

constitute a material breach of contract upon which the City Manager or his/her designee who shall be a Department Director or higher may cancel, terminate or suspend this Agreement.

42. **INDEMNIFICATION AND INSURANCE.** The SUB-RECIPIENT shall indemnify, release, defend and save harmless the CITY, its City Council and each member thereof, its officers, agents and employees from and against any and all liability, suits, damages, costs, expenses (including attorneys' fees and costs), claims and losses whatsoever accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation for damage, injury, injury to property, or other damage (contract or tort) or death which directly or indirectly, wholly or in part, results or is alleged to have resulted from, or arises or is alleged to have arisen out of any activity, use or performance under this Agreement; or any acts, errors or omissions of SUB-RECIPIENT, its officers, employees, representatives, subcontractors, or agents in connection with the performance of this Agreement. The sole negligence or willful misconduct of CITY, its employees or agents other than SUB-RECIPIENT or SUBRECIPIENT's subcontractors are excluded from this indemnity agreement.

The SUB-RECIPIENT 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 and the results of that work by the SUB-RECIPIENT, its agents, representatives, employees, or subcontractors. SUB-RECIPIENT shall procure and maintain for the duration of the contract insurance against claims arising out of their professional services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. The cost of such insurance shall be borne by SUB-RECIPIENT.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- **Commercial General Liability (CGL).** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. The policy shall include broad form contractual liability coverage.
- **Sexual Misconduct Liability.** If the services provided in relation to this agreement relate in any way to care of supervision of minors, senior and/or other vulnerable persons, then Sexual Misconduct Liability insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2,000,000 per claim and \$2,000,000 aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to

report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

- **Automobile Liability.** ISO Form Number CA 0001 covering, Code 1 (any auto), or if SUB-RECIPIENT has no owned autos, Code 8 (hired) and 9 (non- owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- **Professional Liability** (Errors and Omissions) insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate.
- **Crime/Custodial/Security - Commercial Crime** insurance, including coverages for loss sustained by a client as a result of employee dishonesty, with limit no less than \$1,000,000 each loss
- **Cyber Liability Insurance** with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the SUB-RECIPIENT in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

SUB-RECIPIENT should check with SUB-RECIPIENT's insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure SUB-RECIPIENT's obligations under this agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover SUB-RECIPIENT's liability under this agreement. These insurance requirements shall not in any way relieve SUB-RECIPIENT of liability in excess of such coverage, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this agreement or law. These insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. If SUB-RECIPIENT maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by SUB-RECIPIENT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage required, which are applicable to any given loss, shall be available to City.

The insurance to be provided by SUB-RECIPIENT under this agreement shall not include any endorsement limiting coverage available to City that is otherwise required herein; and any policy or endorsement language that (i) negates coverage to City for City's own negligence; (ii) limits the duty to defend City under the policy; (iii) provides coverage to City only if SUB-RECIPIENT is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this agreement shall not contain any restrictions or limitations which are inconsistent with City's rights under this agreement.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status

The City of Pasadena, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of SUB-RECIPIENT including materials, parts, or equipment furnished in connection with such work or operations. General liability additional insured coverage shall be provided in the form of an endorsement to SUB-RECIPIENT's insurance at least as broad as ISO Form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

Severability of Interests (Cross-Liability).

A severability of interest provision must apply for all the additional insureds, ensuring that SUB-RECIPIENT's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

Primary Coverage

For any claims related to this contract, SUB-RECIPIENT's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its City Council, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall be excess of SUB-RECIPIENT's insurance and shall not contribute with it.

Notice of Cancellation/Change in Coverage

Each insurance policy required above shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. Prior written notice shall be sent to City pursuant to the Notice provisions of this agreement.

Waiver of Subrogation

SUB-RECIPIENT hereby grants to City a waiver of any right to subrogation which any insurer of SUB-RECIPIENT may acquire from SUB-RECIPIENT by virtue of the payment of any loss. SUB-RECIPIENT agrees to obtain any endorsement that may be necessary to

affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by City. City may require SUB-RECIPIENT to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VII.

Claims Made Policies

If the Professional Liability policy provides coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If the policy is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, SUB-RECIPIENT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Certificate Holder

Certificate Holder on each insurance certificate shall be addressed pursuant to the Notice provisions of this agreement.

Verification of Coverage

SUB-RECIPIENT shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements required herein. Each insurance certificate shall specifically identify this agreement. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive SUB-RECIPIENT's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

SUB-RECIPIENT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and SUB-RECIPIENT shall ensure that City is an additional insured on insurance required from subcontractors.

Failure to Maintain Insurance Coverage