

ATTORNEY SERVICES AGREEMENT

THIS AGREEMENT, by and between the City of Benicia, a municipal corporation herein referred to as "City," and Burke Williams & Sorensen, an LLP engaged in the practice of law in the State of California, herein called "Law Firm."

WHEREAS, the City desires to engage Law Firm to perform the duties of the office of the City Attorney;

WHEREAS, the city attorney of the City of Benicia is the chief legal advisor and litigator for the City and is charged with the responsibility of protecting the interest of the City, its directors, officers, employees and agents in any litigation initiated by or against the City, its Council, officers, employees and agents as provided for by California law and the ordinances of the City; and

WHEREAS, Law Firm certifies that its attorneys and staff have the skills, qualifications, ability, background, certifications, licenses, knowledge and experience necessary to provide city attorney services on the terms and conditions described herein.

WITNESSETH:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1.0 Scope of Services.

Law Firm is to perform the duties of City Attorney and to provide all necessary legal services as may be required from time to time by City as set forth in Exhibit A which is attached hereto and incorporated herein by reference. Law Firm shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction and supervision of the City Council. Law Firm shall coordinate services hereunder with the City Council or its delegee and that all performances required hereunder by Law Firm shall be performed to the satisfaction of the City Council. Nothing in this agreement shall limit City's authority pursuant to California Government Code section 36505 to appoint a different city attorney. Nor shall this agreement limit City's authority under California Government Code section 53060 to contract with any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters.

2.0 Time of Performance.

The services of Law Firm are to commence upon March 1, 2019 and shall continue until this Agreement is amended or terminated. Work shall be undertaken and completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care.

3.0 Compensation, Reimbursement and Methods of Payments.

3.1 Compensation to be paid to Law Firm shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference. The schedule of charges shall set forth how long the prices are valid.

3.2 Unless otherwise agreed, Law Firm shall provide monthly bills unless charges for a particular month are insignificant. The following information must be provided in monthly bills:

A. A detailed description of work, in time increments of .1 hour (one tenth of an hour) for and by each and every individual billing services. Law Firm shall keep the City advised regarding the identity and the billing rates of those people who work on the account. General information sufficient to identify the work being done shall be provided if services are provided on a fixed cost basis.

B. Identification of the lawyer who is in charge of the matter.

C. Detailed disbursement breakdowns, including the nature and purpose of each disbursement.

D. Each billing item will be separately stated on a separate line identifying the biller, the time spent, and the exact nature of the service rendered.

E. Where charges are made for research time, the specific issue being researched, and the need will be identified. City has retained Law Firm for Law Firm's expertise, and therefore expects not to be billed for introductory or background research. The City will not pay for attorneys, law clerks and paralegals educating themselves or doing work of a transient nature on the case.

4.0 Engagement of Other Counsel, Specialists or Experts.

Law Firm will not engage or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without the prior written approval of the City Council or City Manager.

5.0 Termination of Agreement and Legal Services.

This Agreement may be terminated by the City immediately with or without cause. Law Firm may terminate the agreement upon sixty (60) days' written notice of termination.

In such event, all finished or unfinished documents, project data and reports, both originals and all duplicate copies, in all forms and media requested by the City, shall immediately be turned over to the possession of City, which owns all such materials. In the event of such termination, Law Firm shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in the City's sole

discretion in light of the particular facts and circumstances involved in such termination.

6.0 Performance Review.

City and Law Firm agree that periodic performance evaluations are an important means by which the City Council and Law Firm may ensure effective communication regarding expectations and performance. During the first year of the Term of this Agreement, the City Council shall conduct a six-month performance evaluation in September 2019. Thereafter, City shall annually review the performance of Law Firm every March; provided, however, a mid-term performance evaluation shall be conducted upon the request of either party. The performance evaluation shall be subject to a process, form, criteria, and format to be determined by the City Council with input from Law Firm, which the City Council may choose to accept or reject. Nothing herein shall prevent the City Council from conducting a performance evaluation of Law Firm as often as it deems necessary under the circumstances.

7.0 Ownership/Retention of Documents, Books and Records.

7.1 All writings prepared by Law Firm in the course of implementing this Agreement, except working notepads, preliminary draft and internal firm documents, are the property of the City.

7.2 Law Firm shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or 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 payment to Law Firm under this Agreement.

7.3 Law Firm shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement.

7.4 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit by the City Manager, City Auditor or designated City Councilmember(s), at any time during regular business hours, upon written request by the City Council. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Law Firm's address indicated for receipt of notices in this Agreement. Nothing herein shall require or permit the release or inspection of any privileged document without the express written waiver of such privilege by the City Council.

7.5 Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Law Firm's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained at City Hall.

8.0 Interest of Members of Local Public Agency.

No member of the governing body of the City, and no other officer, employee or agent of the City who exercises any discretion, function or responsibility in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

9.0 Adverse Interest of Counsel.

Law Firm agrees to secure the informed written consent of the City Council before accepting any representation adverse to the City (actual or apparent) during the term of this Agreement, and to forego such representation if the City Council, in its sole discretion, objects for any reason.

10.0 Conflict of Interest.

Law Firm certifies that no member, officer or employee of the Law Firm is an officer or employee of the City of Benicia except to the extent permitted by law.

Law Firm (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Law Firm's services hereunder. Law Firm further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

11.0 Prohibited Interests.

Law Firm maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Law Firm, to solicit or secure this Agreement. Further, Law Firm warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Law Firm, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

12.0 Professional Ability of Law Firm.

City has relied upon the professional training and ability of Law Firm to perform the services hereunder as a material inducement to enter into this Agreement. Law Firm shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Law Firm under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily

to be expected of competent professionals in Law Firm's field of expertise.

13.0 Compliance with Laws.

Law Firm shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Law Firm represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Law Firm to practice its profession. Law Firm represents and warrants to City that Law Firm shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Law Firm to practice its profession, including a City Business License.

14.0 Indemnity.

Law Firm agrees to defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers. Law Firm's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not be in any way be limited by, the insurance obligations contained in this Agreement.

Further, Law Firm will indemnify City, and hold it harmless, from an assertion that as a result of providing services to City, Law Firm or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, Law Firm's obligations for any payments to such claimant shall be limited to those payments which City may be required to pay.

15.0 Assignment and Subcontracting.

The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Law Firm. Law Firm shall be fully responsible to City for all acts or omissions of any subcontractors. Assignments of any or all rights, duties or obligations of the Law Firm under this Agreement will be permitted only with the express consent of the City Council. Law Firm shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Law Firm shall be fully responsible to City for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

16.0 Authority to Enter Agreement.

Law Firm has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

17.0 Choice of Forum.

The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and/or is to be performed in the City of Benicia and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Solano at a place to be determined by the rules of the forum.

18.0 Insurance.

Law Firm shall procure and maintain, at its sole cost and expense, comprehensive general liability and property insurance, including automobile and excess liability insurance, and professional liability insurance against all claims for injuries against persons or damages to property resulting from Law Firm's negligent acts or omissions arising out of or related to Law Firm's performance under this agreement. The coverages and minimum limits are set forth in Exhibit C.

19.0 Notice.

Written communications and invoices under this agreement shall be addressed as follows:

If to CITY: City Clerk
 City of Benicia
 250 East L Street
 Benicia, CA 94510

With a copy to: City Manager
 City of Benicia
 250 East L Street
 Benicia, CA 94510

If to Law Firm: Benjamin L. Stock, Partner
 Burke, Williams & Sorensen, LLP
 1901 Harrison Street, Suite 900
 Oakland, CA 94612

20.0 Nondiscrimination.

Law Firm shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Law Firm agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Law Firm or Law Firm's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. Law Firm agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

21.0 Independent Contractor.

In the performance of the services in this Agreement, Law Firm is an independent contractor and is not an agent or employee of City. Law Firm, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit City to any decision or course of action, and shall not represent to any person or business that they have such power. Law Firm has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting Law Firm in the performance of said service hereunder. Law Firm shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

22.0 Amendment.

Except as otherwise stated herein, any and all obligations of City and Law Firm are fully set forth and described in this Agreement. Any changes in this Agreement, including any increase or decrease in the amount of compensation or any change in the term, which shall be mutually agreed upon by and between City and Law Firm, shall be set forth in written amendments to this Agreement. Amendments to this Agreement shall be executed by the Mayor.

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IN WITNESS WHEREOF, the City and Law Firm agree as set forth hereinabove as of the date last set forth below.

Burke, Williams & Sorensen

CITY OF BENICIA

By: _____
Benjamin Stock, Partner

By: _____
Elizabeth Patterson, Mayor

Dated: _____

Dated: _____

ATTEST:

By: _____
Lisa Wolfe, City Clerk

Approved as to Form:

City Attorney

Exhibit A: Scope of Services

Exhibit B: Costs

Exhibit C: Insurance

Exhibit A

SCOPE OF SERVICES

The parties agree that Benjamin Stock shall serve as City Attorney for Benicia and Nira Doherty as Assistant City Attorney. The City shall have sole discretion in the choice of City Attorney and Assistant City Attorney. In the event that either party requires a change of the attorney assigned to these roles, written approval shall be obtained from the City Council.

General City Attorney Services will include the matters defined as “basic services” below, and include attendance at Council meetings and closed sessions, Council subcommittee meetings, and Planning Commission meetings, as directed by the City; routine legal advice and consultation; analysis of Public Records Act responses and conflicts of interest questions; assistance in the preparation of agenda items, staff reports, and resolutions; review and preparation of orders, agreements, forms, notices, declarations, certificates, leases, and other documents as required by the City; and consultation with Council Members, the City Manager, and department heads regarding routine legal issues.

Basic services shall include those legal services generally understood within the field of municipal law to fall within the category of “general counsel” work, and shall include, but not necessarily be limited to, the following:

- a) Attendance at all meetings of the City Council (including regular sessions, closed sessions, and as needed work sessions). Regular sessions of the City Council are normally held on the first, third and occasionally fourth Tuesdays of each month commencing at 7:00 p.m. for the regular meeting with closed session typically held in advance of the meeting;
- b) Attendance at the monthly Planning Commission and at the Open Government Commission meetings;
- c) Attendance at various Council-appointed Board or Commission meetings on an as needed basis and/or as directed by the City Council or City Manager;
- d) Review and/or preparation of ordinances, resolutions, orders, agreements, contracts, forms, notices, declarations, certificates, deeds, leases, and other documents required by the City;
- e) Consultation with the City Council Members, City Manager, and City Department Heads and Staff as needed – rendering of legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions. Perform research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council and City Department Heads on legal matters pertaining to City operations;
- f) Legal work pertaining to property acquisition, property disposal, public improvements, public rights of way and easements, and matters relating to public utilities;
- g) Coordinate the work of outside counsel as needed and as directed by the City Council or the City Manager;
- h) Regularly scheduled office hours a minimum of two days per week at City Hall at times and on weekdays to be mutually agreed upon, to allow for direct interaction with the City Manager and Department Heads.

Special Services. Special services are those provided on an as-needed basis when directed by the City Council or City Manager. These special services, are provided at a specified hourly rate, include research, preparation, and follow through on various types of specifically requested special services matters.

The charts below help explain the difference between special services and basic services.

Services		Provided by Firm		Included as Basic Services		Title of Person Performing Service
		Yes	No	Yes	No	
1.	Attendance at regular meetings of City Council, Planning Commission, and Open Government Commission.	X		X		City Attorney- CC & OGC Ass't CA- Planning except for vacations, holidays etc.
2.	Telephone consultation and e-mails with Executive Team, City Manager and City Council.	X		X		City Attorney/ Ass't CA
3.	Review of every agenda item prior to its review by City Manager and inclusion on agenda.	X		X		City Attorney/ Ass't CA
4.	Review and approve Minutes of City Council and Planning Commission meetings.	X		X		City Attorney/ Ass't CA
5.	Review agendas for all City meetings (City Council, Planning Commission).	X		X		City Attorney/ Ass't CA
6.	Review public hearing notices.	X		X		City Attorney/ Ass't CA
7.	Review Planning Commission staff reports.	X		X		City Attorney/ Ass't CA
8.	Review all tort claims received by City and provide direction in coordination with PLAN/York representatives.	X		X		City Attorney/ Ass't CA
9.	Review and approve Risk Management and Administrative Policies.	X		X		City Attorney/ Ass't CA
10.	Review and approve Requests for Proposals for various City projects.	X		X		City Attorney/ Ass't CA
11.	Review and approve destruction of documents per the Council approved retention schedule.	X		X		City Attorney/ Ass't CA
12.	Review all public records requests as they come in. Review responsive documents where a determination as to public record and or privilege needs to be made.	X		X		City Attorney/ Ass't CA
13.	Review all contracts with third party providers and other agencies.	X		X		City Attorney/ Ass't CA
14.	Prepare resolutions and ordinances of a routine nature.	X		X		City Attorney/ Ass't CA
15.	Provide annual training on topics such as Open Government, AB 1234 and AB 1825.	X		X		City Attorney/ Ass't CA
16.	Review and approve public records request and records destruction requests.	X		X		City Attorney/ Ass't CA
17.	Correspondence as necessary.	X		X		City Attorney/ Ass't CA

18.	Advise on strategy and anticipation of issues.	X		X		City Attorney/ Ass't CA
19.	Attendance at and advice to other Boards and Commissions.	X		X		City Attorney/ Ass't CA
20.	Litigation – cases not covered by PLAN. Monitor and strategize with outside counsel in litigation and personnel/labor matters.	X			X	City Attorney
21.	Respond to Pitchess motions seeking Police personnel records.	X			X	Deputy City Attorney
22.	Attendance at special City Council, Planning Commission, and Open Government Commission meetings. Attendance at Closed Sessions.	X		X		City Attorney/ Ass't CA
23.	Work on major issues such as affordable housing, subdivision and sign ordinance updates, the Arsenal, the Port and district elections.	X		X*		Depending on Expertise
24.	Work on economic development incentive arrangements with developers. Exclusive Negotiating Agreements, Disposition and Development Agreements, Developer Agreements, etc.	X			X	Depending on Expertise
25.	Open Government- Farmers Market Support, Candidates Forum	X		X		City Attorney/ Depending on Expertise
26.	Legal services for Code Enforcement. Consultation with staff, correspondence, meetings, preparation of complaints, court appearances as necessary.	X		X*		City Attorney/ Depending on Expertise
27.	Review of plans, specifications and proposed construction agreements for CIP projects.	X		X		City Attorney/ Depending on Expertise
28.	Review of CC&Rs for approved projects.	X		X		City Attorney/ Depending on Expertise
29.	Work on major projects for which City receives a deposit and charges staff and consultant time to the projects—example: hotels.	X			X	Depending on Expertise
30.	Collections for damage to city property.	X			X	City Attorney/ Depending on Expertise
31.	Legal services for labor negotiations and personnel matters.	X			X	Depending on Expertise

* Depending on scope.

Exhibit B**SCHEDULE OF CHARGES****General Municipal Hourly Rate**

General City Attorney Services will include the matters defined as “basic services” in the City’s RFP, and include attendance at Council meetings and closed sessions, Council subcommittee meetings, and Planning Commission meetings, as directed by the City; routine legal advice and consultation; analysis of Public Records Act responses and conflicts of interest questions; assistance in the preparation of agenda items, staff reports, and resolutions; review and preparation of orders, agreements, forms, notices, declarations, certificates, leases, and other documents as required by the City; and consultation with Council Members, the City Manager, and department heads regarding routine legal issues.

All Attorneys

\$250 per hour

Special Counsel Hourly Rates

Special Services include all litigation, arbitration, and mediation activities (including all appellate work); complex construction; eminent domain; legal advice regarding and drafting of financing documents; legal analysis and advice regarding complex environmental matters, including Endangered Species Act issues, environmental permitting and regulatory issues, Clean Water Act compliance issues, NPDES compliance, and the application of and compliance with the California Environmental Quality Act and National Environmental Policy Act; wage and hour determinations by the DIR; personnel advice and labor negotiations; and contested conflict of interest matters, including the preparation of FPPC or Attorney General advisory letters, and defense of public officials in response to FPPC investigations and charges.

Partners

\$325 per hour

Associate Attorneys

\$270 per hour

Paralegals

\$135 per hour

Developer/Third Party Reimbursable Work

Legal work on projects for which the City receives reimbursement from a developer or other third party, as determined by the City’s development processing procedures, Master Fee Schedule or according to the mutual agreement of the City and third party. Costs and fees shall also be paid for by the third party. Excluded from this provision are collections from parties who damage city property such as hydrants, meters, light poles, vegetation etc. Such collections are part of basic services until litigation is required. If litigation is required, the developer/third party rates apply.

\$325- \$550 per hour

Reimbursements

Routine office charges such as copying and legal research online charges shall not be charged for Basic Services but may be charged for Special services. Computer and word processing time is not chargeable to the City:

In-house reproduction charges	
black and white	20¢ per page
color	\$1 per page
Facsimile	\$1 per page
Mileage shall not be charged from Law Firm's Offices to Benicia. Mileage may be charged from Benicia to court or other meetings:	54.5¢ per mile (or current IRS rate)
Out of Pocket Expenses including, but not limited to, transcriptions, messengers, or special reproductions:	Actual costs

Retainer Option

The parties agree that in June of 2019 they will review the workload and billing to see if a retainer alternative to the above rate structure is reasonable.

Costs and Expenses

Law Firms shall promptly notify the City Manager or the City Council, as the case may be, whenever fees, costs and expenses are anticipated to be more than originally expected for a project or for a month.

Adjustments

Except as provided above in the Retainer Option or the Reimbursed Special Services, the rates for legal services will remain in effect for the first two years of the contract. Thereafter, unless otherwise negotiated, rates may be adjusted based on a standard annual adjustment upon consultation with the City Manager and approved by the Council as part of the Council's standard budget adoption process, equal to the greater of the average Consumer Price Index for SF Bay Area Consumer Price Index for All Urban Consumers (CPI-U) as of December 2020 to be effective March 1, 2021.

Exhibit C

Insurance Provisions

INSURANCE

(a) Without limiting Law Firm's indemnification, it is agreed that Law Firm shall maintain in force at all times during the performance of this contract, the following types of insurance providing coverage on an "occurrence" basis. Said insurance shall name the City, its officers, agents and employees as additional insureds. Evidence of said insurance shall be delivered to City at the same time Law Firm signs this Agreement in certificate forms acceptable to the City.

Commercial general liability and property damage insurance. Coverage: at least \$1,000,000 per occurrence. If commercial general liability insurance or other form with a general aggregate limit shall apply separately to this Project/location, the general aggregate limit shall be at least twice the required occurrence limit.

Automobile insurance for the vehicle(s) Law Firm uses in connection with the performance of this Agreement. Coverage: at least \$1,000,000 per occurrence for bodily injury and property damage.

Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. Law Firm's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the City, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation Statutes, the Law Firm shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

Errors and Omissions insurance. Coverage: at least \$2,000,000 each occurrence, at least \$2,000,000 policy aggregate.

(1) The limits of insurance required in the contract 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 noncontributory basis for the benefit of the City (if agreed to in a written contract) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(2) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader

coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(3) The insurer waives all rights of subrogation against the City, its elected or appointed officials, officers, employees or agents.

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

(5) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the City.

(b) Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

(1) The City of Benicia, its elected or appointed officers, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Law Firm, including materials, parts or equipment furnished in connection with such work or operations.

(2) This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it. The Additional Insured coverage shall be at least as broad as CG 20 01 04 13.

(3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(c) In the event Law Firm desires to hire or employ any other company or person to perform any part of the services contemplated herein, the written approval therefore must be first obtained from the City. The City may withhold such approval for any reason. If approval is given by the City, Law Firm shall secure and provide City evidence securing said Worker's Compensation insurance covering said approved employee(s) in statutory amounts and providing 30 days' advance notice to City in the event said policy is canceled.

(1) Should the City approve the hiring or employment of another company or person as a Subcontractor, Law Firm agrees to include with all subcontractors in the subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they

apply to the scope of the subcontractor's work. Subcontractors hired by the Law Firm agree to be bound to Law Firm and the City in the same manner and to the same extent as Law Firm is bound to the City under the Contract Documents. Subcontractor further agrees to include these same provisions with any subcontractor. A copy of the City's Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request. The Law Firm shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to the commencement of any work and will provide proof of compliance to the City.

(2) Any approved Subcontractor agrees to be bound to the Law Firm and City in the same manner and the same extent as Law Firm is bound to the City under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this Contract, including the indemnity and insurance requirements, with any City approved subcontractor to the extent they apply to the scope of subcontractor's work.

(d) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the City's Risk Management for approval and shall not reduce the limits of liability. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the City, its officers, officials, agents, employees and volunteers; or Law Firm shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City. The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.