

Attachment A

Professional Services Agreement with Eide Bailly LLP

**ON-CALL PROFESSIONAL SERVICES AGREEMENT
WITH EIDE BAILLY, LLP FOR
ON-CALL CONSULTING SERVICES RELATED TO THE CITY'S INTERNAL
AUDIT PROGRAM**

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 9th day of July, 2024 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and EIDE BAILLY, LLP, a North Dakota limited liability partnership registered and in good standing with the California Secretary of State to transact intrastate business in the State of California ("Consultant"), whose address is 4310 17th Ave S, Fargo, ND 58103, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide on-call consulting services related to the City's Internal Audit Program ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2029, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Consultant shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Consultant shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within ten (10) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed,

the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Bradford Rockabrand to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the reasonable discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Finance Department. City's Finance Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them). Notwithstanding the foregoing, to the extent a Claim is based on actual or alleged errors and omissions in the performance of professional services, Consultant's duty under this section shall be limited to indemnify and hold harmless City, but not provide a defense.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim to the extent it arises from

the negligence of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications, specifically prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, by Consultant for and required to be delivered to City under this Agreement (hereinafter, "Documents"), shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

20. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Finance Director
Finance Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Bradford Rockabrand
Eide Bailly, LLP
10681 Foothill Blvd., Ste. 300
Rancho Cucamonga, CA 91730

26. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's

acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

28.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

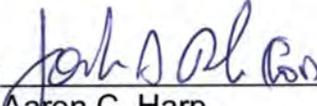
28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 6/26/24

By: 
Aaron C. Harp
City Attorney

*ms
4/24/24*

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

ATTEST:

Date: _____

CONSULTANT: Eide Bailly, LLP, a North
Dakota Limited Liability Partnership

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Bradford Rockabrand
Partner

[END OF SIGNATURES]

- Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A

SCOPE OF SERVICES

The Director of Finance, or designee, shall establish a project-specific timeline and scope of work. It is generally expected that fieldwork will commence in January and the consultant shall render the final report within 90 days of the commencement of fieldwork, unless otherwise specified by the Director of Finance, or designee.

A majority of the work may be performed in accordance with the Statement on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (AICPA). Examples of required work include:

- Participate in the assessment of the internal control environment and related internal control risks.
- Provide an outline or work plan for the project. Conduct interviews of key personnel and supervisors in the Finance Department and other departments to determine if existing policies and procedures are being followed and identify internal control deficiencies.
- Review and evaluate the policy and procedures to assess internal control effectiveness and weaknesses. Review and evaluate controls performed directly by Senior Staff or Management or detect Senior Staff or Management override of controls.
- Identify inconsistencies in internal controls and recommend changes to enhance consistency citywide.
- Perform an analysis of selected electronic data on a limited basis for anomalies or unusual transactions.
- Test accounting documentation for any identified areas of concern or potential areas of vulnerability.
- Test organization compliance with Council and or administrative policies and or operational procedures.
- Examine the practices of a department or program to determine if it is achieving economy, efficiency and effectiveness in the employment of available resources.
- Create a report identifying internal control weaknesses, potential risks and recommendations to improve internal controls, management practices, and efficiency.
- Review payroll change procedures and time and attendance records for potential timecard fraud or unauthorized absences.
- The Consultant will also provide recommendations on new, or changes to existing, financial policies and procedures, risk management methods, and ideas to support organizational efficiency and effectiveness.

A photograph of several hands stacked together in a pyramid shape, symbolizing teamwork and collaboration. The background is a blurred bokeh of light spots.

**INSPIRED TO
WORK TOGETHER
TOWARD SUCCESS**

October 6, 2023

Proposal for Professional Services | Request for Proposal No. 24-21

CITY OF NEWPORT BEACH

Submitted By:

Eide Bailly LLP
Bradford Rockabrand, CPA, CIA
Partner

TABLE OF CONTENTS

Executive Summary..... 3

Qualifications and Experience 5

Principal, Supervisory and Staff Qualifications and Experience 9

Project Approach..... 13

The Right Choice for City of Newport Beach..... 14



What inspires you, inspires us.
eidebailly.com

Executive Summary

WE WANT TO WORK WITH YOU

Thank you for the opportunity to reply to the City of Newport Beach's (City) Request for Proposal (RFP) to review internal controls and provide on-call management consulting services. We understand your needs and have provided similar services to the government industry for more than 70 years. We are confident that the City will benefit from the experience we can provide. Eide Bailly has the qualifications to be the firm of choice for this engagement for the following reasons:

➤➤➤ **Extensive Government Industry Experience:** Business is about more than numbers and we are active in the industries we serve. We stay abreast of current issues impacting the government industry and grow our knowledge by attending workshops and trainings. During your engagement, we will work closely with your management team to define a scope of service for each project awarded that is highly tailored to be exceptionally responsive to your objectives for that project versus simply executing canned solutions. Our extensive experience allows us to develop "the right" solution for the City's needs and bring seasoned judgement to interpreting the results as we review them with the City's management team.

The government industry represents one of Eide Bailly's largest niche areas — with more than 1,300 government clients firmwide. We provide services for a variety of cities, counties, school districts, colleges and universities, fire relief agencies, housing authorities, state agencies, and tribal entities. Through serving these clients, our professionals have gained focused expertise in the government industry and will provide you with insightful advice that aids in managing the finances of the City.

The firm has more than 275 full-time professionals who participate in our Government Industry Group. These professionals share information, learn from others, and stay up to date on industry developments. To gain the greatest benefit, the knowledge is shared with professionals across the firm. With the vast array of services we offer our government clients, our team has the experience and knowledge to address any of your concerns.

As a valued client, you will also experience:

- **Personal Service, National Presence:** Although the City will have resources with extensive local experience that enables us to understand and address the challenges unique to the City, you will also have access to national resources, including more than 3,000 professionals with diverse skill sets and experiences across the firm.
- **Proactive Communication:** You can expect your Eide Bailly service team to keep you informed as our work progresses. We will build communication protocols into our service delivery to ensure timely communication resulting in prompt completion of work and consistent responsiveness.



EXPERIENCE

Our experienced professionals are committed to the industries we serve. We focus on training, and we like to think of ourselves as thought leaders.

PEOPLE

We're a team of collaborators and innovators. Our culture is the heart of our firm, and we're always working together to do things differently and better.

COMMUNICATION

Open, honest, frequent communication ensures that you're not in for any surprises. We'll stay in touch throughout the year so you feel understood, connected and confident.

CORPORATE RESPONSIBILITY

We consider ourselves good corporate citizens—caring for our people, giving back to our communities, and taking care of our environment.

- **Timeliness:** We understand and will comply with the timing requirements and scope of services of your request. Your proposed engagement team's experience allows us to promptly address your needs.

▶▶▶ **Unmatched Client Service is Our Passion:** Our history of high staff continuity — significantly higher than most firms — means you will work consistently with the same team, all of whom have been chosen because of their experience serving and advising government entities similar to the City. Working with Eide Bailly means all of your service needs will be addressed within a single, core team, resulting in greater efficiency and scale.

We Want to Work with You

We have developed the following proposal with City of Newport Beach in mind and we will provide timely, personalized review of internal controls and on-call management consulting services for you. We will also get to know you and your staff and take the time to understand your specific challenges and opportunities. We deliver honest and insightful advice beyond what is normally experienced in the public accounting industry. Our tagline, **what inspires you, inspires us**, is more than copy to add to marketing materials. We gain energy from those we serve, which turns into a passionate interest in our clients' success.

The following pages highlight our firm's strengths and solutions that we can provide for the City. We believe this demonstrates why Eide Bailly merits serious consideration. You will be a highly valued client and we would be proud to work with City of Newport Beach, building a trusting relationship with your team.

This proposal is valid for a period of 180 days from the submission deadline. Please contact me if you would like to discuss any aspect of this proposal.

Sincerely,



Bradford Rockabrand, CPA, CIA

Partner

909.755.2712

brockabrand@eidebailly.com



Qualifications and Experience

WHAT INSPIRES YOU, INSPIRES US

Firm History and Overview

Eide Bailly has a long history, beginning in 1917 in Fargo, North Dakota when the accounting firm Bishop, Brissman & Co. opened an office. Our namesake Oliver Eide started his career there in 1934, and the firm eventually became Eide Helmeke. Sixteen years later, accountant Charles E. Bailly moved to Fargo in 1950 to open an office for Broeker Hendrickson & Co. of St. Paul, Minnesota. In 1978, a group of partners at Broeker Hendrickson withdrew and created their own firm, with Bailly as their leader. The firm was called Charles Bailly & Company.

By the 1990s, Charles Bailly and Eide Helmeke were the major accounting players in the region and much of the upper Midwest. Both ranked in the top 50 accounting firms in the U.S. and were often competing for the same clients and talent. Talks began between the two firms, and it was unanimous: they'd join to become Eide Bailly.

In 2019, Eide Bailly acquired Vavrinek, Trine, and Day, one of California's largest accounting and advisory firms. With that acquisition, Eide Bailly gained a sizable advisory group that has been providing advisory services to clients throughout the country for over 20 years.

By embracing change and focusing on innovative ideas, Eide Bailly has grown with our clients to become one of the top 25 accounting firms in the nation. Eide Bailly's Government Advisory Services Department has a deep bench of resources located throughout the United States working on a variety of projects for state and local governments.

Your experience will be different than working with other firms because we offer knowledge and skills backed by more than 100 years of service. Our professionals deliver industry and subject matter expertise resourcefully, ensuring we are providing services and guidance that directly reflects your needs. Our clients benefit from local, personal service and, at the same time, enjoy access to more than 3,000 professionals, including 404 partners and principals, with diverse skillsets and experiences.

AT A GLANCE



TOP 25 CPA FIRM



40+ OFFICES IN U.S. & INDIA



375+ PARTNERS



3,000+ STAFF MEMBERS



FOUNDED IN 1917

Legal Form, Ownership and Senior Officials

Eide Bailly is a limited liability partnership, with 404 partners and principals. Below is our firm’s management and Board of Director members. More information can be found on our website: www.eidebailly.com.

Firm Leadership

Firm Management		Board of Directors	
Jeremy Hauk, CPA	Managing Partner/CEO	Jeremy Hauk, CPA	Managing Partner/CEO
Andy Spillum, CPA	Partner/COO	Paul Skeen, CPA	Partner/ Board Chair
Mike Astrup, CPA	Partner/CAO	Derrick Larson, CPA	Partner/Vice Chair
Ross Manson	Principal/Chief Advisory & Industry Officer	Andy Kaiser, CPA	Partner
Scott Kost	Principal/Chief Technology Officer	Jodi Daugherty, CPA	Partner
Laura Srsich, CPA	Partner/Chief Talent Officer	Chad Flanagan, CPA	Partner
Jason Delles	Principal/Chief Growth Officer	Jason Oelrich, CPA	Partner
Brian Bluhm, CPA	Partner/Chief Quality Officer		
Brian Callahan, CPA	Partner/National Market Leader		
Stacy Erdmann, CPA	Partner/National Tax Leader		
Ben Ellingson, CPA	Partner/National Assurance Leader		

Main Contact

As a Partner with Eide Bailly, **Bradford Rockabrand** is authorized to answer questions, present this proposal, and to contractually bind the firm.

Bradford Rockabrand, CPA, CIA Partner	Eide Bailly LLP 10681 Foothill Blvd., Ste. 300 Rancho Cucamonga, CA 91730	909.755.2712 brockabrand@eidebailly.com
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Subcontractor

Eide Bailly has the resources to meet the needs of the City and fulfill these services; we will not be utilizing a subcontractor or outside resource.

Office Location

Eide Bailly has more than 40 offices across the U.S., including eight offices in California. Our Government Advisory Services Department team are located throughout the United States. We operate in a largely virtual environment, with team members serving clients throughout the United States regardless of their physical location. Yet, we recognize that clients value local resources and we therefore strive to assign several team members to each engagement who are located nearby and are available for on-site meetings during the engagement should the need arise.

In this case, **Bradford Rockabrand is located within driving distance of the City and can be on-site if needed.** In today’s virtual world, we are able to serve clients remotely with a level of service that feels as though we are located next door. Our firm has invested in the technology resources to be effective with a nationwide footprint while maintaining the relationships normally only found with a local service provider.



WE UNDERSTAND GOVERNMENTS

Government Industry Experience

Our firm has more than 70 years of experience providing services to government entities and our Government Industry Group is made up of 275+ full-time professionals who share information, learn from others and stay up to date on industry developments. To gain the greatest benefit, the knowledge is shared with professionals across the firm.

The government industry represents one of Eide Bailly's largest niche areas — with more than 1,300 government clients firmwide. Through serving these clients, our professionals have gained focused expertise in the government industry and will provide you with insightful advice.

Government Advisory Services

Eide Bailly's Government Advisory Services Department brings unique solutions to the firm's clients in a variety of areas. These range from providing outsourced accounting services and assistance with implementing new accounting standards, to complex financial management projects. The Government Advisory Services Department staff includes former California city finance directors and accounting managers who have the knowledge and experience that is required for the projects noted in the Scope of Services. We believe that this sets our firm apart from other consulting firms in that we provide perspectives that are informed by experience serving in these roles. In the City's specific request for assistance with internal audit projects, that experience translates into results that are customized to your specific circumstances. Not all "best practice recommendations" fit every city in the same way. We have the experience with different cities to help Newport Beach craft its best practices.

Unlike other firms and other teams at Eide Bailly, the Government Advisory Services Department team does not perform audits or provide other assurance services. Our team specializes in advisory services for state and local government agencies like yours. Our government advisory team is located throughout the United States with team members based in California, North Carolina, South Dakota, Tennessee, Texas, and other states.

At a Glance

GOVERNMENT



70+
YEARS EXPERIENCE



1,300+
INDUSTRY CLIENTS



275+
DEDICATED STAFF



\$28.8 BILLION ANNUAL
AVERAGE IN SINGLE AUDITS

CITY OF NEWPORT BEACH

Services provided by the Government Advisory Services Department include, but are not limited to:

- Outsourced Finance / Accounting Services
- Annual Audit Preparation
- Budget Development / Assistance
- Fiscal Condition Assessments
- Risk Advisory Services
- Internal Audit
- Financial Policy Development
- Complex Financial Analysis
- Long-Term Financial Planning
- Financial System Implementations
- Cybersecurity
- Fraud/Forensics

Our team members have a thorough understanding of state and local government finance throughout the country, providing them with diverse perspectives and experience that is grounded in best practices and the latest standards, information, and trends. Our team also brings the unique perspectives of individuals who have previously served as finance directors, controllers, and in other capacities for local governments. Per your RFP, we confirm that we can perform all of the services requested in the Scope of Services.

We have provided a description of prior experience with similar entities to the City in section References.

Firm Areas of Specialization

Eide Bailly is a full-service CPA firm performing traditional CPA firm services of attest (audits, reviews, compilations) and tax. We also focus on management advisory services including forensics, cybersecurity and IT, internal audit, and many other nontraditional services. Our core services offered include the following:

Audit & Assurance		Tax	
• Audits	• Single Audits	• Reviews	• Compilations
• Employee Benefit & Retirement Plan Audits	• International Financial Reporting Standards	• Agreed-Upon Procedures	• SEC Services
• System and Organization Controls (SOC 1, 2 & 3)			
Consulting			
• New Standard Implementation	• Internal Audits	• Technology Consulting	• Enterprise Risk Management
• Financial Services			



Principal, Supervisory and Staff Qualifications and Experience

KNOWLEDGEABLE AND EXPERIENCED

We are passionate about our work — and your success. We have selected professionals for your service team who are the right fit for your engagement based on their knowledge and experience in the government industry. You will work with a team that has extensive knowledge and experience in your industry and bring strong credentials and a desire to work with the City. Below is an overview of the team, with their full profiles on the following pages. Additional resources are available to call upon, if needed.

Key Leadership Overview

Team Member	Qualifications and Experience
<p>Bradford Rockabrand, CPA, CIA Partner/Primary Contact</p>	<p>Brad has more than 15 years of experience in various aspects of auditing, compliance, and financial and regulatory reporting via public accounting and government enterprises. He helps our clients identify organizational strategies that align their objectives with the complex and evolutionary regulatory environment.</p>
<p>Brent Mason, CPA Senior Manager</p>	<p>Brent brings more than 30 years of experience working within finance departments of large municipalities with complex operating environments. He is skilled at diagnosing issues faced by finance leaders and bringing constructive solutions. His years spent with large municipalities has given him extensive experience issuing and administering all kinds of municipal debt which he continues to use now for the benefit of his clients. He has served as the “interim” CFO or finance staff member in multiple engagements with the firm, bringing solutions and stability to their respective situations and will be the primary staff working on the City’s engagement.</p>
<p>Sam Singery, CPA Manager</p>	<p>Sam has 11 years of experience in various aspects of auditing, financial reporting and municipal financial management. Since joining Eide Bailly in 2023, he has successfully served in multiple challenging client situations which required him to get an immediate understanding of the current circumstances and develop a strategy to very quickly achieve the clients’ objectives.</p>

BRADFORD ROCKABRAND, CPA, CIA

Partner

INSPIRATION: I find great joy in creating empowering, cross sector partnerships with our government clients in order to support them in carrying out their mission of public service. By understanding the complex, evolutionary environment in which governments operate, I can offer sound advice and provide turnkey solutions that meet their objectives.

909.755.2712 | brockabrand@eidebailly.com

Brad has more than 15 years of experience in various aspects of auditing, compliance, and financial and regulatory reporting via public accounting and government enterprises. He helps our clients identify organizational strategies that align their objectives with the complex and evolutionary regulatory environment.

Brad is a hands-on audit and accounting professional with considerable experience in financial accounting and reporting, internal control development, policy composition, budgeting, cash flow modeling and long-term debt use. His professional experience is primarily in municipal finance policy issues as they pertain to new GASB pronouncements and legislative changes. Brad prepares in depth financial analysis on the potential impacts of the changing political landscape in California and assists his clients with navigating the associated implementation complexities.

Outside of work, Brad is an adjunct professor of public administration and enjoys traveling, playing golf, experimenting in the kitchen and spending time with friends and family.

Client Work

Provides advisory services for government organizations navigating the evolutionary legislative and political landscape. Services include internal control review and design, policy implementation and monitoring, risk analysis and related policy design, general ledger maintenance, strategic management, financial analysis, debt issuance and use, cash / investment management, and internal and external reporting.

Secured \$17,500,000 in private placement debt for a water district in an adjudicated water basin where there was no established market for water rights in order for the district to purchase permanent water rights to serve the community.

Turned around a community services district with a going concern opinion and no reserves through meticulous budgeting and strict adherence to accounting practices which now has nine consecutive years of unmodified audit opinions, no findings, sufficient reserves and current administrative and financial policy.



Memberships

American Institute of Certified Public Accountants

Government Finance Officers Association

California Society of Municipal Finance Officers

Designation/Licensures

Certified Public Accountant

Certified Internal Auditor

Education

Doctor of Public Administration - University of La Verne, California

Master of Business

Administration – Saint Louis University, Missouri

Bachelor of Arts, Business –

Principia College, Elsau, Illinois

BRENT MASON, CPA

Senior Manager

INSPIRATION: I enjoy helping other people succeed! Drawing on over 30 years of experience developing specific solutions to complex situations in which cities and other agencies find themselves, and successfully implementing a solution, gives me great satisfaction.

909.755.2692 | bmason@eidebailly.com

Based in San Antonio, Texas, Brent brings more than 30 years of experience working within finance departments of large municipalities with complex operating environments. He is skilled at diagnosing issues faced by finance leaders and bringing constructive solutions. His years spent working for large cities have given him extensive experience in a wide range of subjects. As Finance Director for two large municipalities, Brent managed budgets of more than \$1 billion and investment portfolios of almost that same amount. With the large municipality where he spent more than 22 years of his career, he led financing teams issuing over a billion dollars in bonds representing all kinds of municipal debt. He uses this varied experience now to primarily serve senior-level leadership with tasks ranging from CFO-type duties to smaller, specific projects requested by the client.

When you work with Brent, you will discover he spends the necessary time up front with each client to understand the circumstances around whatever situation requires attention. He then works collaboratively with you to design a tailored response that effectively resolves the outstanding issue.

Away from work, Brent spends much of his free time assisting his wife caring for their nine adopted special needs children, and he periodically enjoys the great outdoors golfing with friends.

Client Work

Experienced with a wide variety of engagements, ranging from full service financial operations to interim CFO work to other special projects/analyses requested by clients, including issuing and managing debt. Currently specializing in performing arbitrage calculations for various agencies.

Mentors both external (client) staff and internal (Eide Bailly) staff, helping each grow as they execute their responsibilities.



Memberships

American Institute of Certified Public Accountants

Government Finance Officers Association

Government Finance Officers Association of Texas

California Society of Municipal Finance Officers

Designation/Licensures

Certified Public Accountant

Education

Bachelor of Science, Accounting
– Biola University, La Mirada, CA

Community

Biola University School of Business, Former Adjunct Instructor

California Society of Municipal Finance Officers, Past Board Member

SCAQMD Investment Oversight Committee, Member

SAM SINGERY, CPA

Manager

INSPIRATION: I enjoy applying the skills I've developed as an auditor and government finance officer to help my clients succeed. I have a passion for coming alongside clients to provide solutions that enable them to efficiently and effectively meet the needs of their constituents and communities.

325.437.4100 | ssingery@eidebailly.com

Based in San Antonio, Texas, Sam has 11 years of experience in various aspects of auditing, financial reporting and municipal financial management. He began his career in public accounting, where he conducted and supervised audits of local governments. More recently, Sam spent the last five years as the Accounting Manager and Assistant Finance Director for small and medium-sized cities, overseeing the daily operations of the finance department in addition to coordinating all required audits, preparing financial and regulatory reports, developing enhanced policies and procedures and implementing new Governmental Accounting Standards Board pronouncements.

When you work with Sam, you can expect a thorough and tailored approach. His range of experience enables him to assist clients with a wide variety of challenges and provide recommendations and results to help his clients successfully achieve their desired outcomes.

Outside of work, Sam enjoys reading, golfing and spending time with his wife and five children.

Client Work

Expertise includes year-end close and audit assistance, financial statement preparation, new Government Accounting Standards Board standard implementations and budget development.



Memberships

Government Finance Officers Association

Government Finance Officers Association of Texas

Designation/Licensures

Certified Public Accountant

Education

Bachelor of Science, Business Administration, Accounting – Biola University, La Mirada, Calif.



Project Approach

QUALIFIED TO MEET THE CITY'S NEEDS AND GOALS

From the City's RFP, we understand that the City is requesting a professional firm to provide internal controls and to provide on-call management consulting services. Eide Bailly has the qualifications and the resources to perform all of the services requested. We have thoroughly reviewed the RFP Scope of Services and our approach to services is outlined below.

The RFP indicates that the City has three specific projects they intend to award in the new calendar year, and that they may be awarded to one or more firms which have competed successfully in this RFP process. The Eide Bailly Government Advisory Services Department team has grown substantially in recent years. Collectively, they have performed a wide variety of projects for cities, primarily in California, but increasingly in cities throughout the United States, as well. These projects range from more routine accounting support services and year end audit preparation work to a variety of complex specialty projects leveraging the CFO experiences of the team members.

Recent projects include budget analysis work and chart of accounts simplification and alignment with state reporting requirements for Douglas County, Nevada; a financial reporting analysis project for the City of Perris, California; procurement and grant administration policies for a California city and a city in North Dakota; and a multi-purpose project for a city in Montana involving [within a matter of weeks] completing their budget process and developing/filing their ad valorem tax rates. Although these projects are actual examples of projects completed by Government Advisory Services team members, the nature of the staff we have hired is such that their depth of experience is appropriate to assist with nearly any type of project that comes up in a city finance department, as that is what they did themselves for their respective cities during their tenures at various cities.

The staff members assigned to the City's engagement are former finance directors, assistant finance directors, and accounting managers for small, medium, and large cities in California. Other team members have served as contract staff in these same roles. Specific experience is with full-service cities that have provided police, fire, water and wastewater services to their residents. Collectively, the team has a diverse breadth of experience it would bring to each of the projects that may be awarded.

Engagement Timing

We understand your requested timeline and are committed to meeting your deadlines. We will work closely with your team through the planning stages to clearly define expectations and the items required from your team in order to facilitate efficient services to enable us to meet your deadline. From the RFP, we understand that the City would like fieldwork to begin in January, with the final report issued within 90 days of commencement of fieldwork.



The Right Choice for City of Newport Beach

WE WANT TO WORK WITH YOU

To us, work is not just work; we see it as a chance to help you solve problems, achieve goals, and pursue passions. After thoughtfully reviewing your needs and taking the time to understand your business, we think we're the best fit for this opportunity.

We can connect you with the knowledge, resources, and solutions that help bring confidence to your business decisions. We want to work with you!

If you have questions or would like additional information, do not hesitate to contact us. We want to make sure you have everything you need to make your decision.



Bradford Rockabrand, CPA, CIA

Partner

909.755.2712

brockabrand@eidebailly.com

We Want to Work with You

We are driven to help clients take on the now and the next with inspired ideas, solutions and results. We look forward to working with you.



Caring for our external and internal clients with a passion to go the extra mile.

Respecting our peers and their individual contributions.

Conducting ourselves with the highest level of integrity at all times.

Trusting and supporting one another.

Being accountable for the overall success of the firm,
not just individual or office success.

Stretching ourselves to be innovative and creative, while managing the related risks.

Recognizing the importance of maintaining a balance between work and home life.

Promoting positive working relationships.

And, most of all, enjoying our jobs ... and having fun!



What inspires you, inspires us.

eidebailly.com

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B

SCHEDULE OF BILLING RATES

Consulting services will be provided at the hourly rates listed below. These rates are current as of August 1, 2023. Each August, hourly rates are adjusted consistent with the consumer price index for the Orange County region.

Position Titles	Hourly Rate
Partner	\$371
Director	\$350
Senior Manager	\$318
Manager	\$265
Supervisor	\$235
Senior Associate	\$201
Associate	\$159

Out-of-Pocket Costs: Travel costs are not anticipated to be incurred for this engagement, but if the City requests a team member to be on-site, travel costs would be passed through to the City. All travel costs must be pre-approved by the City in writing before the costs are incurred. Other miscellaneous out-of-pocket costs (e.g., mileage) are included within the hourly rates noted above.

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Contract, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

2. 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 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.

3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California.

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

 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 08 and 09 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Contract, including coverage for any hired, non-owned or

rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

D. 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 two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) 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.

E. Cyber Liability Insurance. Consultant shall maintain cyber liability insurance in an amount not less than one million dollars (\$1,000,000) per claim and annual aggregate, covering (1) network security and privacy risks, including unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or negligence in the handling of confidential information, privacy perils, including coverage for related regulatory defense and penalties; (2) data breach expenses payable whether incurred by City or Consultant, including consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for City or on behalf of City hereunder.

F. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant's primary and excess/umbrella liability policies are exhausted.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees, or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements 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 subcontractors.

- B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess/umbrella liability, pollution liability, and automobile liability, if required, but not including professional liability or cyber liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as additional insureds under such policies.
 - C. Primary and Non-Contributory. Consultant's insurance coverage, except for Professional Liability and Cyber Liability, shall be primary insurance and/or the primary source of recovery with respect to the City, its City Council, boards and commissions, officers, agents, volunteers and employees. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies, except for Professional Liability and Cyber Liability, shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Contract must be returned to City within ten (10) regular City business days after the date on the "Notification of Award". 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 at all times during the term of this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, Consultant shall endeavor to provide evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

- B. City's Right to Revise Requirements. 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 Consultant ninety (90) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. 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 higher limits maintained by the Consultant. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.
- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

- G. 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 Contract that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.