

REPORT TO CITY COUNCIL

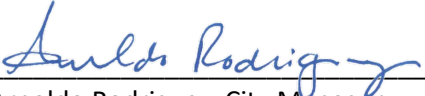
Approved by:

Council Meeting of: May 18, 2022



Dan Foss, Interim Public Works Director

Agenda Number: B-4



Arnaldo Rodriguez, City Manager

SUBJECT:

Service provider agreement with O&E Transportation LLC, for litter abatement project in the Fresno River

RECOMMENDATION:

Adopt a resolution approving a service provider agreement with O&E Transportation LLC, for a litter abatement project addressing the Fresno River within the city limits

SUMMARY:

In an effort to beautify the City, staff has actively cleaned the river, primarily through contracted services. In the recent past, the City employed three companies. While the City has experienced varying degrees of success, the task is challenging given the terrain, necessary equipment, and challenges associated with communicating with those living in the river. In March of 2022, four companies were contacted to perform additional river clean up in the Fresno River, within the City limits, including:

- Junk King
- Mid Valley Disposal
- Haul-R-US, and
- O&E Transportation (O&E)

Based on their prior experience providing similar services to the City, Junk King and Haul-R-US declined further work. Said two companies conducted work in 2021 and are accurately familiar with some of the challenges discussed above. After a brief period, both companies declined additional work due to the difficulty of working in the river bottom and other concerns, such as the high banks and soft sand. Mid Valley Disposal also declined to participate in the Fresno River litter abatement project, citing that this would require a more specialized operation. Fortunately,

O&E expressed interest and has performed well. As a result, staff is recommending that Council approve a contract with O&E.

While the task is for river clean-up, the proposed service provider agreement with O&E is not intended to displace people experiencing homelessness, but rather to remove trash and/or debris and improve the visual aesthetics. Moreover, it is imperative that trash be removed to mitigate potential hazards during fires and to keep the channel clear in the event of water flows, which staff acknowledges are not likely this season due to the ongoing drought.

DISCUSSION:

Since March of 2022, O&E Transportation has removed a total of 134.6 tons of waste and refuse from the Fresno River bottom. To continue progressing these efforts, a service provider agreement of O&E's services will need to be implemented. This is necessary since O&E is the only company that is equipped and willing to provide their services. Due to the amount of refuse in the river, time is of the essence with serious health and safety concerns to secure a service provider. Staff has also noticed a drastic decrease in fires since employing O&E to remove the excess trash.

The term of the service agreement will commence on May 18, 2022, and conclude on May 17, 2023. During this time the City will be issuing an RFP to try to reach more interested vendors in sufficient time to meet the City's needs at the end of the agreement with O&E Transportation.

FINANCIAL IMPACT:

O&E Transportation will be charging \$575 per every 16 yards that is serviced (one full trailer load), which includes manpower and track loader fees. It should be noted that during a full work week, O&E Transportation has been able to remove over 300 yards (nearly 20 loads) of trash. For reference, 300 yards is approximately 40 tons of material (determinant of the density of refuse being removed). This means on a very busy week, total expenses can equate upwards of \$10,000 or more.

Currently, the river bottom is in much better condition and we intend to utilize O&E Transportation more sparingly. We are estimating approximately 300 yards of refuse to be removed per month, and staff will monitor in order to not exceed this amount under normal conditions.

In addition, Council is aware the City was recently notified it was selected to receive \$832,350 through the Clean California Local Grant Program, administered by Caltrans. The grant specifically asked for \$200,000 for litter abatement efforts in the Fresno River and Vernon McCullough River Trail through the grant performance period ending June 30, 2024. Although the grant agreement is not yet executed, the plan and intent is to offset litter abatement costs in the Fresno River with this grant funding, as litter abatement is a permitted eligible expense under the grant. The City understands it may only begin incurring eligible costs upon execution of the grant agreement with Caltrans. Until the grant is executed, costs associated with the project will be financed by

money set aside in the City's Street division budget, as well as any future expenses considered ineligible costs under the grant.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this agreement is addressed in the Vision Plan for a Quality Environment within Strategy #434.7 – Promote increased protection for the Fresno River.

ALTERNATIVES:

If Council chooses not to adopt this service provider agreement, the City will not be able to continue its litter abatement efforts in the Fresno River for the next several months. This may result in increased trash, litter, debris accumulating in the river, as well as the progress conducted thus far being impacted.

ATTACHMENTS:

1. Resolution
 - a. Exhibit 1 - Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF MADERA, CALIFORNIA
APPROVING A SERVICE PROVIDER AGREEMENT WITH O&E
TRANSPORTATION LLC SERVICE PROVIDER AGREEMENT WITH O&E
TRANSPORTATION LLC, FOR LITTER ABATEMENT PROJECT IN THE FRESNO
RIVER**

WHEREAS, conditions on the Fresno River are such that they present serious health and safety concerns; and

WHEREAS, the City has a need to secure Fresno River clean up services from a qualified professional; and

WHEREAS, the City contacted four companies to perform the clean-up services and O&E Transportation was the only company that is equipped and willing to provide the services needed by the City in the Fresno River; and

WHEREAS, time is of the essence with serious health and safety concerns to secure a service provider; and

WHEREAS, O&E Transportation, has been identified as a firm having the necessary experience and qualifications to provide these services; and

WHEREAS, the City will be issuing an RFP to try to reach more interested vendors in sufficient time to meet the City's needs at the end of an agreement with O&E Transportation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY finds, orders, and resolves as follows:

1. The above recitals are true and correct.
2. The City Council approves the service provider agreement with O&E Transportation for river clean up services attached hereto as Exhibit 1 and incorporated by reference.
3. This resolution is effective immediately upon adoption.

* * * * *

**SERVICE PROVIDER AGREEMENT BETWEEN
THE CITY OF MADERA AND O&E TRANSPORTATION**

This Professional Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and O&E TRANSPORTATION LLC ("Service Provider"). This Agreement shall be effective on the date signed by City which shall occur after execution by Service Provider.

RECITALS

- A. City has sought quotes for services regarding clean-up of the Fresno River.
- B. Service Provider submitted a proposal for performing the requested Services and is engaged in the business of furnishing such services as a Service Provider and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Proposals and this Agreement.
- C. City has selected Service Provider to perform the requested Services on the basis of Service Provider's demonstrated competence and professional qualifications.
- D. City desires to retain Service Provider, and Service Provider desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Service Provider agree as follows:

AGREEMENT

1. Scope of Services. Service Provider shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **Exhibit A** and incorporated by herein by this reference. Service Provider shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.
2. Commencement of Services; Term of Agreement. Service Provider shall commence the Services upon City's issuance of a written "Notice to Proceed." This Agreement shall be effective on May 18, 2022, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through May 17, 2023, unless otherwise terminated earlier by one of the parties pursuant to Section 16 of this Agreement.
 - (a) Continuity of Personnel. Service Provider shall make every reasonable effort to

maintain the stability and continuity of Service Provider's staff and subcontractors assigned to perform the Services under this Agreement. Service Provider shall notify City of any changes in Service Provider's staff and subcontractors assigned to perform the Services under this Agreement.

(b) Additional Services. Service Provider shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in **Exhibit A** unless such additional services are authorized in advance and in writing by the City Manager of City. Service Provider shall be compensated for any such additional services in the amounts and in the manner agreed to by the City and Service Provider.

3. Compensation for Services. The total amount of this Agreement shall not exceed two hundred fifty thousand dollars (\$250,000). City shall compensate Service Provider for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Service Provider by the amounts specified in the Cost Breakdown attached hereto as **Exhibit A** and incorporated herein by this reference.

(b) Each month Service Provider shall invoice City for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by subcategory), the number of dumpsters filled by dated, and sub-Service Provider contracts.

(c) City shall independently review each invoice submitted by the Service Provider to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Service Provider of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(d) Payment to Service Provider for work performed under this Agreement shall not be deemed to waive any defects in work performed by Service Provider.

4. Independent Contractor Status. Service Provider and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship

between City and Service Provider's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Service Provider's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which

Service Provider or its agents or employees perform the services under this Agreement.

5. Qualifications, and Professional Standards. Service Provider represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Service Provider shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Service Provider under this Agreement. Service Provider represents that to the extent Service Provider utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Service Provider also expressly represents that both Service Provider and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Service Provider and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

6. Identity of Subcontractors and Sub-Consultants. Service Provider shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Service Provider intends to utilize in Service Provider's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Service Provider shall only employ subcontractors pre-approved by City and in no event shall Service Provider replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Service Provider shall be liable to City for the performance of Service Provider's subcontractors.

7. Subcontractor Provisions. Service Provider shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Service Provider owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Service Provider; and (c) compliance with all laws and certifications as required under this Agreement.

8. Power to Act on Behalf of City. Service Provider shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

9. Record Keeping; Reports. Service Provider shall keep complete records showing the type of Services performed. Service Provider shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of

Service Provider and its subcontractors for inspection and audit purposes. Service Provider shall provide City with a working draft of all reports and a copy of all final reports prepared by Service Provider under this Agreement.

10. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Service Provider or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Service Provider shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Service Provider shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

11. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Service Provider in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Service Provider shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Service Provider shall also require its subcontractors to be bound to these confidentiality provisions.

12. City Name and Logo. Service Provider shall not use City's name or insignia, photographs relating to the City projects for which Service Provider's services are rendered, or any publicity pertaining to the Service Provider's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

13. Conflicts of Interest. Service Provider warrants that neither Service Provider nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Service Provider's performance of services under this Agreement. Service Provider covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Service Provider shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Service Provider is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Service Provider 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. City understands and acknowledges that Service Provider will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

14. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Service Provider, or any successors in interest, in the event of a default or breach by City for any amount which may become due Service Provider or its successor, or for any breach of any obligation under the terms of this Agreement.

15. City Right to Employ Other Service Providers. This Agreement is non-exclusive with Service Provider. City reserves the right to employ other Service Providers in connection with the Services.

16. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

a. For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Service Provider.

b. For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

c. Compensation to Service Provider Upon Termination. In the event termination is not due to fault attributable to Service Provider and provided all other conditions for payment have been met, Service Provider shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Service Provider's compensation has not become due, Service Provider shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Service Provider's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon receipt of a termination notice (or completion of

this Agreement), Service Provider shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Service Provider in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Service Provider. Service Provider may not refuse to provide such writings or materials for any reason whatsoever.

17. Insurance. Service Provider shall obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference. All insurance policies shall be subject to City approval as to form and content. Service Provider shall provide City with copies of required certificates of insurance upon request.

18. Indemnity and Defense. Service Provider shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Service Provider's performance of its obligations under this agreement or out of the operations conducted by Service Provider, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Service Provider's performance of this agreement, the Service Provider shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

19. Compliance with All Laws. Service Provider shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Service Provider shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Service Provider without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Service Provider shall not assign the payment of any monies due Service Provider from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Service Provider directly to Service Provider.

21. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: Adam Gonzales, Administrative Analyst
Public Works
1030 S Gateway Dr Madera, CA 93637
Email: agonzales1@madera.gov

To Service Provider: Oscar Ramirez
O&E Transportation LLC
270 S. Apricot Ave
Fresno, CA 93727
Email: oetransportation@gmail.com

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.

22. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Service Provider, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Service Provider.

23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

24. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

25. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

26. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Service Provider in the County of Madera, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.

27. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Non-Discrimination. Service Provider shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Service Provider employees or applicants for employment. Service Provider shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement on the date(s) set forth below.

CITY OF MADERA

O&E Transportation LLC

By: _____
Santos Garcia, Mayor

By: _____
Oscar Ramirez, Owner

Date: _____

Date: _____

ATTEST:

Alicia Gonzales, City Clerk

APPROVE AS TO FORM:

Hilda Cantú Montoy, City Attorney

**EXHIBIT A
COST BREAKDOWN & SCOPE OF SERVICES**



O&E Transportation LLC

City of Madera River Clean-up

Service	Description of service	Rate
16 Yard dumpster	This fee includes- removing material such as but not limited to pvc pipe, plastic, wood, paper, and cans and glass from the river. We are coordinating with Code Enforcement to ensure nobody is residing in the encampments as well as communicating when any valuable items are found before disposing. Every morning we are walking sections of the river to remove any new material that has been brought back into previously cleaned sections with the intent of discouraging individuals from continuing to come back and rebuilding after we have removed building material. The rate is for every 16-yard dumpster filled to the allowed limit and includes the labor.	\$575 / Load
Track Loader with grapple	Backfilling holes in the river previously used as living structures as well as assisting in removing building material that have damaged river banks and natural habitats from hard-to-reach areas.	(This service is being included with the dump fee)

EXHIBIT B INSURANCE REQUIREMENTS

Without limiting Vendor's indemnification of City, and prior to commencement of Work, Vendor shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Vendor shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 and CG 20 37 to provide that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **\$2,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Vendor 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. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Vendor shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

Maintenance of Coverage

Vendor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Vendor, his agents, representatives, employees, subcontractors, or subconsultants as specified in this Agreement.

Proof of Insurance

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

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Vendor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

Vendor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Vendor of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications 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 Vendor maintains higher limits than the minimums required** above, the entity shall be entitled to coverage at the higher limits maintained by Vendor.

Notice of Cancellation

Vendor agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

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

Timely Notice of Claims

Vendor shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Vendor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Vendor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.