed with 67 parking spaces and a public restroom building. The majority of the building's height would reach 29 feet, with the maximum height of the two stair/elevator tower architectural projections reaching 37 feet 1 inches in height. The main entrance would be located at a porte cochère on the western side of the hotel facing the remainder of Parking Lot #3. Vehicular access to the hotel would be through City Parking Lot #3, via Fifth Street. Required parking for the hotel is proposed to be accommodated by a shared use parking arrangement (described in more detail within the parking description below).

The first floor of the hotel would be 15,110 square feet in size and would include a lobby, 17 guest rooms, a manager's unit, café/restaurant, visitor center, and administrative, storage, mechanical, trash and bicycle storage areas. Each guest room on the first floor and the manager's unit would have a private outdoor patio. The 1,111 square foot public café/restaurant is proposed to be located at the southeast corner of the site, fronting Linden Avenue, and would feature a 390 square foot outdoor dining patio area. The proposed 245 square foot visitor center would be adjacent to the café/restaurant and similarly oriented towards Linden Avenue.

The second floor of the hotel would be 13,180 square feet in size and would contain 19 guest rooms and five suites. Each guest room and suite on the second floor would have a private balcony. The roof of the hotel would feature an open approximately 6,877 square foot terrace consisting of an outdoor rooftop bar and seating area of 1,280 square feet, an event area of 2,000 square feet, guest lounge of 310 square feet, a swimming pool area of 1,865 square feet, pool equipment room of 122 square feet, landscape planter areas of 1,292 square feet, and stairways and elevator shafts.

Staffing

The hotel is expected to require staff around the clock with 10 to 11 employees per shift, and a total of three shifts per day. The Project also includes an on-site manager's unit. The most hotel employees would be present during the morning shift, and the least hotel employees would be present during the night shift. The café/bar is anticipated to have two shifts with 7-8 employees per shift, and offer seating for 40 guests plus the additional roof-top bar and lounge area.

Parking

A total of 139 parking spaces would be provided for the Project. As proposed, the Project would operate under a conjunctive parking arrangement which would accommodate parking for hotel guests, hotel employees, and the general public within the reconfigured City Parking Lot #3 and the proposed City Parking Lot #4. A total of 25 electric vehicle car charging stations are proposed. The parking lots would feature both permeable and impermeable surfaces. The Project also includes a total of eighteen bicycle storage and bicycle parking spaces.

City Parking Lot #3 Reconfiguration

The remaining portion of City Parking Lot #3 not occupied by the hotel, approximately 20,094 square feet in area, would be reconfigured and would provide 46 parking spaces. The parking lot would continue to be accessed from the existing westernmost entrance from Fifth Street. A bicycle storage room attached to the hotel building would accommodate secure storage of eight bicycles for hotel guests and additional bicycle racks accommodating four bicycles would be provided for public use near the café and visitor center along the Linden Avenue frontage. Eight electric vehicle charging spaces would be provided in the reconfigured City Parking Lot #3.

New City Parking Lot #4

The proposed new public parking lot on the south side of the Union Pacific railroad tracks (City Parking Lot #4) would be 55,321 square feet in area and provide 93 parking spaces with vehicular access from Linden Avenue. Seventeen electric vehicle charging spaces would be provided. The proposed City Parking Lot #4, including the public restroom relocation, would be constructed by the City with funds provided by the developer of the proposed hotel Project. The existing public restrooms that are presently at the corner of Linden Avenue and Fifth Street would be relocated to this new parking lot facing Linden Avenue. Additional public bicycle racks accommodating six bicycles would be provided adjacent to the restroom. A locked secondary emergency access gate is proposed at the end of Elm Avenue to provide emergency vehicle access and an emergency ingress/egress route to the public parking lot and adjacent neighborhood. This parcel was acquired from the UPPR in 2013 and currently includes an interim public trail from Holly Avenue to Linden Avenue. This proposed parking lot would be constructed prior to commencement of construction for the hotel and reconfigured City Parking Lot #3 to ensure no loss of public parking during construction of the Project. A new 5-foot-wide decomposed granite public pathway is proposed along the northern boundary of the parking lot, terminating to the east at the sidewalk along Linden Avenue to replace the existing interim Linden-to-Holly Trail segment.

Landscaping

Landscaped areas for the proposed Project would total 28,235 square feet, comprised of the following areas:

Parking Lot 3 and Hotel Site Landscape Areas:

Onsite: 11,023 square feet (22%)

Offsite (Fifth Street and Linden Avenue Rights-of-Way): 9,255 square feet

Roof-level (raised planters on roof): 1,292 square feet

Parking Lot 4 Landscape Area: 6,665 square feet (12%)

Storm Water

The proposed Project includes a “Tier 4” storm water plan (projects with 22,500 square feet or more of impervious surfaces) which incorporates Low Impact Development (LID) measures including the use of permeable surfaces for portions of the new and reconfigured parking areas and the installation of underground retention chambers in each parking lot to treat and limit storm water discharge from the site.

Grading

Total grading for the Project would include approximately 1,160 cubic yards of cut, 360 cubic yards of fill, and 800 cubic yards of export:

	Cut (CY)	Fill (CY)	Export (CY)
Hotel Site	340	330	10
Parking Lot #4	820	30	790
Total	1,160	360	800

Additional Information

Additional Project information can be found on the City’s website at <https://carpinteriaca.gov/city-hall/community-development/linden-inn-project>. Applicant-provided technical studies and reports listed below, can be found in the application packet included in [Dropbox Here](#).

- Air Quality and Greenhouse Gas Emissions Memo
- Arborist Report
- Archaeological Resources Assessment Report (to be provided with contract)
- Geotechnical Investigation
- Noise and Vibration Technical Memorandum
- Peer Review of Previous Environmental Assessment
- Stormwater Control Plan Tier Letter
- Traffic and Parking Study

Contact City staff to review the Phase I Archaeological Resources Report.

II. EIR SCOPE OF WORK & SERVICES REQUESTED

The CDD is requesting proposals for environmental consultant services to prepare an EIR pursuant to the requirements of CEQA for the Surfliner Inn Project. CDD's initial preliminary review identified that the Project may have a significant adverse effect on the environment, and an EIR must be prepared. The selected environmental consultant will be assigned to complete the following tasks:

- A. Attendance at (1) a "kick off" meeting with CDD staff and the applicant prior to beginning work on the EIR; and (2) additional meetings with CDD staff and staff of responsible Districts/Agencies as needed throughout the preparation of the EIR to ensure that the EIR is prepared in compliance with City, County, and State standards.
- B. Preparation of the EIR Notice of Preparation (NOP). This task would include the drafting and finalization of the NOP document in collaboration with CDD staff, preparation of the Notice of Completion (NOC), formal distribution to the State Clearinghouse through CEQA Submit, preparation of a Scoping Meeting presentation, and facilitation of the City's Scoping Meeting. At the close of the NOP period, compile all NOP comments for inclusion and response within the EIR.
- C. Preparation of an Administrative Draft EIR, Draft EIR, Administrative Final EIR, and Final EIR, pursuant to the requirements of CEQA and the City of Carpinteria Environmental Review Guidelines. The EIR must include an analysis of issues listed in Appendix G of the CEQA Guidelines with consideration given to and the Environmental Thresholds Manual set forth in the City of Carpinteria Environmental Review Guidelines https://carpinteriaca.gov/wp-content/uploads/2020/03/cd_Environmental-Review-Guidelines.pdf. The EIR must identify and describe potential alternatives and feasible mitigation measures to lessen or avoid the significant impacts of the proposed Project. The EIR must also include, as needed, color illustrations, tables, charts, graphs, photographs, and any typographical elements to effectively communicate the analysis and conclusions of the EIR.
- D. Conduct any surveys and/or technical studies, and preparation of supporting documentation required to complete the EIR. Note that several technical studies and reports were prepared by the Project applicant and submitted with the application; those documents should receive peer review by the environmental consultant for potential use and inclusion in the EIR analysis, with additional/supplemental analysis performed if deemed necessary by the EIR consultant.
- E. Preparation of all required CEQA noticing documents for the draft and final EIRs (e.g., Notice of Availability, updated Notice of Completion, etc.), and distribution/uploading through CEQA Submit.
- F. Preparation of written responses to all substantive public and agency comments received on the Draft EIR to be included in the Administrative Final EIR and Final EIR at the conclusion of the noticing period for the Draft EIR.
- G. Preparation of all required Notice of Determination documents for recordation with the Santa Barbara County Clerk and Recorder's Office, and distribution/uploading through CEQA Submit.

- H. Assisting CDD staff with the preparation of a mitigation monitoring and reporting program, findings of fact pursuant to CEQA Guidelines 15091, and if necessary, a statement of overriding considerations.
- I. Attendance/participation at one Environmental Review Committee meeting, one Planning Commission meeting, and one City Council meeting at which the proposed Project and EIR will be considered. Although only one Planning Commission hearing and one City Council hearing are required for the proposed Project, additional decision-maker meetings might be required depending on the level of public interest and issues that might arise during the decision-maker meetings. Therefore, the Consultant must be available to attend additional decision-maker meetings regarding the EIR.

III. PROPOSAL CONTENT

Responding environmental consultants must prepare and submit by **February 20, 2025 no later than 5:00 pm PDT**, a technical qualifications proposal and a cost proposal for the work specified in the Environmental Consultant Performance Criteria (below). The contents of each proposal should be as follows:

- A. Technical Qualifications Proposal: The technical qualifications proposal must include the following:
 - 1. A detailed description of the degrees, certifications, qualifications, and experience of all individuals, including those of any subconsultants, who will be performing the work and activities that are required to prepare the EIR;
 - 2. A detailed description of the environmental consultant's related work experience, familiarity with the proposed Project, and experience evaluating projects with similar impacts as those that must be evaluated in this EIR;
 - 3. A list of references;
 - 4. A detailed discussion of the proposed methodological approach to analyzing the Project's impacts and preparing the mitigation monitoring and reporting program; and a Project timeline that provides the projected number of hours that will be required to complete the EIR, and any additional follow-up required to produce a final certified copy of the EIR.

The environmental consultant must submit a digital copy of the technical proposal via email to mindyf@carpinteriaca.gov.

- B. Cost proposal: Materials, travel costs, and any/all other costs/associated fees must be detailed in the cost proposal including required insurances. The cost proposal must also include a breakdown of the tasks and projected hours by staffing levels, and the hourly billing rate(s) for the various levels of staff to be assigned to the Project.

Please submit the cost proposal as a digital copy in a **separate email than the technical proposal** to mindyf@carpinteriaca.gov.

- C. Insurance: The City of Carpinteria requires that contract service providers be able to verify that they maintain the appropriate insurances. For professional contracting services, vendors must maintain the minimum General Liability, Automobile, and Worker's Compensation coverage. Professional Liability coverage is also required per the amounts listed.

IV. SUBMITTAL PROCEDURES

The technical qualifications proposal and cost proposal may be submitted digitally to:

Mindy Fogg, Principal Planner
mindyf@carpinteriaca.gov

V. SCHEDULE

Consultant selection will proceed according to the following schedule:

RFP Released	January 22, 2025
RFP Submittal Deadline	February 20, 2025
Selection Interviews*	Early March
Notification of Selection	By March 21, 2025

*Interviews will only be held if deemed necessary by the City in evaluating multiple firm submissions. The City may elect to conduct informational phone calls or virtual meetings to each firm as part of the proposal review and evaluation.

VI. PROPOSAL EVALUATION AND SELECTION PROCEDURES

The technical qualification proposals will be evaluated by a panel on the basis of the following criteria:

- A. The environmental consultant's demonstrated understanding of the scope of work and consultant performance criteria;
- B. The environmental consultant's demonstrated professional skills, and the credentials (e.g., degrees and certifications) of all staff responsible for preparing the EIR;
- C. The environmental consultant's experience and references related to preparing EIRs for projects similar to the Project that is the subject of the EIR;
- D. The general quality of the proposal (e.g., organization, use of charts and graphs; legibility); and,
- E. The proposed methodological approach to analyzing the Project's impacts and preparing the mitigation monitoring and reporting program.

The consultants will be ranked according to CDD's evaluation criteria provided above. The cost proposals will not be opened by CDD until the technical qualifications have been ranked.

The selection of a candidate firm will be based on a combination of the evaluation criteria, references, and costs. The candidate firm with the best qualifications coupled with a competitive cost estimate will be invited to negotiate an EIR Services Agreement. If an agreement is not reached, negotiations with the candidate may be terminated, and CDD will commence with negotiations with the next most qualified consultant.

The CDD reserves the right to reject any and/or all proposals. The CDD also reserves the right to invite any of the candidates to attend an oral interview, and/or request additional clarifying information from any of the candidates if necessary.

VII. BILLING AND PAYMENT PROCEDURES

- A. Billing and payment for the services rendered by the environmental consultant shall be as outlined in the contract.
- B. The environmental consultant's fees and costs will be paid by the City with money deposited by Linden Managers, LLC (hereinafter "the applicant"). The environmental consultant must agree that the contract fees include all fees and costs to be incurred by the environmental consultant for: the preparation of the Administrative Draft EIR, Draft EIR, Administrative Final EIR, and Final EIR; attendance at meetings and hearings; time spent coordinating activities; all salaries, travel, production of materials, and fees paid to other firms for related special services; and all field surveys and investigations of the Project site.

SAMPLE CONTRACT

SAMPLE

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTANT SERVICES (“Agreement”) is made and effective as of the Day of Month, Year by and between the City of Carpinteria, a municipal corporation (“City”), and the NAME (“Consultant”) (collectively, the “Parties”) at Carpinteria, California, with reference to the following facts:

- A. City has determined that it is necessary and appropriate to engage a non-design professional to carry out the services described herein; and
- B. Consultant has represented itself as being fully qualified and available to perform the consultant services required or necessary under this Agreement in a fully competent, professional and timely manner; and
- C. City desires to contract with Consultant and Consultant is willing to perform the consultant services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SERVICES.

- 1.1 **Basic Services.** City hereby retains Consultant to perform the services described and set forth in the attached Exhibit A (“Basic Services”), which is incorporated by this reference as though set forth in full. Consultant hereby agrees to perform said services within the designated time frames and accepts this retention. Consultant shall complete the Basic Services according to a schedule of performance which is also set forth in Exhibit A. The Parties agree and acknowledge that time is of the essence in performance of this Agreement.
- 1.2 **Additional Services.** In addition to the Basic Services, City may elect to have Consultant perform additional services that are beyond the current scope of the Basic Services, but within the expertise of Consultant (“Additional Services”). Such Additional Services shall be mutually agreed to in advance and specified in a writing, which shall also specify the basis for the Consultant’s fee for such additional services. Basic Services and Additional Services are referenced collectively as “Services.”

2. PERFORMANCE.

- 2.1 **Standard of Performance.** Consultant shall faithfully, competently and diligently perform the obligations and responsibilities required by this Agreement, applying best management practices and the same standards of care utilized by persons commonly

engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall not engage the assistance of subcontractors for performance of the Services unless previously agreed to in writing by the City.

- 2.2 **Labor and Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the Services. Consultant shall give its attention and supervision to the fulfillment of the provisions of this Agreement by its employees and subcontractors and shall be responsible for the timely performance of the Services required by this Agreement. Consultant is an independent contractor of City. Any and all employees of the Consultant engaged by the Consultant in the performance of any work or services required of the Consultant under this Agreement, shall be considered employees or agents of the Consultant only and not of the City, and any and all claims that may or might arise under any workers compensation or other law or contract on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Consultant. Consultant is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work related to the Basic Services.
- 2.3 **Review of Service.** Consultant shall furnish City with reasonable opportunities from time to time to ascertain whether the Services of Consultant are being performed in accordance with this Agreement. All work done and materials furnished shall be subject to final review and approval by City; Consultant is not providing final approval or review, which is solely City's function and role. City review and approval of such work and Services shall not, however, relieve Consultant of any of its obligations under this Agreement.
- 2.4 **Contract Administration.** The City Manager or his/her designee shall represent the City in all matters relating to the administration of this Agreement. The City Manager or his/her designee shall have the authority to act on the City's behalf to review and approve all products submitted by Consultant and may execute all necessary documents to authorize Consultant to perform Additional Services as provided for herein. The City Manager or his/her designee shall have the authority to render decisions within guidelines established by the City Council and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information. The following individual(s) will serve as the primary contact(s) for Consultant in the administration of this Agreement:

Mindy Fogg, Principal Planner, Community Development Department

- 2.5 **Representations and Warranties.** Consultant represents and warrants to City that: (i) its fulfillment of its obligations and, as applicable, performance the Services under this Agreement, will not violate any applicable or breach any contracts with third parties and (ii) it has the right, power and authority to fulfill its obligations, and, as applicable perform the Services, and enter into this Agreement; (iii) the Services contemplated hereunder will be performed by adequately trained, competent personnel, in a professional manner, with such personnel having the requisite skill and expertise necessary to perform and complete the Services in accordance with industry standards and in accordance with the terms and

conditions of this Agreement; and (iv) the Services and all deliverables provided hereunder will conform to the specifications agreed-to by the parties.

3. **TERM.** This Agreement shall be effective as of the date first above written and shall continue until all Services to be provided by Consultant are completed to the satisfaction of the City, unless terminated earlier as provided for herein.

4. **COMPENSATION.**

4.1 **Basic Services.** For Basic Services, City shall pay Consultant on a time and materials basis, not to exceed amount of \$**AMOUNT** as full compensation for all labor, materials, equipment, tools, transportation, and Services. This compensation shall be paid in accordance with the payment rates and schedule as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference as though set forth in full, based on the actual time spent on the tasks and the actual price of the necessary materials. In the event a term or condition in any document or attachment conflicts with a term or condition of this Agreement the term or condition in this Agreement shall control. Should such conflict arise the priority of documents shall be as follows: This Agreement, the City's Request For Proposal together with attachments, Consultant's proposal together with attachments.

4.2 **Additional Services.** Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to the Basic Services, unless such services are authorized Additional Services agreed to in advance and in writing in the method provided for herein. Consultant will submit fee estimates for such Additional Services upon request of City.

4.3 **Invoices.** Should City reasonably determine that Consultant has not fulfilled any services or met the timelines established in Exhibit A, City shall notify Consultant of the failure in writing of deficiencies believed to be substantially inadequate within thirty (30) days after receipt of product or performance of Services. The City, at its discretion may provide the Consultant five (5) days to cure the breach. City may withhold the accompanying payment without penalty until such time as Consultant cures the breach. In the alternative, upon Consultant's failure to meet any deadlines the City may modify the Services schedule. Should Consultant or its representatives fail to cure the breach within five (5) days, or fail to reasonably agree to such modified schedule, City may immediately terminate this Agreement in writing, without penalty or incurring further obligation to Consultant.

4.4 **Withholding.** City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work or performance of Services is found to be substantially inadequate. City shall notify Consultant in writing of deficiencies believed to be substantially inadequate within thirty (30) days after receipt of product or performance of Services.

4.5 **Taxes/Insurance/Licenses.** Consultant shall be solely responsible for the payment of any federal, state, or local income tax, social security tax, workers' compensation insurance, state disability insurance, and any other taxes or insurance which Consultant is responsible for paying as an independent contractor under federal, state or local law. At all times during

the term of this Agreement, Consultant and any approved subcontractors performing Services under this Agreement shall have in full force and effect all licenses necessary for the performance of Services hereunder, including without limitation, business licensing from City, all at the sole cost of Consultant.

5. RECORDS.

- 5.1 **Financial Records.** 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 also 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.
- 5.2 **Access to Records.** Consultant shall (i) provide free access to the representatives of City or its designees at reasonable times to books and records as set forth in section 5.1; (ii) shall give City the right to examine and audit said books and records; (iii) shall permit City to make transcripts therefrom as necessary; and (iv) 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 four (4) years after receipt of final payment.
- 5.3 **Original Records.** All original agreements, data, documents, designs, drawings, exhibits, maps, models, computer files, reports, studies, surveys, notes, and other work, materials or documents prepared or used to prepare Consultant's work product in the course of providing the Services pursuant to this Agreement shall be referred to as "**Consultant Work Product**". Upon completion of, or in the event of termination or suspension of this Agreement, all completed and incomplete Consultant Work Product shall become the sole property of City once the Consultant has received payment. City may duplicate, disclose, disseminate, use, reuse or otherwise dispose of Consultant Work Product in whole or in part in any manner it deems appropriate, without the permission of Consultant. With respect to computer files, Consultant shall make available to the City, at Consultant's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Consultant may retain copies of such Consultant Work Product as a part of its record of professional activity, except for Consultant Work Product marked as "DRAFT" or "CONFIDENTIAL".

6. TERMINATION.

- 6.1 **Termination Without Cause.** This Agreement may be terminated by either party for any reason upon ten (10) days prior written notice by the terminating party to the other party. In the event of a termination, the date of termination shall be deemed to be the first business day occurring after the expiration of the notice period. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise.

6.2 **Termination With Cause.** Either party may terminate this Agreement with cause, effective immediately upon written notice of such termination to the other party and failure of the breaching party to correct within five (5) days of receiving such notice, based upon the occurrence of any of the following events:

- Material breach of this Agreement;
- Cessation of Consultant to be licensed, as required by applicable law;
- Failure to substantially comply with any applicable federal, state or local law or regulation;
- Filing by or against Consultant of any petition under any law for the relief of debtors; and,
- Filing of a criminal complaint against Consultant for any crime, other than minor traffic offenses.

6.3 **Performance Upon Termination.** In the event this Agreement is terminated pursuant to this Section, City shall pay Consultant for the outstanding balance owed for work performed up to the time of termination. Upon termination of the Agreement, Consultant shall submit an invoice to City as provided for herein and shall submit to the City all of its files for any billable or non-billable matters in which the Consultant is involved under the scope of this Agreement.

6.4 **Termination Upon Mutual Consent.** This agreement may also be terminated by mutual consent of the parties and in accordance with the terms and conditions of any plan of termination established by the parties. In the event of a termination by mutual consent, the date of termination shall be such date as is agreed upon by the parties. The parties may agree to suspend or terminate a portion of this Agreement and such suspension or termination shall not make void or invalidate the remainder of this Agreement.

7. **DISPUTE RESOLUTION.** Except as explicitly provided in Exhibit C relating to claims by Consultant, if any dispute, claim or disagreement shall arise relative to the interpretation or enforcement of this Agreement, the parties shall use commercially reasonable efforts to settle the dispute, claim or disagreement. To this end, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such a solution within a period of thirty (30) days, then, upon notice by either party to the other, the dispute, claim or disagreement shall be submitted to final, binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator shall have the authority to assess arbitration costs and expenses against either or both parties. The decision in the arbitration shall be binding on all parties, and judgment on any arbitration award may be entered in any court of competent jurisdiction.

8. **INSURANCE.** Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in the attached Exhibit D, which is incorporated by this reference as though set forth in full.

9. **INDEMNIFICATION.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any of its officials, directors, employees and agents

(“**Indemnified Parties**”) from and against any and all losses, liabilities, damages, costs, charges, payments, claims, and expenses, including attorney’s fees and costs of defense, which arise out of, are a consequence of, or are in any way attributable to, in whole or in part, this Agreement, including but not limited to any activities associated with carrying out the agreed to Services by Consultant, its agents, employees, subcontractors, consultants, assigns or by any individual or entity for whom Consultant is legally liable.

10. **RELEASE OF INFORMATION.**

10.1 **Confidentiality.** All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released except to the City, directly or indirectly, by Consultant without City's prior written authorization. Consultant, its officers, employees, subcontractors or sub-consultants shall not voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Services performed under this Agreement unless requested by the City Attorney or authorized in writing by the City Manager. Response to a subpoena or court order shall not be considered "voluntary" provided that Consultant shall give City prompt written notice of any such court order or subpoena. The provisions of this Paragraph shall survive the termination of this Agreement.

10.2 **Notice and Cooperation.** Consultant shall promptly notify the City Manager and City Attorney in writing if Consultant, its officers, employees, agents, subcontractors or subconsultants are 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 related to this Agreement and/or Consultant’s related Services. City has no obligation to, but may exercise discretion 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 City an opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not grant or imply a right of City to control, direct, dictate or rewrite said response.

11. **RELATIONSHIP TO CITY.**

11.1 **Independent Contractor.** Consultant is and shall at all times remain as to the City a wholly independent contractor. 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 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.

11.2 **No Employee Privileges.** No City employee benefits shall be available to Consultant in connection with the 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.

- 11.3 **Consultant Duty to City.** Consultant understands and agrees that its responsibility to provide complete and accurate Services is owed solely to City and that its accountability under this contract shall likewise be solely to City and not to any City applicants or any other third person or entity.
- 11.4 **Interest of Consultant.** Consultant represents and warrants to City that it presently has no interests, and covenants that it shall not acquire any interests, direct or indirect, financial or otherwise, which would conflict with the performance of the services to be provided by Consultant under this Agreement. Consultant further covenants that, in the performance of this Agreement, no subcontractor or employee having such an interest shall be employed by Consultant. Consultant certifies that no one who has or will have any financial interest under this Agreement is: (a) an officer or employee of City, or (b). an officer or employee of the applicant and any of its consultants. Consultant agrees to comply with any applicable conflict of interest code.
- 11.5 **Undue Influence.** Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City 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 City will receive compensation, directly or indirectly, from Consultant or 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 City to any and all remedies at law or in equity.
- 11.6 **Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the City and the Consultant and will not confer any rights upon any person not expressly a party to this Agreement.

12. GENERAL PROVISIONS.

- 12.1 **Assignment of Rights.** Contractor agrees to assign City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act arising from purchases of goods, services, or materials pursuant to this Agreement.
- 12.2 **Further Assurances.** City and Consultant each agree to cooperate with one another, to use their best efforts, to act in good faith, and to promptly perform such acts and execute such documents or instruments as are reasonably necessary and proper to consummate the transactions contemplated by this Agreement.
- 12.3 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if personally served or on the second day after mailing if mailed by first-class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To City:
Michael Ramirez, City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013-2698
P: (805) 684-5405

To Consultant:

Any party may change their address for the purpose of this paragraph by giving the other party written notice of the new address in the above manner.

- 12.4 **Legal Responsibilities.** Consultant shall keep itself informed of state, federal and laws and regulations which in any manner affect those employed by it or in any way affect the performance of its Service pursuant to this Agreement. The Consultant shall reasonably observe and comply with such laws and regulations. The City and its officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.
- 12.5 **Licenses.** At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses, certifications, or related credentials required by law for the performance of Services described in this Agreement. Consultant represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses certifications, or credentials are current, active, and not in a state of suspension or revocation.
- 12.6 **Labor Conditions.** City is a public entity in the state of California, and therefore, City and Consultant are subject to the provisions of the Government Code and the Labor Code of the state of California. All provisions of law applicable to public contracts and/or this Agreement are incorporated herein by this reference and are made a part of this Agreement to the same extent as if they were fully stated in the Agreement and shall be complied with by Consultant.
- 12.7 **Labor Requirements.** Consultant shall abide by all federal and California laws and regulations regarding wages, including, without limitation, the Fair Labor Standards Act and the California Labor Code, which, in part, mandate that 8 hours' labor constitutes a legal days' work, and require Consultant to pay the general prevailing wage rates. The California statutory provisions for penalties for failure to pay prevailing wages will be enforced and the statutory provisions for penalties for failure to comply with California's wage and hour laws will be enforced. In addition, Consultant is required to comply with the statutory requirements relating to employment of apprentices. Consultant also must secure the payment of workers' compensation to its employees as provided by California law. Consultant acknowledges its obligation to secure payment of Workers' Compensation before beginning work as set forth in the attached **Exhibit E** (together, "Acknowledgement of Workers' Compensation Obligation" and "Declaration of Exemption from Workers' Compensation") which is incorporated by this reference as though set forth in full. Additionally, Consultant is required to comply with all statutory requirements relating to certified payroll records, including the maintenance of the records, their certification, and their availability for inspection.

- 12.8 **Discrimination.** No person shall be excluded from employment in the performance of this Agreement on the grounds of race, creed, color, sex, age, marital status, sexual orientation or place of national origin. Consultant shall comply with all local, state, and federal laws relating to equal employment opportunity rights.
- 12.9 **Assignment.** Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City, which shall have the sole discretion to consent to any proposed assignment. Because of the personal nature of the Services to be rendered pursuant to this Agreement, only Consultant shall perform the services described in this Agreement.
- 12.10 **Waiver.** No waiver of a provision of this Agreement shall constitute a waiver of any other provision, whether or not similar. No waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 12.11 **Force Majeure.** Neither Consultant nor City shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
- 12.12 **Construction of Terms.** All parts of this Agreement shall in all cases be construed according to their plain meaning and shall not be construed in favor or against either of the parties. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. In the event of any provision shall be adjudged invalid, void or unenforceable, the parties hereto agree to enter into a supplemental agreement to effectuate the intent of the parties and the purposes of this Agreement.
- 12.13 **Controlling 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, with venue proper only in the County of Santa Barbara, State of California.
- 12.14 **Authorization.** All officers and individuals executing this and other documents on behalf of the respective parties hereby certify and warrant that they have the capacity and have been duly authorized to execute said documents on behalf of the entities indicated.
- 12.15 **Entire Agreement.** This Agreement, along with its attached exhibits, which are incorporated herein by this reference, constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be altered, amended or modified only by a supplemental writing executed by the parties to this Agreement and by no other means. Each party waives any future right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver or estoppel.

12.16 **Counterparts.** This Agreement may be executed in counterparts, each of which shall remain in full force and effect as to each party.

12.17 **Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement at the place and as of the date first written above.

"CITY"
City of Carpinteria

"CONSULTANT"
NAME

By: _____
Michael Ramirez, City Manager

By: _____
[]

APPROVED AS TO FORM:
City of Carpinteria

ATTEST:
City of Carpinteria

By: _____
Jena Shoaf Acos, on behalf of
Brownstein Hyatt Farber Schreck, LLP
Acting as City Attorney of the City of Carpinteria

By: _____
Brian C. Barrett, CMC, CPMC
City Clerk

EXHIBIT A

BASIC SERVICES TO BE PERFORMED

EXHIBIT B

PAYMENT RATES AND SCHEDULE

EXHIBIT C

RESOLUTION OF CONSTRUCTION CLAIMS

The following pertains to Public Contract Code Sections 20104 through 20104.6 (Resolution of Construction Claims)

1. This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
2. This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
3. "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.
4. "Claim" means a separate demand by the contractor for (a) a time extension, (b) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency.
5. The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
6. This article applies only to contracts entered into on or after January 1, 1991.
7. For any claim subject to this Agreement, the following requirements apply:
 - a. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
 - b. (1) For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the claimant.

(3) The City's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

- c. (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the claimant.

(3) The City's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

- d. If the claimant disputes the City's written response, or the City fails to respond within the time prescribed, the claimant may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- e. Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

- f. This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

- 8. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both

parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

9. (a) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(b) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(c) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

10. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.
11. The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
12. In any suit filed under Section 20104.4, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.
13. Pursuant to California Public Contract Code Section 7201, the City may not retain greater than five (5%) percent of contract price.

EXHIBIT D

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 form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross-liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form 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.

When applicable, 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.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, volunteers and agents, using standard ISO endorsement No. CG 2010-0413. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
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 contractor 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 (thirty) 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, non-contributing 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 contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
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 increased 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 requirement 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. The City's failure to comply with reporting requirements should not affect coverage required under the Agreement.
23. The consultant's insurance is primary to that of any insurance claimed by the City.

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.

EXHIBIT E

WORKERS' COMPENSATION REQUIREMENTS

The Consultant is required to sign and file either a statement acknowledging its obligation to secure payment of Workers' Compensation before beginning work, or a declaration confirming that as a sole proprietor consultant is exempt from Workers' Compensation Requirements.

ACKNOWLEDGEMENT OF WORKERS' COMPENSATION OBLIGATION

I, **Name**, hereby acknowledge my obligation to secure payment of Workers' Compensation before beginning work.

Consultant

By: _____
Name, Title of Signator

Dated: _____