

DATE SUBMITTED 7/10/2019  
 SUBMITTED BY CITY MANAGER'S OFFICE  
 DATE ACTION REQUIRED 7/17/2019

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS 8

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: IMPERIAL CHAMBER OF COMMERCE 1. AGREEMENT BETWEEN CITY OF IMPERIAL AND IMPERIAL CHAMBER OF COMMERCE FOR FISCAL YEAR(S) 2017-2020	
DEPARTMENT INVOLVED:	
BACKGROUND/SUMMARY: As per direction by the City Council, attached for your review and consideration is the existing agreement between the City of Imperial and Imperial Chamber of Commerce. The contract is set to term as of June 2020.	
FISCAL IMPACT: Remainder of Contract as approved in the adopted 2019-2020 Fiscal Year Municipal Budget: \$10,000.00 – Cash \$15,000.00- In Kind (Facility/Utilities) Total Contribution: 25,000.00	FINANCE INITIALS <u>VP</u>
STAFF RECOMMENDATION: N/A	DEPT. INITIALS <u>al</u>
MANAGER'S RECOMMENDATION: N/A	CITY MANAGER'S INITIALS <u>[Signature]</u>
MOTION:  SECONDED: APPROVED ( ) REJECTED ( ) AYES: DISAPPROVED ( ) DEFERRED ( ) NAYES: ABSENT: REFERRED TO:	

## CITY OF IMPERIAL

### IMPERIAL CHAMBER SERVICE AND LEASE AGREEMENT

This agreement ("AGREEMENT"), is made and effective as of the latest date of execution by the City of Imperial ("Agency"), a municipal corporation of the State of California and Imperial Chamber of Commerce ("CONSULTANT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

#### I. TERM

This AGREEMENT shall commence on effective date for a period commencing July 1, 2017 and shall remain and continue in effect until June 30, 2020, unless sooner terminated pursuant to the provisions of this AGREEMENT.

#### II. SERVICES

CONSULTANT shall perform the services described in the attached Exhibit A.

#### III. PERFORMANCE

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

#### IV. PAYMENT

A. The AGENCY agrees to pay CONSULTANT quarterly in arrears the sum of \$2500.00. Additionally, CONSULTANT may occupy that portion of AGENCY owned property shown on the attached Exhibit B and located at 101 West 4<sup>th</sup> Street, Imperial, California 92251. Said property consists of 800 square feet of space which the CONSULTANT will have exclusive use of AGENCY, at its expense will provide water and electricity. CONSULTANT shall be responsible for all costs associated with other utilities, including, but not limited to telephone, gas, internet and the like. CONSULTANT shall not make any alterations to the building without Agency's prior written consent. The agreed upon value of CONSULTANT'S occupancy is \$3750.00 per calendar quarter.

B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Agency City Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency City Manager and

CONSULTANT at the time AGENCY's written authorization is given to CONSULTANT for the performance of said services.

- C. CONSULTANT will submit invoices quarterly for services performed. Invoices shall be submitted on or about the first business day of each calendar quarter, or as soon thereafter as practical, for services provided in the previous calendar quarter. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the AGENCY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice therefore.
- D. AGENCY shall be recognized as a Platinum sponsor
- E. CONSULTANT shall provide AGENCY with its annual financial report. The report shall detail CONSULTANT'S financial activities in the previous fiscal year. While an audit is preferred, AGENCY will accept a financial review in accordance with non-profit entities receiving public funds. The report shall be prepared by a CPA or other professional trained to perform such financial analysis. The report shall be submitted no later than 6 months after the end of the fiscal year.

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

- A. Either Party may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the other at least 30 days prior written notice. Said termination will be effective at the end of the calendar quarter at least 30 days after notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the AGENCY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT. Unless otherwise specifically stated in the notice, termination includes services and occupancy of the AGENCY property.
- B. In the event this AGREEMENT is terminated pursuant to this Section, the AGENCY shall pay to CONSULTANT that portion of the annual \$10,000.00 fee for work performed up to the time of termination, provided that the work performed is of value to the AGENCY. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the AGENCY pursuant to Section IV.

**VI. DEFAULT OF CONSULTANT**

- A. The CONSULTANT's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this AGREEMENT, AGENCY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.
- B. If the Agency City Manager or his/her designee determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this AGREEMENT, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the AGENCY with a written plan for the cure of the default, the AGENCY shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this AGREEMENT. Such termination includes CONSULTANT'S occupancy of the Agency property.

**VII. OWNERSHIP OF DOCUMENTS**

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

## **VIII. INDEMNIFICATION**

### **A. Indemnity for professional liability**

When the law establishes a professional standard of care for CONSULTANT'S Services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless AGENCY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by any negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or Sub-Consultants (or any Agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT.

### **B. Indemnity for other than professional liability**

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

### **C. Duty to defend**

In the event the AGENCY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by AGENCY, CONSULTANT shall have an immediate duty to defend the AGENCY at CONSULTANT's cost or at AGENCY's option, to reimburse AGENCY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters. Payment by AGENCY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and AGENCY, as to whether liability arises from the sole negligence of the AGENCY or its officers, employees, or agents, CONSULTANT will be obligated to pay for AGENCY's defense until such

time as a final judgment has been entered adjudicating the AGENCY as solely negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

**IX. INDEPENDENT CONSULTANT**

- A. CONSULTANT is and shall at all times remain as to the AGENCY a wholly independent Consultant and/or 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 AGENCY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the AGENCY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY in any manner.
- B. No 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, AGENCY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for AGENCY. AGENCY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

**X. LEGAL RESPONSIBILITIES**

The CONSULTANT shall keep itself informed of State and Federal 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 at all times observe and comply with all such laws and regulations. The AGENCY, 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.

**XI. UNDUE INFLUENCE**

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

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

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

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

- A. All documents which AGENCY provides to CONSULTANT in performance of this AGREEMENT which AGENCY considers confidential will be clearly marked as such. Such documents shall not be released by CONSULTANT without AGENCY's prior written authorization. CONSULTANT, its officers, employees, agents, or sub-consultants, shall not without written authorization from the Agency Manager or unless requested by the Agency Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the AGENCY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives AGENCY notice of such court order or subpoena.
- B. CONSULTANT shall promptly notify AGENCY should CONSULTANT, its officers, employees, agents, or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the AGENCY, unless the AGENCY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the AGENCY of such Discovery.

AGENCY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless AGENCY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with AGENCY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, AGENCY's right to review any such response does not imply or mean the right by AGENCY to control, direct, or rewrite said response.

**XIV. NOTICES**

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

To AGENCY:                      City of Imperial  
   420 South Imperial Avenue  
   Imperial, California 92251  
   Attn: City Manager

To CONSULTANT:                Imperial Chamber of Commerce  
   101 W 4<sup>th</sup> Street  
   P.O. Box 296  
   Imperial, California 92251  
   Attn: Executive Director

**XV. ASSIGNMENT**

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the AGENCY.

**XVI. LICENSES**

At all times during the term of this AGREEMENT, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this AGREEMENT.



**XVII. GOVERNING LAW**

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

**XVIII. ENTIRE AGREEMENT**

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

**XIX. WORK SCHEDULE/TIME OF COMPLETION**

AGENCY and CONSULTANT agree that time is of the essence in this AGREEMENT. The Services described in Paragraph II shall be completed as set forth therein or in accordance with a schedule to be agreed upon by the parties.

**XX. AUTHORITY TO EXECUTE THIS AGREEMENT**

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

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

CONSULTANT  
Imperial Chamber of Commerce

By:   
Susan Paradis, Executive Director

AGENCY  
City of Imperial, a municipal corporation

By:   
Stefan T. Chatwin, City Manager

Attest:

  
City Clerk

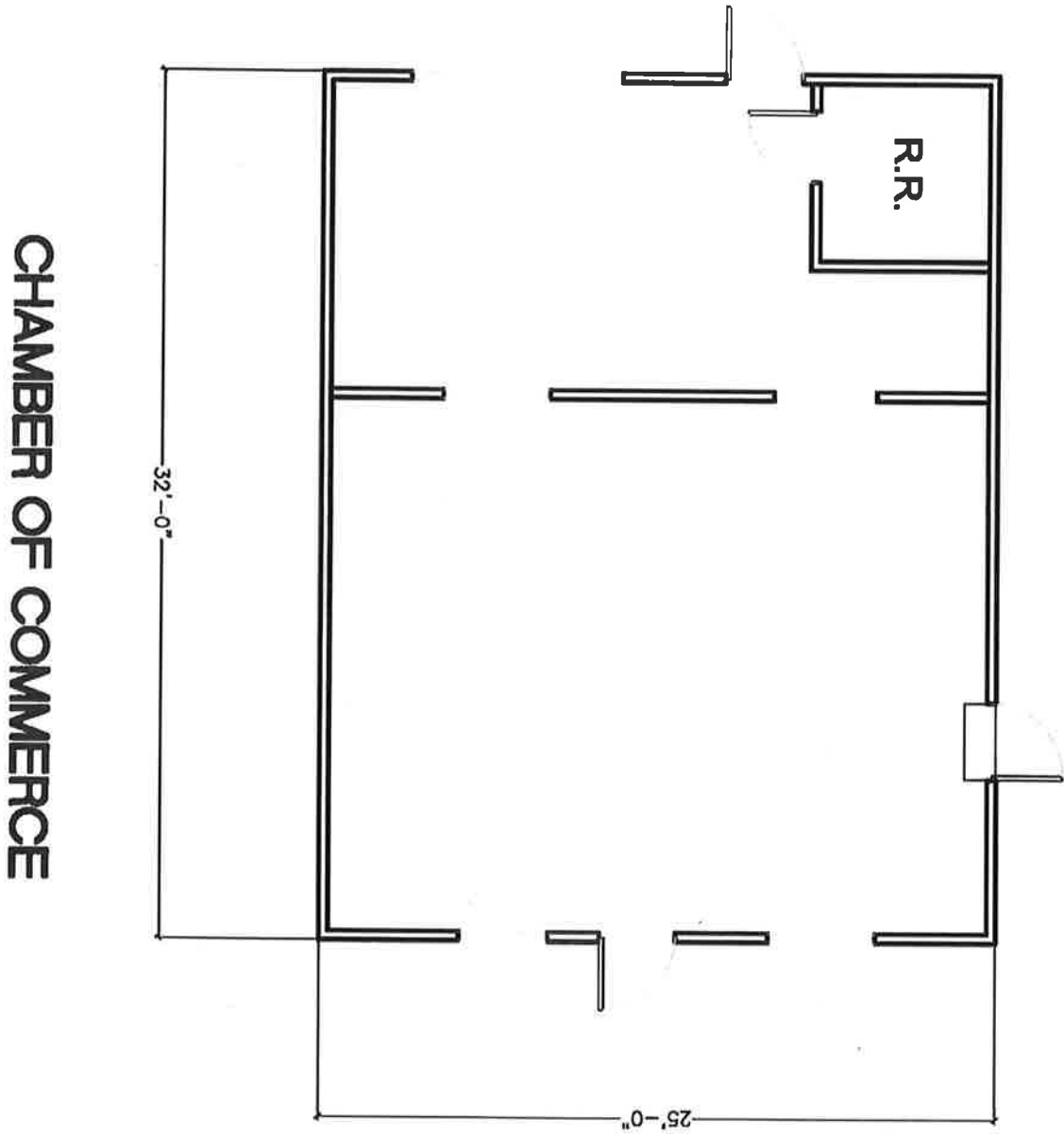
## EXHIBIT A

### **Imperial Chamber of Commerce Duties and Tasks**

The Imperial Chamber of Commerce promotes and champion's business growth and vitality for those who live, visit, and work in our community.

1. Chamber to maintain an office, open to the public on a regular schedule of not less than 16 hours per week in order to respond to requests for information and promote the general community/business environment to outside world. Maintain a supply of information about the history, culture and economics of Imperial and the Imperial Valley and provide same to those who ask, whether in person, by telephone, by mail or digitally.
2. Maintain an active program designed to increase and enhance business retention, expansion and attraction in Imperial.
3. Provide to the City by October 1<sup>st</sup> each year, a list of all events the Chamber intends on focusing their efforts and resources upon in order to promote the positive and healthy image of the City of Imperial to citizens, the region and to potential tourists and other interested parties. Special attention to be given to the major events such as Christmas In A Small Town which focus positive attention upon the community and brings in revenue to community businesses.
4. Chamber shall assist City staff with development, maintenance, and distribution of accurate data about the City and its businesses, such as demographic data, utility contacts, City contact information, training and work force assistance, transportation and education details, housing market and land availability data and other data as the client may need and is available.
5. Promote and market a "shop local" campaign and encourage new development in the City of Imperial.
6. The Chamber will present a report to the City Council at one Council meeting each month. A written status report on activities, finances and general operations will be provided to the City manager mid-year (January) and end of fiscal year (June).
7. Chamber agrees to refer and inform the City Manager or designated staff, about the needs of any business prospect interested in Imperial, or voiced by existing businesses.
8. Chamber shall develop and provide information about the Chamber and local businesses to distribute to business prospects.
9. Chamber shall support City branding and marketing efforts
10. The Chamber shall ensure that Chamber information and/or events carry the City of Imperial logo as a main contributor/sponsor, and the City shall receive all benefits of the Chamber's most valuable membership category.

**EXHIBIT B**



**CHAMBER OF COMMERCE**

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of AGENCY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to AGENCY.

**General liability insurance.** CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Workers' compensation insurance.** CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to AGENCY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of AGENCY, its officers, agents, employees and volunteers.

#### **Other provisions or requirements**

**Proof of insurance.** CONSULTANT shall provide certificates of insurance to AGENCY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with AGENCY at all times during the term of this contract. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or Sub-Consultants.

**Primary/noncontributing.** Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by AGENCY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of AGENCY before the AGENCY's own insurance or self-insurance shall be called upon to protect it as a named insured.

**Agency's rights of enforcement.** In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, AGENCY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by AGENCY will be promptly reimbursed by CONSULTANT or AGENCY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, AGENCY may cancel this AGREEMENT.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against AGENCY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against AGENCY, and shall require similar written express waivers and insurance clauses from each of its Sub-Consultants.

**Enforcement of contract provisions (non estoppel).** CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the AGENCY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the AGENCY nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. 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 all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the AGENCY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance

proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the AGENCY.

**Notice of cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide to AGENCY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that AGENCY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** 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.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** 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 and endorsements 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.

**Agency's right to revise specifications.** 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 and CONSULTANT may renegotiate CONSULTANT's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by AGENCY. AGENCY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by AGENCY.

**Timely notice of claims.** CONSULTANT shall give AGENCY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's

performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.