



Council Agenda Report

To: Mayor Stewart and the Honorable Members of the City Council

Prepared by: Susan Dueñas, Public Safety Director

Approved by: Steve McClary, City Manager

Date prepared: November 1, 2024 Meeting date: November 25, 2024

Subject: Professional Services Agreement with Kimley Horn

RECOMMENDED ACTION: Authorize the Mayor to execute a professional services agreement with Kimley Horn to develop a Speed Safety System Use Policy and Impact Report.

FISCAL IMPACT: No additional appropriation is required. Funding for this project is in the Adopted Budget for FY 2024-25 in Account No. 100-7021-5100-00 (Professional Services).

STRATEGIC PRIORITY: This item supports the Public Safety priority identified in the Adopted FY 2024-25 Strategic Priority Project List.

DISCUSSION: In response to the tragic deaths of four Pepperdine students on Pacific Coast Highway on October 17, 2024, Senate Bill (SB) 1297 was created and signed by the Governor on September 27, 2024. SB 1297 authorizes the installation of five speed camera systems along the 21-mile stretch of PCH within the Malibu city limits. The City must develop a Speed Safety System Use Policy and Impact Report before purchasing or leasing equipment and implementing a speed camera program.

The Speed Safety System Use Policy must include the following:

- 1) The specific purpose of the system;
- 2) The uses that are authorized;
- 3) The rules and processes required to be followed by employees and contractors of the designated jurisdiction administering the system prior to its use;
- 4) The uses of the equipment and data collected that are prohibited;

- 5) Identification of the data or information that can be collected by the speed safety system, the individuals who can access or use the collected information, and the rules and processes related to the access, transfer, and use or use of the information; and,
- 6) Provisions for protecting data from unauthorized access, data retention, public access, third-party data sharing, training, auditing, and oversight to ensure compliance with the Speed Safety System Use Policy.

The Speed Safety System Impact Report must include the following information:

- 1) Proposed purpose of the speed safety system;
- 2) Locations where the system may be deployed and traffic data for these locations, including the address of where the cameras will be located;
- 3) If potential deployment locations of systems are predominantly in low-income neighborhoods, a determination of why these locations experience high fatality and injury collisions due to unsafe speed;
- 4) Assessment of the potential impact of the speed safety system on civil liberties and civil rights and any plans to safeguard those public rights.
- 5) Description of the speed safety system and how it works; and,
- 6) Fiscal costs for the speed safety system, including program establishment costs, ongoing costs, and program funding.

On October 1, 2024, staff issued a Request for Proposals to hire a firm to develop the Use Policy and Impact Report. Proposals were due on November 12, 2024. The City only received one proposal, from contractor Kimley Horn. Kimley Horn has successfully worked on various City projects and they also developed the Use Policy and Impact Report for the City of Glendale's speed safety system. The cost of the contract will not exceed \$147,250 for the term of the agreement which runs for one year. Although the term of the agreement is set at one year, it is anticipated that the work will be completed by May 31, 2025. Due to the urgency of having these reports completed as soon as possible, staff recommends that the City initiate an agreement with Kimley Horn.

ATTACHMENTS:

1. Professional Services Agreement with Kimley Horn

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of November 25, 2024, by and between the City of Malibu (hereinafter referred to as the "City"), and Kimley Horn (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

RECITALS

- A. The City does not have the personnel able and/or available to perform the services required under this Agreement.
- B. The City desires to contract out for consulting services for certain projects relating to developing a Speed Safety System Use Policy and a Speed Safety System Impact Report.
- C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

1.0 SCOPE OF THE CONSULTANT’S SERVICES. The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

2.0 TERM OF AGREEMENT. This Agreement will become effective on November 25, 2024, and will remain in effect for a period of one year from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

3.0 CITY AGENT. The City Manager, or his or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or his or her designee, has the authority to provide that approval or authorization.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work’s fee and cost schedule. The cost of services shall not exceed \$147,250 for the term of the agreement. No additional compensation shall be paid for any other expenses incurred unless first approved by the City Manager, or his or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

5.0 CONFLICT OF INTEREST. The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

6.0 GENERAL TERMS AND CONDITIONS.

6.1 Termination. Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

6.2 Non-Assignability. The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.3 Non-Discrimination. The Consultant shall not discriminate as to race, creed, gender, color, national origin, or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

6.4 Insurance. The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement. Consultant further agrees to comply with all provisions in the attached Exhibit B which is incorporated herein.

6.5 Indemnification.

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City and any and all of its officials, employees, agents, and/or volunteers (“Indemnified Parties”) from and against any and all losses, liabilities, damages, costs, and expenses, including attorney’s fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of services under this Agreement. Consultant’s duty to indemnify and hold harmless City shall not extend to the City’s sole or active negligence or willful misconduct.

6.5.1. Duty to defend:

In the event the Indemnified Parties, individually or collectively, 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 City, Consultant shall defend the Indemnified Parties at Consultant’s cost or at City’s option, to reimburse City for its costs of defense, including reasonable attorney’s fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant’s negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City, as to whether liability arises from the sole or active negligence or willful misconduct of the City or its officers, employees, or agents, Consultant will be obligated to pay for City’s defense until such time as a final judgment has been entered adjudicating the Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. 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.

6.6 Compliance with Applicable Law. The Consultant and the City shall comply with all applicable laws, ordinances, and codes of the federal, state, county, and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

6.7 Independent Contractor. This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture, or association, as between the City and the

Consultant.

6.7.1. The Consultant shall be an independent contractor and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

6.8 Copyright. No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

6.9 Legal Construction.

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

6.10 Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

6.11 Final Payment Acceptance Constitutes Release. The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an

assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

6.12 Corrections. In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

6.13 Files. All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

6.14 Waiver; Remedies Cumulative. Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

6.15 Mitigation of Damages. In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

6.16 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6.17 Attorneys' Fees. The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

6.18 Entire Agreement. This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City

and the Consultant.

6.19 Notices. Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

CITY:	Steve McClary City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 226 FAX (310) 456-2760	CONSULTANT:	Sri Chakravarthy, PE 73629 Senior Vice President Kimley Horn 25152 Springfield Ct., Ste. 200 Santa Clarita, CA 91355 TEL (213) 261-4037
--------------	---	--------------------	--

6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)

7.1 Disclosure Required. By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials _____

Consultant Initials _____

7.2 Disclosure not Required. By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

City Initials _____
Consultant Initials SC

This Agreement is executed on November 25, 2024, at Malibu, California, and effective as of November 25, 2024.

CONSULTANT:

Signed by:
Sri Chakravarthy, PE 73629
D019A53198DD4E0...

By: Sri Chakravarthy, Senior Vice President
CA P.E. 73629



CITY OF MALIBU:

DOUG STEWART, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney

EXHIBIT A SCOPE OF WORK

Proposal to
Develop a Speed Safety System Use Policy and a Speed Safety System Impact Report



2. Understanding of the Scope of Work

Project Understanding

The City of Malibu (City) has been selected as one of the cities within California to implement a Speed Safety System pilot program. This program has the capability of making an impact in the City by improving the safety and well-being of its visitors and residents, increasing the efficiency of enforcement, and financing much-needed traffic calming measures. The City is seeking a qualified consultant to guide them through the Speed Safety implementation process in accordance with AB-645.

Kimley-Horn is the right consultant to support the City through this program implementation. Not only do we bring valuable local knowledge and presence through our decade of support on traffic engineering and transportation planning projects in Malibu, but our proven technical expertise with similar pilot programs also spans across California and nationwide. We have developed policies and implemented surveillance camera and red-light enforcement networks in the cities of Stockton, Porterville, Santa Clarita, and other cities throughout the state. Our proposed team of safety professionals understand how to analyze crash data and interpret the details behind the data to assess safety challenges and appropriate countermeasures. We recently completed the statewide Vulnerable Road User Assessment for Caltrans to identify locations and safety counter measures across California in order to create a safety toolbox. We will apply these analytic techniques to determine the best locations for speed safety system implementation. We are skilled at using data analytic tools to identify disadvantaged communities beyond the typical CalEnviroScreen process and can perform specific outreach to keep those communities engaged throughout the process.

Kimley-Horn's approach to the scope of work is shown below. We have developed this scope of work using first-hand experience developing and implementing speed enforcement camera systems around the country.

Scope of Services

The following section is a description of the scope of services Kimley-Horn will provide for this project.

Task 1 – Meetings and Project Management

Kimley-Horn will attend a project kick-off call with City staff to discuss project expectations and goals. Kimley-Horn will attend up to four progress meetings with the City. It is anticipated we will meet with the City about the public outreach task, site selection methodology, and two additional status meetings.

We will prepare monthly invoices consistent with the contract terms.

Task 1 Deliverables:

- » Monthly invoices
- » Project kick-off agenda and minutes
- » Four project status meetings

Task 2 – Speed Safety System Use Policy

Task 2.1 – Speed Safety System Use Policy Development

Based on AB-645, Kimley-Horn will draft a speed safety use policy that will determine how data is collected, accessed, and used. The City will share their data policy and other relevant policies with Kimley-Horn.

Once the speed safety use policy is drafted, it will be provided to City staff. We will address one round of consolidated City comments and submit a revised draft for the City to post for public comment. Documenting, reviewing, and addressing public comment is not included in this scope of work.

Task 2 Deliverables:

- » Draft and Final Speed Safety System Use Policy

Proposal to
Develop a Speed Safety System Use Policy and a Speed Safety System Impact Report

Task 3 – Speed Safety Impact Report

Task 3.1 – Site Selection Methodology

Kimley-Horn will develop site selection criteria to be used in the identification of locations where speed systems can deter vehicular speeding. The site selection methodology will include criteria such as traffic volumes, roadway geometry, historic crash data, citizen complaints, and disadvantaged community analysis. Locations will be ranked in high, medium, and low categories. Depending on the number of high and medium ranked locations, we will provide a more detailed assessment of locations to make a recommendation for up to 10 locations. The detailed assessment will include further disadvantaged community analyses using a variety of different metrics including CalEnviroScreen and Census data. We will also examine how the roadway geometry would benefit from traffic calming measures before speed systems are used.

Task 3.2 – Opinion of Probable Cost

Kimley-Horn will develop an opinion of probable cost for implementing and operating the program. To develop the costs, Kimley-Horn will contact up to three system vendors to provide high-level costs for the system and its operation and maintenance.

Task 3.3 – Speed Safety Impact Report

The Kimley-Horn team will develop a speed safety system impact report that will be informed by public outreach, and previous tasks. The report will include a description of the speed safety system, its purpose, and how it works. The Kimley-Horn team will include an assessment of civil liberties, equity analysis, privacy policy, and how those will impact the implementation. Some considerations include privacy policies, oversight to review potential inequities, and impacts to disadvantaged communities.

We will summarize the site selection methodology and the final site locations. In addition, we will provide cost information and the impact of the speed safety system on civil liberties, privacy, and equity. We will address one round of consolidated comments and submit the final to the City.

Task 3 Deliverables:

- » Draft and Final Speed Safety Impact Report

Task 4 – Public Outreach

Task 4.1 – Develop Engagement Strategy

Kimley-Horn will work with the City to develop an engagement strategy that includes a process to identify and partner with stakeholders early and involve diverse members of the community to help shape the development of the Speed Safety System Use Policy and Speed Safety System Impact Report. Our team understands the importance of making it convenient for stakeholders and members of the public to engage in the process. The engagement strategy will include a roadmap for meetings, methods of outreach to the community, and a timeline in which to implement these activities.

Task 4.2 – Conduct Outreach Meetings

Kimley-Horn will lead the planning and facilitation of up to two outreach meetings that are proposed to be scheduled at strategic junctures of the project. These meetings aim to solicit feedback from the community engagement strategy, policymaking, and development of the public outreach campaign. We anticipate that meetings will be in-person and will be provided in an open-house or similar format recommended by the City to encourage participation. Meeting agendas and summary notes with key action items will be developed and distributed by Kimley-Horn.

Task 4.3 – Develop Outreach Campaign Materials

Kimley-Horn will produce public outreach materials in both printed and digital formats featuring project branding, infographics, and easy terminology for the public to understand.

We anticipate this to be promoted through our stakeholder group to help raise awareness of the project and encourage review and feedback from their communities and constituents. Other materials may include a fact sheet, meeting notices, email and

Proposal to
Develop a Speed Safety System Use Policy and a Speed Safety System Impact Report

social media content, traditional media press releases and briefings, and virtual and/or in-person community meetings and presentations.

This proposal assumes that the City will be responsible for administering the outreach campaign supported by the materials produced by the Kimley-Horn team.

Task 4 Deliverables:

- » Engagement strategy, draft and final
- » Conduct up to two (2) stakeholder meetings
- » Develop outreach materials

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then hourly rates. Additional services shall be completed only upon written authorization from the City of Malibu. The following services are not included:

- » Addressing public comments on deliverables
- » Technical assistance in the development of the RFP for procurement of the speed safety enforcement system
- » Technical assistance on the selection of the enforcement
- » Program audit and oversight
- » Conduct additional outreach



EXHIBIT B INSURANCE LANGUAGE

Without limiting Consultant's indemnification of City, and prior to commencement of work and/or services under this Agreement, 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 City.

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.

Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

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 City, its officers, agents, employees, and volunteers.

OTHER PROVISIONS OR REQUIREMENTS

Proof of Insurance. Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City 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 contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the

performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

Primary/Noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City 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 City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City'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, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City 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 VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, 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 City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of Contract Provisions (Non Estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City 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 City 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 City.

Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide the City 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. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional Insured Status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such 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 City 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 who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. 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. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

City's Right to Revise Specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days' advance written notice of such change. If such a change results in substantial additional costs to the Consultant, the City and Consultant may renegotiate the Consultant's compensation.

Self-Insured Retentions. Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely Notice Of Claims. Consultant shall give City 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. The 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.