

5. Professional Services Agreement with Rec Technologies, Inc.

Recommended Action: Authorize the Mayor to execute a Professional Services Agreement with Rec Technologies, Inc. (Rec Tech) to provide a recreation software system that tracks and processes program registrations, facility rentals, and payments.

Staff Contact: Community Services Director Riesgo, 456-2489, ext. 350



Council Agenda Report

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

Prepared by: Kristin Riesgo, Community Services Director

Approved by: Joseph D. Toney, Acting City Manager

Date prepared: April 9, 2025 Meeting date: April 28, 2025

Subject: Professional Services Agreement with Rec Technologies, Inc.

RECOMMENDED ACTION: Authorize the Mayor to execute a Professional Services Agreement with Rec Technologies, Inc. (Rec Tech) to provide a recreation software system that tracks and processes program registrations, facility rentals, and payments.

FISCAL IMPACT: No additional appropriation is required. Funding for this agreement is included in the Adopted Budget for FY 2024-25 in Account No. 100-4001-6120-00 (General Recreation – Computer Software).

STRATEGIC PRIORITY: This item is part of the day-to-day operations identified in the Adopted FY 2024-25 Strategic Priority Project List.

DISCUSSION: Since 1993, the Community Services Department (Department) has offered various instructor and staff-led recreation programs for the community at City and school district facilities. In FY 2023-24, the Department provided over five hundred recreation programs, coordinated twenty special events, and processed approximately seventy-five facility rental applications. The Department's recreation software system is a key element in tracking registration for these programs.

The recreation software allows users to view program offerings, register and pay for programs online or in person, and track family registrations and activity history. Staff use the software system to view program rosters, reconcile financial data, and process instructor payments and reports. The software system is a key element to the Department's successful operations.

The Department has used R.C. Systems, Inc. (RecPro) since 2014. Last year, the company notified staff that the software system would sunset on September 30, 2025,

causing the Department to open a Request for Proposal (RFP) for a new recreation software system.

The RFP opened on November 26, 2024. Resulting in the City receiving seven proposals by the January 8, 2025 deadline. Staff reviewed the proposals and offered interviews with three agencies. The selected contractor, Rec Tech, provided a comprehensive proposal that would enhance the customer interface and provide mobile payment options, such as ApplePay and GooglePay, which are not options with the RecPro system. Additionally, Rec Tech had excellent references. Municipal references stated that the company exceeded their expectations. Rec Tech's innovative software system, experience, and customer communication options, such as text messaging, technical support, and payment processing system, are stand-out items that will enhance the Department's overall operation.

Once approved by Council, staff will immediately work with Rec Tech to coordinate data management and software development. This process will take approximately three months. Community outreach will also occur to inform residents of the new system, which will be available in August 2025.

ATTACHMENTS: Professional Services Agreement with Rec Technologies, Inc.

AGREEMENT FOR PROFESSIONAL AND SOFTWARE SERVICES

This Agreement for Professional and Software Services (the “Agreement”) is made and entered into as of April 28, 2025 by and between the City of Malibu, a California municipal corporation (hereinafter referred to as the "City"), and Rec Technologies, Inc., a Delaware corporation (hereinafter referred to as "Consultant"). The City and the Consultant are sometimes referred to individually as a “Party” and collectively as the “Parties.”

The City and the Consultant agree as follows:

RECITALS

A. The City does not have the personnel able and/or available to provide the professional and software services required under this Agreement.

B. The City desires to contract consulting and software services for certain projects related to the planning, configuration, building, implementation, and maintenance of a recreation software program.

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

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

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

2.0 TERM OF AGREEMENT. This Agreement will become effective on April 28, 2025, and will remain in effect for a period of three years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

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

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional and software services provided to the City pursuant to this Agreement in accordance with the Scope of Work’s fee and cost schedule. The cost of services shall not exceed \$12,000 per

year, for a total amount not to exceed \$36,000 for the term of the agreement. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his or her designee.

4.1 The Consultant shall submit an annual invoice to the City. The invoice shall include itemized fees and costs incurred for the year. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

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

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

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

6.0 GENERAL TERMS AND CONDITIONS.

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

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

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive

compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

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

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

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

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

6.5.1. Duty to defend. In the event the Indemnified Parties, individually or collectively, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall defend the Indemnified Parties at Consultant's cost or at City's option, to reimburse City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant's negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City, as to whether liability arises from the sole or active negligence or willful misconduct of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

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

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

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

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

6.8.1 Rec Platform. Rec hereby grants City a limited, nonexclusive, nontransferable, non-sublicensable, revocable right to access and use the Rec Platform solely for the purposes described in the Agreement during the Term. Any access, use, or attempted access or use of the Rec Platform other than as expressly permitted in this Agreement is a material breach of the Agreement. Rec shall own and retain all right, title and interest in and to (a) the Rec Platform, the Services, technology underlying the Services, and any information included therein (excluding any and all Client Data), and all improvements, enhancements, customizations, updates, revisions, derivative works, or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Services, implementation services or support, and (c) all intellectual property rights related to any of the foregoing. Rec reserves all other rights in the Rec Platform. No transfer of ownership will occur under this Agreement.

6.8.2 Notwithstanding any provision of this Agreement to the contrary, this Agreement and any related materials or information, regardless of how it is classified, shall be subject to the order a court of law or similar body and shall be subject to the requirements of the California Public Records Act, the Ralph M. Brown Act, and any other relevant transparency law.

6.8.3. Client Data. City will own all worldwide right, title and interest in and to all City Data and Rec will not obtain any ownership rights or interests in such data. City hereby grants to Rec a limited, non-exclusive, revocable license to use, reproduce, modify and distribute copies of and make available the City Data and to sublicense such rights, limited to the degree it is necessary to provide the Rec Platform to Client. "City Data" will mean all data and information submitted to the Rec Platform under the account of an employee, consultant, contractor or agent of City.

6.9 Legal Construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY: Joseph Toney
 Acting City Manager
 City of Malibu
 23825 Stuart Ranch Road
 Malibu, CA 90265-4861
 TEL (310) 456-2489 x 226
 FAX (310) 456-2760

CONSULTANT: Rachel Williams
 President
 Rec Technologies, Inc.
 2261 Market Street STE 22268
 San Francisco, CA 94114
 TEL (415) 910-9224

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

6.20.1 Each Party represents to the other that it is a valid legal entity and is in good standing or validly existing under the laws of the state of its formation. Each Party represents that it has all the requisite legal power and authority to execute, deliver and perform its obligations under the Agreement; that the execution, delivery and performance of the Agreement has been duly authorized; that the Agreement is enforceable in accordance with its terms; and that no approval, authorization or consent of any governmental or regulatory authorities is required to be obtained or made in order for it to enter into and perform its obligations under the Agreement. Rec warrants that it has the qualifications, experience and facilities to perform properly and timely the Services under this Agreement

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

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

City Initials _____

Consultant Initials _____

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

City Initials DS
Consultant Initials RW

This Agreement is executed on _____, at Malibu, California, and effective as of April 28, 2025.

CONSULTANT:

DocuSigned by:
Rachel Williams
By: RACHEL WILLIAMS, President

CITY OF MALIBU:

DOUG STEWART, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

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

TREVOR RUSIN, Interim City Attorney

Exhibit A - Scope of Work
Rec Technologies, Inc.
City of Malibu Recreation Software Program

The Consultant will be responsible for planning, configuring, building, implementing, training, and maintaining a recreation software program for the City of Malibu.

1. The Consultant will collaborate with City staff to collect and communicate requirements to launch (Launch) the Rec Technologies recreation software program. The software, once live, will process program registrations, facility reservations, memberships, attendance tracking, point of sale, ticketing, volunteer management, marketing, and customizable reporting.
2. Rec Technologies will communicate with City staff to provide a timeline for the new software system to Launch on August 4, 2025. The Consultant and City will meet on March 26, 2025, to schedule key dates and deadlines for the project.
3. The Consultant will collaborate with City staff to build and customize a recreation software program based on the City's requirements. Upon the effective date of the agreement, the city will be billed a one-time implementation fee of \$3,000 in addition to the annual maintenance fee of \$9,000.
4. The Consultant will work with the Community Services Director or their designee to schedule training sessions for City of Malibu personnel a minimum of 60 days before Launch. Training will include system operations, including but not limited to adding recreation courses, processing registrations, processing payments, facility rental options, customer messaging, and reports. The Consultant will provide additional training sessions at the request of the Community Services Director or their designee during the term of the Agreement.
5. Once the system is live, the Consultant will email a weekly financial report to the Community Services Director or their designee every Sunday outlining the accounting and finance reconciliations. The report will include all transactions 365 days a year, payments, payment methods, and reconciled credit card payment receipts. If Sunday falls on a legal holiday, observed by the City of Malibu, the financial report will be provided the next business day.
6. For the term of the Agreement, the Consultant will have weekly meetings with the Community Services Director or their designee to discuss system operations.
7. The Consultant will maintain the recreation software platform, perform routine maintenance, and timely notify the City of Malibu Community Services Director or their designee of any performance-related issues, updates, software downtime, and holidays that would affect access to support personnel.

8. The Consultant agrees to abide by all terms and conditions of the Agreement, including City, state, and federal laws, and to supply and maintain insurance and cyber security operations while performing the scope of work under the Agreement.
9. The Consultant will immediately notify the City of Malibu Community Services Director or their designee of any issues or delays related to the work performed under this Agreement.

CONSULTANT:

DocuSigned by:

Rachel Williams

2D0525B757DC4A6...

RACHEL WILLIAMS, President

CONSULTANT'S Business Phone Number

415,910.00

CONSULTANT'S Email Address

rachel@rec.us

CONSULTANT'S Emergency Phone Number

630-544-9829

City of Malibu Community Services Department
 Software and Maintenance Fee Schedule Form

Software

One-Time Software Purchase

One-Time

\$3,000 Implementation Fee

Software Total

\$3,000

Maintenance Fee

Annual Cost

User Licenses

Cloud Hosting

Insurance

Personnel Support

Other Software Licensing

\$9,000

Other _____

Other _____

Maintenance Fees Total (Billed Annually)

\$9,000

Consultant Information:

Consultant Rec Technologies Inc.	
Headquarters Street Address, City, State and Zip Code: 1624 California St, San Francisco CA 94116	
Business Phone and Mobile Phone: 415-910-9224	
Email Address: molly@rec.us	
Authorized Representative: Molly Nelson	Title: Partnerships Lead
Signature: <i>Molly Nelson</i>	Date: 01/06/2025

Implementation Fee (\$3,000): data confirmation of programming and facilities completed by Rec Technologies. Unlimited onsite and online training. Marketing and design assets for online and offline transition.

Annual Fees (\$9,000): maintenance, upgrades, text messaging capabilities, and support. POS devices.

Credit Card Fee: online 3.5% credit card fee plus \$.30/transaction; offline 1% POS plus 2.5% and \$.30/credit card transaction.

EXHIBIT B - INSURANCE LANGUAGE

Without limiting Consultant's indemnification of City, and prior to commencement of work and/or services under this Agreement, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

General Liability Insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 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.

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.

Cyber Security and Privacy Liability Insurance. Contractor shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- a) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including but not limited to personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, etc.
- b) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- c) Liability arising from introducing a computer virus into or otherwise causing damage to vendor (first-party) or customer's (third party) computer, computer system, network, or similarly related property and the data, software, and programs.
- d) Liability arising from professional misconduct or lack of the requisite skill required for performing services defined in the contract or agreement.
- e) Costs associated with restoring, updating, or replacing data
- f) Costs associated with a privacy breach, including notification costs, customer support, forensics, crises management, public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolution services for affected individuals.

If coverage is maintained on a claims-made basis, consultant shall maintain such coverage for an additional three (3) years following termination of the contract.

Cyber Technology Errors and Omissions Insurance. Consultant shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- a) Liability arising from the unauthorized release of information for which an entity has the legal obligation to keep private, such as personally identifiable information (PII) and protected health information (PHI).
- b) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- c) Liability arising from the failure of technology products (software and hardware) required under the contract for Consultant to properly perform the intended services.
- d) Claims alleging the failure of computer security that resulted in the transmission of malicious code, deletion, destruction or alteration of data, or the denial of service.
- e) Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep linking or framing, and infringement or violation of intellectual property rights.
- f) Liability arising from the rendering, or failure to render, professional services.
- g) Defense costs in regulatory proceedings (state and federal) involving a violation of privacy laws or intellectual property rights.
- h) Crisis management and other expert services.

If coverage is maintained on a claims-made basis, the Consultant shall maintain such coverage for an additional three (3) years following termination of the contract.

Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

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

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 City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

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

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

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

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

Enforcement of Contract Provisions (Non Estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional Insured Status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition Of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

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

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry

the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

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

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

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

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