



CITY OF BISHOP

377 West Line Street - Bishop, California 93514
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760-873-8458 publicworks@cityofbishop.com
www.cityofbishop.com

Request For Proposals

Municipal Drainage Planning

Release: 31 December 2015

Closes: 1 February 2016

Contact: David Grah, Director of Public Works

General: The City of Bishop requests proposals from consultants for drainage planning services. Because drainage and transportation infrastructure are so closely linked, the city has obtained funding for the effort from the Inyo Local Transportation Commission.

The City: The City of Bishop has a permanent population of about 3,900 and is located in a remote rural part of the State of California. The City's economic base is mostly recreation and government.

Bishop is located in the Owens Valley in the eastern central part of the state, east of the highest part of the Sierra Nevada mountain range. The climate is dry with hot summers and cool winters. Bishop is at an elevation of about 4,100 feet with 14,000 foot peaks to the west in the Sierra Nevada and to the east in the White Mountains.

The City of Bishop is surrounded by property owned by the City of Los Angeles and is adjacent to the Bishop Paiute Indian Reservation. In addition, most undeveloped property within the city is owned by the City of Los Angeles. Los Angeles acquired its property in the area as water supply and generally manages the property for this purpose. Even so, almost all Los Angeles property in the area is leased for various purposes, mostly ranching, though a number of in-town commercial properties are owned by Los Angeles. Los Angeles is concerned about water availability and quality but has no unusual water management roles outside of its properties.

The City of Los Angeles is reluctant to release its property and, as a result, the rate of private development in Bishop is slow. At the same time, the city makes ongoing improvements to its street system.

Existing Drainage Situation: Most drainage in the City of Bishop is conveyed by street gutters to surface waters such as creeks and ditches. The presence of sub surface storm drains is very limited. The expansion of sub surface drains is complicated by relatively flat topography (sloping gently to the east) and a canal near the east boundary of the city.

The City of Bishop has no established drainage standards and the most recent drainage master plan is from the mid 1900's. As a result, proponents of projects in the city are met with uncertainty in regard to how to handle drainage at the site and what standards are to be used. Both typically have to be developed by proponents on a case by case basis.

Data Available: The City of Bishop Geographic Information System (GIS) includes the following data in ESRI format that may be useful to consultants providing drainage planning services to the city:

1. Existing subsurface drainage system.
2. Creeks, ditches, and canals.
3. Light Detection and Ranging (LiDAR) derived topographic (1 foot contours), ground cover and impermeable surfaces, and building footprints for Bishop area.
4. Four-inch-resolution aerial imagery from 2012 for Bishop area.
5. Zoning
6. Boundary and a range of other geospatial data.
7. Elevation and location data for 10 control points in and around city
(<http://www.cityofbishop.com/Misc/BishopControlNetworkSurveyCORRECTED.pdf>)

Scope of Work: The products of the following work shall be the property of the City. Where applicable, in addition to readable formats, products should be provided in editable electronic formats.

1. Task 1 – Drainage Master Plan This task consists of identifying and evaluating the city's existing drainage system, identifying needed improvements to existing drainage system to serve existing demands, identifying general drainage strategy to serve all areas of the city including undeveloped areas, and providing results in the form of a report. This task is expected to include these activities:
 - Identify all city outfalls - Outfalls defined as any discharge point to surface waters, non-city owned storm drain system or land outside the city
 - Delineate drainage areas for all outfalls
 - Field review existing drainage system
 - Review and update storm drain data available (see above), as appropriate
 - Delineate logical subareas based on existing storm drain system
 - Establish identification system with unique identifiers for system features and elevations and locations, as appropriate
 - Evaluate conveyance capacity of existing system
 - Identify locations where additional capacity is needed (based on information from Task 2)

- Identify feasible conceptual solutions for locations where additional capacity is needed
 - Develop conceptual drainage system to serve build out within city limits
2. Task 2 – Design Standards This task consists of developing drainage design standards and providing results in the form of a report. This task is expected to include these activities:
- Review and summarize up to two other community drainage design standards with similar climate and elevation to inform the development of the city’s design standards
 - Develop design guidelines for conveyance including establishing acceptable street flooding limits
 - Develop design guidelines for flow modification such as detention and retention for public and private developments
 - Develop design guidelines for standards of treatment of storm water
3. Task 3 – Regulatory Summary Provide results of the following activities in the form of a report that could be used to support obtaining funds through the Inyo Mono Integrated Regional Water Management Group or other sources:
- Identify federal, state and local storm water and water quality regulations or issues which may have implications for the drainage in the city
 - Identify what storm water and water quality regulations currently impact the City and what regulations may impact the city in the future. Identify specific steps the City should take in anticipation of existing or future regulations
 - Review city’s grading ordinance and program. Recommend modifications or additions to address construction site best management practices and how to integrate with state construction general permit requirements

Proposal: A qualifying proposal must address the entire scope of work and include:

1. Brief description of firm, contact person, address, telephone number, and e-mail address.
2. Description of approach to work and description of work products.
3. Description of how city staff will be able to engage in work and provide review of draft work products.
4. Description of how work is integrated between tasks.
5. Resumes of staff involved.
6. Examples of similar work including projects descriptions and dates. Of special interest is similar work in rural communities in California that included storm water and water quality regulations.
7. Three references.

8. Proposed work schedule.
9. Cost proposal broken down to at least the task level.

Proposals are due 1500 (3 pm) on the closing date for this Request for Proposals. Send proposals to:

David Grah
 Director of Public Works
 City of Bishop
 377 West Line Street
 Bishop, California 93514
 publicworks@cityofbishop.com

Proposals shall be submitted either in a sealed envelope (3 paper copies and 1 electronic copy) or by email which is clearly marked with the title of the Request for Proposal.

Selection Process: The consultant will be selected based on the experience and ability of the firm and staff to accomplish the scope of work, based on the proposal and considering the effective use of City funds. Selection process is expected to include initial screen of proposals, interviews of top candidate firms, and reference checks. The City is particularly interested in receiving proposals from female, minority, and locally-owned small businesses. Each firm will be rated using the following criteria and rating schedule.

Evaluation Criteria	Possible Rating Points
Experience successfully performing similar drainage planning for small municipalities	20
Quality of response to Request for Proposals.	20
Technical expertise with drainage planning and ability to dedicate qualified staff to effort	15
Ability to effectively engage city input and review	15
Ability to deliver product cost effectively and in a timely way.	15
Ability to maintain excellent client service over life of project	15
Total	100

The city will attempt to negotiate a contract with the highest rated firm. The city reserves the right to reject any or all proposals, to waive minor irregularities in said proposals, or to negotiate minor deviations with the successful firm.

The city typically follows the attached template for consultant contracts, edited as needed for the specific project and consultant involved.

**CITY OF BISHOP
PROFESSIONAL CONSULTANT SERVICES AGREEMENT
WITH
[INSERT CONSULTANT’S NAME]**

1. PARTIES AND DATE

This AGREEMENT is made and entered into this ____ day of _____, 20__ (“Effective Date”), by and between the City of Bishop, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 377 West Line Street, Bishop, California, 93514 (“City”) and [INSERT NAME OF COMPANY], a [INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.], with its principal place of business at [INSERT ADDRESS] (“Consultant”). City and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to render such professional [INSERT TYPE] consulting services for the [INSERT NAME OF PROJECT, AND CONTRACT NUMBER, IF APPLICABLE] project (“Project”), as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Scope of Services”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

2. SERVICES PROVIDED BY CONSULTANT

2.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work

necessary to fully and adequately supply the professional [INSERT TYPE] consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. **[INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE:** Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit “A-I.”]

2.2 Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

2.3 Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

2.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers’ compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys’ fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant’s performance under this Agreement.

2.5. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

3. COMPENSATION AND BILLING

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" (the "Fee Schedule") attached hereto and incorporated herein by reference. The total compensation shall not exceed **[INSERT AMOUNT WRITTEN OUT]** (**[\$[INSERT NUMBER]**) without written approval of the City Council or City Representative as applicable. Consultant shall promptly notify the City Representative, in writing, when fees and expenses incurred under this Agreement have reached **[\$[INSERT AMOUNT]** (80% of maximum amount allowable). Consultant shall concurrently inform the City Representative of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work would exceed the maximum amount payable. Additional Services may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Additional Services. As used herein, "Additional Services" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Additional Services without written authorization from the City. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Representative for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

3.3 Method of Billing. Within 10 calendar days following the end of the preceding month in which services are performed or expenses incurred under this Agreement, Consultant shall submit to City an invoice to the City. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. The invoice shall indicate work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 45 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.4 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.5 Records and Audits. Consultant shall maintain full and accurate records with respect to all services and matters covered under this Agreement. City shall have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. Consultant shall maintain an up to date list of key personnel and telephone numbers

for emergency contact after normal business hours. Records of Consultant's services relating to this Agreement and funds received from City shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times for a period of five (5) years from the date of performance of said services.

4. TIME OF PERFORMANCE

4.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" ("Schedule of Services") attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

4.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5. TERM AND TERMINATION

5.1 Term. The term of this Agreement shall commence on the Effective Date and continue for a period of _____ months, from [INSERT DATE] to [INSERT DATE], unless earlier terminated as provided herein. *****INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE:** The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than [INSERT NUMBER] additional one-year terms.***] Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

5.2. Notice of Termination. Notwithstanding the provision in paragraph 5.1 above, City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.3. Compensation. In the event of termination, City shall pay Consultant for

reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination unless the termination is for cause, in which event Consultant need be compensated only to the extent required by law. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. Such payment will be subject to City's receipt of a close-out billing. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, and to other documents pertaining to the services contemplated.

5.4. Documents. In the event of termination of this Agreement, all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in its performance of this Agreement shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.5 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

6.0. INSURANCE

6.1 Consultant shall procure and maintain at all times during the term of this Agreement insurance as set forth in Exhibit "D" attached hereto. Proof of insurance shall consist of a Certificate of Insurance provided on IOS-CGL form No. CG 00 01 11 85 or 88 executed by Consultant's insurer and in a form approved by the City Attorney.

6.2 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

7. GENERAL PROVISIONS

7.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2 City's Representative. The City hereby designates [INSERT NAME AND TITLE], or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's

Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Representative shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.1 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Administrator, City's Representative or his/her designee.

7.3 Consultant's Representative. Consultant hereby designates **[INSERT NAME AND TITLE]**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

7.4 Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

Consultant: [INSERT BUSINESS NAME]
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: [INSERT NAME AND TITLE]

City: City of Bishop
377 West Line Street
Bishop, CA 93514
ATTN: [INSERT NAME AND TITLE]

7.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction

located in Inyo County, California.

7.7 Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement. If assignment or transfer is authorized by City, this Agreement shall be binding on the successors and assigns of the parties.

7.8 Indemnification.

7.8.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

7.8.2 Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 7.8.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

7.9 Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an

agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

7.10 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **[INSERT NAME AND TITLE]**.

7.11 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

7.12 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the

adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

7.13 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

7.14 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

7.15 Water Quality Management and Compliance.

7.15.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

7.15.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

7.15.3 Standard of Care. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Section 7.15.2 of this Agreement. Consultant further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

7.15.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 7.15.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 7.15.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

7.16 Ownership of Materials and Confidentiality.

7.16.1 Documents & Data; Licensing of Intellectual Property. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on any form of electronic media, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to

Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

7.16.2 Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

7.16.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

7.17 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

7.18 Time of Essence. Time is of the essence for each and every provision of this Agreement.

7.19 City's Right to Employ Other Consultants. City reserves the right to employ other consultants in connection with this Project.

7.20 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. In the

event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

7.21 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

7.22 Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.23 No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.24 Invalidity; Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.25 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his

or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

7.26 Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

7.27 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

7.28 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

7.29 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original. All counterparts shall be construed together and shall constitute one agreement.

7.30 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

7.31. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.32. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California

applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

7.33. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

7.34. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

7.35. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

7.36. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

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

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions

for PERS benefits.

7.38. Benefits. Consultant will not be eligible for any paid benefits for federal, social security, state workers' compensation, unemployment insurance, professional insurance, medical/dental, California Public Employees Retirement System ("PERS") or fringe benefits offered by the City.

7.39. Release of Information. Consultant shall not make public information releases or otherwise publish information obtained or produced by it as a result of, or in connection with, the performance of services under this Agreement without the prior written authorization from the City Representative.

7.40. Economic Interest Statement. Consultant hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City hereunder, Consultant is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advise under this Agreement, prior to the commencement of work.

7.41. Political Activity/Lobbying Certification. Consultant may not conduct any activity, including any payment to any person, officer, or employee of any governmental agency or body or member of Congress in connection with the awarding of any federal contract, grant, loan, intended to influence legislation, administrative rulemaking or the election of candidates for public office during time compensated under the representation that such activity is being performed as a part of this Agreement.

7.42. Licenses, Permits, and Fees. Consultant shall obtain a City of Bishop Business License and any and all other permits and licenses required for the services to be performed under this Agreement.

7.43. Taxpayer Identification Number. Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W 9, as issued by the Internal Revenue Service.

7.44. Change in Name, Ownership or Control. Consultant shall notify the City Representative, in writing, of any change in name, ownership or control of Consultant. Change of ownership or control of Consultant may require an amendment to the Agreement.

7.45. Covenants and Conditions. Each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

7.46. Use of City's Name. Consultant shall not publish or use any advertising, sales promotion, or publicity in matters relating to services, equipment, products, reports, and material furnished by Consultant in which City's name is used, or its identity implied without the City Representative's prior written approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF BISHOP

By: _____
[Mayor or City Administrator]

Date: _____

CONSULTANT

By: _____
[INSERT NAME AND TITLE]

Date: _____

Taxpayer ID Number

[If Corporation, TWO SIGNATURES, President **OR** Vice President **AND** Secretary OR Treasurer REQUIRED]

ATTEST

By: _____
Robin Picken
Assistant City Clerk for the City of Bishop

APPROVED AS TO FORM

By: _____
[NAME]
City Attorney
Jones & Mayer

APPROVED AS TO INSURANCE

By: _____
Risk Management

APPROVED AS TO CONTENT

By: _____
Project Manager

SAMPLE

EXHIBIT "A"
SCOPE OF SERVICES

SAMPLE

EXHIBIT "A-I"
FEDERALLY REQUIRED PROVISIONS FOR SERVICES

**[INSERT FEDERALLY REQUIRED PROVISIONS TRIGGERED BY RECEIPT OF
FEDERAL FUNDS FOR THE SERVICES; OTHERWISE
ALWAYS DELETE ENTIRE EXHIBIT "A-I"]**

SAMPLE

EXHIBIT "B"
SCHEDULE OF SERVICES

SAMPLE

**EXHIBIT "C"
FEE SCHEDULE**

NOTE:

TO FIX PAGE BREAK TO SECTION BREAK AND FIX HEADERS DO THE FOLLOWING

- 1) DELETE PAGE BREAK**
- 2) GO TO: PAGE LAYOUT – PLACE SECTION BREAK TO REPLACE PAGE BREAK**
- 3) GO TO HEADER FOOTER – DESIGN – NAVIGATION – AND UNCLICK THE “LINK TO PREVIOUS” IN ORDER TO GET THE CORRESPONDING PAGE NUMBERS (D-1) TO GO IN CORRECT ORDER GOING FORWARD TO NEXT PAGES.**
- 4) THEN FIX FOOTERS FOR EXHIBITS A-D.**

EXHIBIT D INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, CONSULTANT and its subcontractors shall 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 herein, 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 CONSULTANT in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to AGENCY.

CONSULTANT shall provide the following types and amounts of insurance:

[Note: verify minimum limit for each coverage with Risk Manager]

1. Commercial General Liability Insurance: CONSULTANT shall maintain commercial general liability insurance including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations. The limits of CONSULTANT's insurance shall apply to this Agreement as if set forth herein, but in no event shall provide combined single limits of coverage of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate. There shall be no cross liability exclusion for claims or suits by one insured against another.

2. Automobile Liability: CONSULTANT shall maintain automobile liability insurance, including owned, non-owned and hired vehicles, covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with the services provided under this Agreement. The limits of CONSULTANT's insurance shall apply to this Agreement as if set forth herein, but in no event shall be less than \$1,000,000 per occurrence, combined single limit.

[Note: may need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees]

3. Workers Compensation: CONSULTANT shall maintain Worker's Compensation Insurance 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.

[Note: If the required limits for general liability, auto and employer's liability are \$1 million or less, the following paragraph may be omitted.]

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 AGENCY for injury to employees of CONSULTANT, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of AGENCY following receipt of proof of insurance as required herein. **Limits are subject to review but in no event less than \$*** per occurrence. [FILL IN AMOUNT]**

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 and any renewal or subsequent policies' 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 AGENCY 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 AGENCY, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992 or similarly worded endorsement. 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 AGENCY 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 AGENCY 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 AGENCY 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 AGENCY, 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 AGENCY’s protection without AGENCY’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 AGENCY 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, AGENCY 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 AGENCY shall be charged to and promptly paid by CONSULTANT or deducted from sums due CONSULTANT, at AGENCY option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to AGENCY 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 AGENCY. CONSULTANT shall ensure that each policy of insurance required herein reflects this agreement and is written into each policy.
10. CONSULTANT agrees to ensure that its subconsultants, 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 consultants, subcontractors and others engaged in the project will be submitted to AGENCY 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 AGENCY without the AGENCY’s prior written approval. If CONSULTANT’s existing coverage includes a deductible or self-insured retention, the deductible or self-insured

retention must be declared to the AGENCY. At that time the AGENCY 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. To the extent the AGENCY agrees to any deductible or self-insured retention under any policy required under this Agreement to which the AGENCY is named as an additional insured, CONSULTANT shall be required to modify the policy to permit the AGENCY to satisfy the deductible or self-insured retention in the event CONSULTANT is unable or unwilling to do so as a means to ensure the AGENCY can avail itself to the coverages provided under each policy.

12. The AGENCY 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 AGENCY will negotiate additional compensation proportional to the increased benefit to AGENCY.

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 AGENCY to inform CONSULTANT of non-compliance with any insurance requirement in no way imposes any additional obligations on AGENCY nor does it waive any rights hereunder in this or any other regard.

15. CONSULTANT will renew the required coverage annually as long as AGENCY, 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 AGENCY 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 and upon the same terms and conditions herein. 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 AGENCY 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 AGENCY, 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, or 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 AGENCY or CONSULTANT for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to AGENCY. It is not the intent of AGENCY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against AGENCY for payment of premiums or other amounts with respect thereto.

CONSULTANT agrees to provide immediate notice to AGENCY of any claim or loss against CONSULTANT arising out of the work performed under this agreement. AGENCY 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 AGENCY.