

PROFESSIONAL SERVICE AGREEMENT

This professional service agreement ("Agreement"), is made and effective as of _____, between the City of San Dimas ("Agency"), a municipal corporation, and [[related_PrimaryPartySiteLink-82_company]] ("Consultant"), a [sole proprietorship, partnership, limited liability partnership, corporation]. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

This Agreement shall commence on _____ and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____ unless sooner terminated pursuant to the provisions of this Agreement.

II. SERVICES

Consultant shall perform the tasks described and set forth in [Exhibit A], attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in [Exhibit A]. To the extent that [Exhibit A] is a proposal from Consultant, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this Agreement unless specifically agreed to in writing.

III. PERFORMANCE

Consultant shall at all times faithfully, competently, and to the best of their 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. AGENCY REPRESENTATIVE

Agency's [Title] shall represent Agency in all matters pertaining to the administration of this Agreement, review and approve all products submitted by Consultant, but not including the authority to enlarge the [Tasks to be Performed] or change the compensation due to Consultant. Agency's [Title] shall be authorized to act on Agency's behalf and to execute all necessary documents which enlarge the [Tasks to be Performed] or change Consultant's compensation, subject to Section V hereof.

V. PAYMENT

A. The Agency agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in [Exhibit B], attached hereto and incorporated herein by this reference as though set forth in full, based

upon actual time spent on the above tasks. This amount shall not exceed [[lifetimeValue]] for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

- 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 [Title]. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency [Title] and Consultant at the time Agency's written authorization is given to Consultant for the performance of said services.
- C. Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. 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.

VI. TERMINATION OF AGREEMENT

- A. Except as otherwise provided herein below, either party may terminate this Agreement, or any portion hereof, by serving written notice of termination upon the other party at least ten (10) days prior to the date of termination. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Agency terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement.
- B. In the event this Agreement is terminated pursuant to this section, the Agency shall pay to Consultant the actual value of the work performed up to the time of termination, less any disputed amounts. Upon termination of the Agreement pursuant to this section, the Consultant will submit an invoice to the Agency as provided herein above.

VII. DEFAULT

- A. Either party's failure to comply with the provisions of this Agreement shall constitute a default. In the event that either party is in default for cause under the terms of this Agreement, the affected party shall promptly notify the deficient party of such default and following such notice shall have no obligation or duty to continue compensating or providing any work after the date of default and can terminate this Agreement immediately by written notice to the other party. If such failure hereunder arises out of causes beyond either party's control, and without fault or negligence, it shall not be considered a default.

- B. If the Agency [Title] determines the Consultant is in default in the performance of any of the terms or conditions of this Agreement, Agency shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service of default notice to cure the default as directed by the Agency in the notice of default. In the event the Consultant fails to cure its default within such period of time, 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.

VIII. 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 Agency 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.
- B. Upon completion of, or in the event of termination of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the Agency and may be used, reused, or otherwise disposed of by the Agency without the permission of the Consultant. With respect to computer files, Consultant shall make available to the Agency, at the Consultant's office and upon reasonable written request by the Agency, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to Agency all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement.

IX. INDEMNIFICATION AND DEFENSE

A. Indemnification

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Agency 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 Agency shall not extend to the Agency's sole or active negligence or willful misconduct.

B. 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 Agency, Consultant shall defend the Indemnified Parties 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 to the extent the matters arise from, relate to or are caused by Consultant's negligent acts, errors or omissions. Payment by Agency is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and Agency, as to whether liability arises from the sole or active negligence or willful misconduct 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 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.

X. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in [Exhibit C] attached herewith and incorporated herein by this reference as though set forth in full.

XI. INDEPENDENT CONTRACTOR

- A. Consultant is and shall at all times remain as to the Agency a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither 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 and/or its employees for performing services hereunder for Agency. Agency shall not be liable for compensation or indemnification to Consultant for injury or sickness to its employee(s) arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of local, 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.

XIII. 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.

XIV. NO BENEFIT TO ARISE TO AGENCY EMPLOYEES

During their tenure and for one year thereafter, 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 services under this Agreement 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 services performed under this Agreement.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Agency's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the Agency [Title] or unless requested by the Agency, 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 subconsultants 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 thereunder 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.

[Note: The following paragraph is only to be used when the Agency will be taking in a fee or deposit from an applicant and use that fund to retain the Consultant to prepare an EIR, specific plan, or some other specific document or where the Agency is funding a similar development-type study.]

- C. Consultant covenants that neither Consultant nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the Agency or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the Agency or the study area prior to the completion of the work under this Agreement.

XVI. 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 (e.g., Federal Express), which provides a receipt showing date and time of delivery; or (iii) 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 San Dimas

Attention: Name/Title

To CONSULTANT: **[[related_PrimaryPartySiteLink-82_company]]**

Attention: Name/Title

XVII. ASSIGNMENT

- A. 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. Due to the personal nature of the services to be rendered pursuant to this Agreement, only Consultant shall perform the services described in this Agreement.
- B. Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide Agency with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision identical to the one provided herein identifying Agency as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from Agency for such insurance.
- C. The **Consultant** may use assistants, under their direct supervision, to perform some of the services under this Agreement. Consultant shall provide Agency fourteen (14) days' notice prior to the departure of **Consultant** from Consultant's employ. Should **Consultant** leave Consultant's employ, the Agency shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Governing Board and the Consultant.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. SEVERABILITY

Any part, provision, or representation of this Agreement or any of its exhibits, including, but not limited to [Exhibit C], which is held to be invalid, void or unenforceable by a court of competent jurisdiction, shall be limited to that part, provision or representation and all other parts, provisions, or representations herein shall remain in full force and effect.

XXII. WORK SCHEDULED/TIME OF COMPLETION

[Note: This section is optional and should be included only when the project is particularly time-sensitive.]

Agency and Consultant agree that time is of the essence in this Agreement. Agency and Consultant further agree that Consultant's failure to perform on or at the times set forth in this Agreement will damage and injure Agency, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, Agency and Consultant agree that any failure to perform by Consultant at or within the times set forth herein shall result in liquidated damages of [[lifetimeValue]] per day for each and every day such performance is late or delayed. Agency and Consultant agree that such sum is reasonable and fair. Furthermore, Agency and Consultant agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said section of the Government Code.

XXIII. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

Consultant is bound by the contents of Agency's Request for Proposal, [Exhibit D], hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, [Exhibit E] hereto. In the event of conflict, the requirements of Agency's Request for Proposal and this Agreement shall take precedence over those contained in the Consultant's proposal. The incorporation of the Consultant's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this Agreement or the relationship between Consultant and/or Agency, unless expressly agreed to in writing.

XXIV. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that they have the authority to execute this Agreement on behalf of the Consultant and have 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.

[[related_PrimaryPartySiteLink-82_company]]

By: _____
(Signature)

(Typed Name)

(Title)

City of San Dimas
A Municipal Corporation

Agency Representative or Governing Body

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

By: _____

Attachments:	Exhibit A	Tasks to Be Performed
	Exhibit B	Payment Schedule
	Exhibit C	Insurance Requirements
	Exhibit D	Request for Proposal
	Exhibit E	Consultant's Proposal

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EXHIBIT A
TASKS TO BE PERFORMED

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EXHIBIT B
PAYMENT SCHEDULE

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EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of Agency, 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 Agency.

[Note: Verify minimum limit for each coverage with Agency Risk Manager.]

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.

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

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.

[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 or excess liability insurance. [If required to meet higher limits.]. Consultant shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrency of effective dates with primary policies.

Should Consultant obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Other provisions or requirements

Proof of insurance. Consultant shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. 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 for the contract period and any additional length of time required thereafter. 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 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 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 VII (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 subconsultants.

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 the 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. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the Agency 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 Agency 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 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 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 Agency, 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 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, 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 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.

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EXHIBIT D
REQUEST FOR PROPOSAL

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EXHIBIT E
CONSULTANT'S PROPOSAL

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