



# *Memorandum*

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**To: Consultants**

**From: Melissa Diels**

**Date: April 11, 2007**

**Subject: MOU's for the City of Hemet**

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Consultants interested in being added to the list of approved Consultants for CEQA, Biological and/or Archaeological services within the City of Hemet need to provide the following documentation:

1. Executed Memorandum of Understanding
2. Brief paragraph describing services provided by firm
3. Resumes of personnel who will be performing work under the MOU
4. Brief statement of qualifications for firm
5. Proof of Insurance, per section B of the MOU. (a copy of the certificate of insurance is sufficient)

Once received, the Planning Director will review all experience and the MOU and upon approval the firm will be added to the approved list, which will be available at the front counter for all applicants.

**MEMORANDUM OF UNDERSTANDING REGARDING  
ENVIRONMENTAL/CEQA CONSULTANT SERVICES**

**By and Between**

**THE CITY OF HEMET,  
a municipal corporation**

**and**

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**MEMORANDUM OF UNDERSTANDING REGARDING  
ENVIRONMENTAL/CEQA CONSULTANT SERVICES  
BETWEEN  
THE CITY OF HEMET, CALIFORNIA  
AND**

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This Memorandum of Understanding Regarding Environmental Consultant Services (“MOU”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the City of Hemet, a municipal corporation (“City”) and \_\_\_\_\_, a \_\_\_\_\_ (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

**RECITALS**

A. The California Environmental Quality Act (“CEQA”) [Public Resources Code § 21000 et seq.] makes lead agencies responsible for determining whether an Environmental Impact Report (“EIR”), a Negative Declaration (“ND”), or a Mitigated Negative Declaration (“MND”) is to be required for any project. CEQA also provides that any such EIR, ND, or MND be prepared directly by, or under contract to, the legal agency

B. City is the lead agency under CEQA with respect to certain applications for entitlements for which Consultant’s services are necessary.

C. Consultant is a qualified environmental and/or land use planning firm and has met City standards for the preparation of a Mitigated Negative Declaration or Negative Declaration and/or any related studies, surveys and reports as may be required to comply with CEQA.

D. From time to time, Consultant may be selected by a project applicant to prepare either a Negative Declaration or a Mitigated Negative Declaration (sometimes referred to as “CEQA Document”) in connection with development projects which are requesting entitlements from the City.

E. The Parties desire to formalize the requirements and conditions which will apply to Consultant should Consultant be selected to prepare a Negative Declaration or Mitigated Negative Declaration by a project applicant requesting entitlements from City. The Parties have agreed to enter into this MOU to set forth the terms and conditions which will apply each time Consultant is selected by a project applicant to prepare the required CEQA Document instead of entering into a new contract each time Consultant performs such services. Therefore, the terms of this MOU shall apply to Consultant for every Negative Declaration and Mitigated Negative Declaration prepared at the request of a project applicant for the City.

F. Consultant acknowledges that as the lead agency, City is responsible for complying with CEQA and the State CEQA Guidelines (“CEQA Guidelines”) [14 Cal. Code Regs. § 15000 et seq], that the City is responsible for the adequacy of its environmental

documents, that the City cannot rely on comments from other public agencies or private citizens as a substitute for work CEQA requires, that the City cannot knowingly release a deficient document, and that this particular CEQA Document must reflect the independent judgment of the City. Consultant further acknowledges that as a result of these responsibilities, the CEQA Document is to be prepared and completed to reflect City's independent judgment, to comply with CEQA and the CEQA Guidelines, and to the comport with all applicable professional standards.

G. City and Consultant acknowledge that CEQA and the CEQA Guidelines encourage the completion of the CEQA Document within certain time limits and that lead agencies should reduce delay and paperwork in the preparation of CEQA Documents.

H. Based on the foregoing Recitals, City and Consultant now desire to enter into this MOU for the preparation of the CEQA Document determined to be necessary as Consultant is selected by project applicants.

### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

#### **SECTION 1. TERM OF MOU.**

Subject to the provisions of Section 20 "Termination of MOU", this MOU shall be ongoing as long as Consultant remains in good standing and complies with the terms of this MOU.

#### **SECTION 2. SCOPE OF SERVICES.**

Consultant agrees to perform the services and prepare a CEQA Document according to the terms and requirements as set forth in Exhibit "A" "Scope of Services" and made a part of this MOU.

#### **SECTION 3. ADDITIONAL SERVICES.**

Consultant shall not perform any services rendered in connection with its performance of this MOU which are in addition to or outside of those set forth in this MOU or listed in Exhibit "A" "Scope of Services," unless such additional services are authorized in advance and in writing by the City Council or City Manager of City.

#### **SECTION 4. COMPENSATION.**

Although this MOU is entered into between City and Consultant, Consultant expressly agrees and acknowledges that City shall have no obligation nor any responsibility for payment of the Consultant's fees or costs. The responsibility for payment of Consultant's fees and costs shall be solely the responsibility of project applicant who hires the Consultant. In no event shall City have any responsibility to incur or pay any cost for the preparation and

completion of the CEQA Document, or any other activities associated with public review, comment, and consideration (such as preparing, posting, and filing notices, circulating copies of the CEQA Documents, or reviewing and recommending the CEQA Document for approval).

**SECTION 5. OBJECTIVE CEQA DOCUMENT**

Consultant agrees that it will prepare an objective CEQA Document and that it will not be unduly influenced by the project applicant. Consultant shall prepare the CEQA Document as an independent third party participant and adhere to the highest standards of ethical conduct in the preparation of the analysis required by CEQA. Consultant shall be charged with the duty and obligation to ensure that the CEQA Document prepared will be objective and prepared on behalf of the City, and not a document prepared for purposes of advocating approval of the private proposed project to which it relates.

**SECTION 6. INSPECTION AND FINAL ACCEPTANCE.**

City may inspect and accept or reject any of Consultant's work under this MOU, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this MOU including, but not limited to, sections 16 and 17, pertaining to indemnification and insurance, respectively.

**SECTION 7. OWNERSHIP OF DOCUMENTS.**

(a) The CEQA Document and all original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this MOU shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. Upon completion, expiration or termination of this MOU, Consultant shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

(b) If and to the extent that City utilizes for any purpose not related to this MOU any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this MOU, Consultant's guarantees and warrants related to Standard of Performance and found in Section 9 of this MOU shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

**SECTION 8. STATUS OF CONSULTANT.**

(a) Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this MOU or is otherwise expressly conferred in writing by City.

(b) The personnel performing the services under this MOU on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this MOU. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

**SECTION 9. STANDARD OF PERFORMANCE.**

(a) Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this MOU in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this MOU, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this MOU.

(b) If and to the extent that City utilizes for any purpose not related to this MOU any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this MOU, Consultant's guarantees and warranties related to Standard of Performance shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

**SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this MOU. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this MOU. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

**SECTION 11. PREVAILING WAGE LAWS**

It is the understanding of City and Consultant that California prevailing wage laws do not apply to this MOU because the MOU does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

**SECTION 12. NONDISCRIMINATION.**

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this MOU.

**SECTION 13. UNAUTHORIZED ALIENS.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this MOU, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**SECTION 14. CONFLICTS OF INTEREST.**

(a) Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this MOU. Consultant further covenants that in the performance of this MOU, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this MOU.

(b) City understands and acknowledges that Consultant is, as of the date of execution of this MOU, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(c) City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the

scope of work under this MOU. Any such future service shall not be considered a conflict of interest for purposes of this section.

#### **SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

(a) All information gained or work product produced by Consultant in performance of this MOU shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this MOU. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this MOU, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this MOU and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

#### **SECTION 16. INDEMNIFICATION.**

(a) Indemnification for Professional Liability. Where 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 City 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 attorney's fees and costs to the extent same are 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 entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this MOU.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City, 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 attorneys 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 MOU by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this MOU. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this MOU or this section.

(d) The provisions of this section do not apply to claims occurring as a result of City's sole negligence or willful acts or omissions.

#### **SECTION 17. INSURANCE.**

Consultant agrees to obtain and maintain in full force and effect during the term of this MOU the insurance policies set forth in Exhibit "B" "Insurance" and made a part of this MOU. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Consultant agrees to provide City with copies of required policies upon request.

#### **SECTION 18. ASSIGNMENT.**

The expertise and experience of Consultant are material considerations for this MOU. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this MOU. In recognition of that interest, Consultant shall not assign or transfer this MOU or any portion of this MOU or the performance of any of Consultant's duties or obligations under this MOU without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this MOU entitling City to any and all remedies at law or in equity, including summary termination of this MOU. City acknowledges, however, that Consultant, in the performance of its duties pursuant to this MOU, may utilize subcontractors.

#### **SECTION 19. CONTINUITY OF PERSONNEL.**

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this MOU. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if

any, assigned to perform the services required under this MOU, prior to and during any such performance.

**SECTION 20. TERMINATION OF MOU.**

(a) City may terminate this MOU, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this MOU for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Consultant or City fails to perform any material obligation under this MOU, then, in addition to any other remedies, either Consultant, or City may terminate this MOU immediately upon written notice.

(d) Upon termination of this MOU by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City.

**SECTION 21. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services," shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this MOU.

**SECTION 22. NOTICES.**

All notices required or permitted to be given under this MOU shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Hemet  
Attn: City Manager  
445 E. Florida Avenue  
Hemet, CA 92543

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**SECTION 23. AUTHORITY TO EXECUTE.**

The person or persons executing this MOU on behalf of Consultant represents and warrants that he/she/they has/have the authority to so execute this MOU and to bind Consultant to the performance of its obligations hereunder.

**SECTION 24. BINDING EFFECT.**

This MOU shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 25. MODIFICATION OF MOU.**

No amendment to or modification of this MOU shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 26. WAIVER.**

Waiver by any party to this MOU of any term, condition, or covenant of this MOU shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this MOU shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this MOU. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this MOU.

**SECTION 27. LAW TO GOVERN; VENUE.**

This MOU shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

**SECTION 28. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this MOU, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 29. ENTIRE MOU.**

This MOU, including the attached Exhibits "A" through "B", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other MOUs or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this MOU. No statements, representations or other MOUs, whether oral or written, made by any party which is not embodied herein shall be valid

and binding. No amendment to this MOU shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 30. SEVERABILITY.**

If any term, condition or covenant of this MOU is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU shall not be affected thereby and the MOU shall be read and construed without the invalid, void or unenforceable provision(s).

**IN WITNESS WHEREOF**, the parties hereto have executed this MOU on the date and year first-above written.

**CITY OF HEMET**

By: \_\_\_\_\_  
John Davidson  
City Manager

**ATTEST:**

\_\_\_\_\_  
Sarah McComas  
Deputy City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Eric S. Vail  
City Attorney

**[CONSULTANT]** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The following tasks, meetings, and products are to be performed by the Consultant.

**Tasks**

- Complete a field visit to the subject site.
- Meet and discuss the project with City staff.
- Review all required special studies prepared by the applicant for inclusion within the Initial Study and Mitigated Negative Declaration.
- Prepare a project description that identifies the existing setting and proposed project characteristics.
- Using the City's Notice of Intent Form, Initial Study/Environmental Checklist Form, and Mitigated Negative Declaration Form, prepare an administrative draft Notice of Intent, Initial Study, and Mitigated Negative Declaration.
- Prepare the appropriate exhibits for inclusion within the Initial Study and Negative Declaration and/or Mitigated Negative Declaration.
- Prepare an administrative draft Mitigation Monitoring Program, if one is required.
- Submit the administrative draft Notice of Intent, Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Program with all appropriate exhibits and attachments to City staff for review and comment.
- Revise the administrative draft Notice of Intent, Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Program, including exhibits, per City comments and submit to City staff for publication and distribution.
- Review comments received during the public review period, prepare administrative draft Responses to Public Review Comments and submit to City staff for review and comment.
- Revise administrative draft Responses to Public Review Comments per City staff comments.
- Using the City's Notice of Determination Form, prepare and submit the Notice of Determination and Final Mitigated Negative Declaration complete with all applicable materials, including the Initial Study, Notice of Intent, Public Review Comments, Responses to Public Review Comments, and Mitigation Monitoring Program.

## **Meetings**

- Attend one (1) City staff and Consultant meeting.
- Attend one (1) Planning Commission meeting
- Attend one (1) City Council meeting

## **Products**

- Administrative Draft Notice of Intent, Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Program, including all appropriate exhibits and attachments (three (3) bound 8½” x 11” hard copies and one (1) electronic version, including scanned exhibits and attachments, formatted in WordPerfect).
- Revised Notice of Intent, Initial Study, Mitigation Monitoring Program, and Draft Mitigated Negative Declaration, including all appropriate exhibits and attachments (one (1) check-print and upon approval by City staff, 30 bound 8½” x 11” hard copies, one (1) loose-leaf reproducible 8½” x 11” hard copy, and one (1) electronic version, including scanned exhibits and attachments, formatted in WordPerfect).
- Administrative Draft Responses to Public Review Comments (three (3) bound 8½” x 11” hard copies and one (1) electronic version, formatted in WordPerfect).
- Final Mitigated Negative Declaration complete with all applicable materials, including the Notice of Intent, Initial Study, Public Review Comments, Responses to Public Review Comments, and Mitigation Monitoring Program (15 bound 8½” x 11” copies and one (1) reproducible loose-leaf 8½” x 11” hard copy and one (1) electronic version, including scanned exhibits and attachments, formatted in WordPerfect).
- Notice of Determination (one (1) 8½” x 11” hard copy and one (1) electronic version formatted in WordPerfect).

## **The following tasks are to be performed by the City.**

- Meet with the Consultant to discuss the proposed project and provide copies of the application and applicable technical studies submitted by the applicant.
- Review of administrative draft Notice of Intent, Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Program.
- Distribution and mailing of the Notice of Intent, Initial Study, Draft Mitigated Negative Declaration, and Mitigation Monitoring Program.
- Review administrative draft Responses to Public Review Comments

- Distribution and mailing of the Notice of Determination and Final Mitigated Negative Declaration, including Mitigation Monitoring Program.

## **AMENDMENT**

The Scope of Services, including services, work products, and personnel, are subject to change by mutual agreement. In the absence of mutual agreement regarding the need to change any aspects of performance, Consultant shall comply with the Scope of Services as indicated above.

## **EXHIBIT "B"** **INSURANCE**

A. Insurance Requirements. Consultant shall provide and maintain insurance, acceptable to the City Manager or City Council, in full force and effect throughout the term of this MOU, 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, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Consultant shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this MOU.

(4) Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this MOU must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this MOU. The insurance must be maintained for at least 3 consecutive years following the completion of Consultant's services or the termination of this MOU. During this additional 3-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits set forth above.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

(4) Professional Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this MOU shall contain the following provisions:

1. All Policies. Each insurance policy required by this MOU shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this MOU, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

2. General Liability and Automobile Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant ; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

(2) Consultant's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.

(3) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

C. Other Requirements. Consultant agrees to deposit with City, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that

Consultant furnish City with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Consultant shall furnish certificates and endorsements from each subcontractor identical to those Consultant provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this MOU.