

AGREEMENT FOR [INSERT SERVICE NAME] MAINTENANCE SERVICES

THIS AGREEMENT FOR [INSERT SERVICE NAME] MAINTENANCE SERVICES (“Agreement”) is made and effective as of the [Insert day] day of [Insert month], [Insert year] by and between the City of Carpinteria, a municipal corporation (“City”), and [Insert company name] (“Contractor”) (collectively, the “Parties”) at Carpinteria, California, with reference to the following facts:

- A. City has determined that it is necessary and appropriate to engage a contractor to carry out the services described herein; and
- B. Contractor has represented itself as being fully qualified and available to perform the contracting services necessary to complete the work in a timely manner; and
- C. City desires to contract with Contractor and Contractor is willing to perform the contracting services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SERVICES.

- 1.1 **Basic Work.** City hereby retains Contractor to perform the services described and set forth in the attached Exhibit A (“**Basic Work**”), which is incorporated by this reference as though set forth in full. Contractor agrees to furnish at his own expense all labor, materials, equipment, tools, transportation, and services necessary for the successful completion of the Basic Work, except such materials, equipment and services as may be stipulated in Exhibit A. Contractor shall complete the Basic Work according to a schedule of performance which is also set forth in Exhibit A. The Parties agree and acknowledge that time is of the essence in performance of this Agreement.
- 1.2 **Additional Work.** In addition to the Basic Work, City may elect to have Contractor perform additional work that is beyond the current scope of the Basic Work (“**Additional Work**”). Such Additional Work shall be mutually agreed to in advance and specified in a writing, which shall also specify the basis for the Contractor’s fee for such Additional Work. Basic Work and Additional Work are referenced collectively as “**Work.**”

2. PERFORMANCE.

- 2.1 **Standard of Performance.** Contractor shall faithfully, competently and diligently perform the obligations and responsibilities required by this Agreement, applying best management practices and the same standards of care utilized by persons commonly engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement. Contractor shall review all plans and specifications and report any errors or omissions to the City before beginning any Work. Contractor

shall not engage the assistance of subcontractors for performance of the Work unless previously agreed to in writing by the Public Works Director or his/her designee.

All Work is to be completed in accordance with, and as applicable to the latest revision of Santa Barbara County's Engineering Design Standards, City of Carpinteria Municipal Code, Caltrans Standard Specifications for Public Works Construction, and traffic control as set forth in accordance with the provisions of the California MUTCD or as specified by the Public Works Director or his/her designee.

- 2.2 **Completion of Work.** Work shall be completed within [Insert contract time] of the signed date of this Agreement, unless extended in writing by the City.
- 2.3 **Labor and Materials.** Contractor agrees to furnish at his own expense all labor, materials, equipment, tools, transportation, and services necessary for the successful completion of the Work, except such materials, equipment and services as may be stipulated in Exhibit A. Contractor shall supervise fulfillment of the provisions of this Agreement by its employees and subcontractors and shall be responsible for the timely performance of the Work as required by this Agreement.
- 2.4 **Review of Work.** Contractor shall furnish City with reasonable opportunities from time to time to ascertain whether the Work is being performed in accordance with this Agreement. All work done and materials furnished shall be subject to final review and approval by the Public Works Director or his/her designee; Contractor is not authorized to provide final approval or review, which is solely City's function and role. City review and approval of such Work shall not, however, relieve Contractor of any of its obligations under this Agreement.
- 2.5 **Contract Administration.** The Public Works Director or his/her designee shall represent the City in all matters relating to the administration of this Agreement. The Public Works Director or his/her designee shall have the authority to act on the City's behalf to review and approve all Work submitted by Contractor and may execute all necessary documents to authorize Contractor to perform Additional Work as provided for herein.
- 2.6 **Representations and Warranties.** Contractor represents and warrants to City that: (i) its fulfillment of its obligations and, as applicable, performance the Work under this Agreement, will not violate any applicable or breach any contracts with third parties and (ii) it has the right, power and authority to fulfill its obligations, and, as applicable perform the Work, and enter into this Agreement; (iii) the Work contemplated hereunder will be performed by adequately trained and properly licensed personnel in a professional manner, with such personnel having the requisite skill and expertise necessary to perform and complete the Work in accordance with best management practices and industry standards and in accordance with the terms and conditions of this Agreement; and (iv) the Work and all deliverables provided hereunder will conform to the specifications agreed-to by the parties.

3. **TERM.** This Agreement shall be effective as of the date first above written and shall continue until tasks described herein are completed to the satisfaction of the City, but in no event later than [Insert contract time], unless sooner terminated pursuant to the provisions of this Agreement. The City has the option to extend this Agreement on the same terms for three (3) additional one (1) year periods. The City shall not be required to provide “cause” or any reason whatsoever should it elect not to renew. The contract term and all extensions thereto shall not exceed a total of eight (8) years.

4. **COMPENSATION.**

- 4.1 **Basic Work.** For Basic Work, City shall pay Contractor on a time and materials basis, not to exceed amount of [Insert dollar amount in words] (\$[Insert dollar amount]) as full compensation for all labor, materials, equipment, tools, transportation, and Work. This compensation shall be paid in accordance with the payment rates and schedule as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based on the actual time spent on the tasks and the actual price of the necessary materials.

Contractor agrees that the above named price shall be full compensation for successful completion of the Basic Work pursuant to the terms outlined in Exhibit A, as well as for furnishing all said labor, materials, equipment, tools, transportation and services, furnishing and removing all plant, temporary structures, tools, and equipment, and doing everything required by this Agreement, for all loss and damages arising out of the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may arise during the prosecution of the Work until its acceptance by City, and for all risks of every description connected with the Work, for all expenses resulting from the suspension or discontinuance of work, except as are expressly stipulated in this Agreement to be borne by City and for completing the Work in accordance with the requirements of this Agreement.

- 4.2 **Additional Work.** Contractor shall not be compensated for any Work rendered in connection with its performance of this Agreement which is in addition to the Basic Work, unless such Additional Work is authorized in advance and in writing in the method provided for herein. Contractor will submit fee estimates for such Additional Work upon request of City.
- 4.3 **Consideration.** Contractor agrees to perform the Work according to the terms of this Agreement for the abovementioned price and City agrees to pay Contractor at the time, in the manner, and upon the conditions stipulated in this Agreement. City and Contractor, for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants contained in this Agreement and in the attached Exhibits.
- 4.4 **Invoices.** Each and every payment by City shall be subject to City’s receipt of an invoice outlining the items for which payment is requested. Payment to Contractor as to any undisputed fees shall be made, after verification of Contractor’s performance, within 30 (thirty) days of receipt of invoice. If City disputes any of Contractor's fees, it shall give

written notice to Contractor within 30 (thirty) days of receipt of an invoice of such disputed fees. The City shall pay interest at the legal rate on any invoices not paid within 30 days of submission where the validity of the request is not disputed and the request has been properly submitted.

4.5 **Withholding.** City reserves the right to withhold future payment to Contractor if any aspect of the Contractor's work is found to be substantially inadequate. City shall notify Contractor in writing of deficiencies believed to be substantially inadequate within thirty (30) days after completion of Work.

4.6 **Taxes/Insurance/Licenses.** Contractor shall be solely responsible for the payment of any federal, state, or local income tax, social security tax, workers' compensation insurance, state disability insurance, and any other taxes or insurance which Contractor is responsible for paying as an independent contractor under federal, state or local law. At all times during the term of this Agreement, Contractor and all subcontractors shall have in full force and effect all licenses necessary for the performance of Work hereunder, including without limitation, business licensing from City, all at the sole cost of Contractor.

5. **RECORDS.**

5.1 **Financial Records.** Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of Work under this Agreement. Contractor shall also maintain adequate records of Work provided in sufficient detail to permit an evaluation of Work. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

5.2 **Access to Records.** Contractor shall provide free access to the representatives of City or its designees at reasonable times to books and records as set forth in Section 5.1; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of four (4) years after receipt of final payment.

5.3 **Original Records.** Upon completion of, or in the event of termination or suspension of this Agreement, all completed and incomplete original agreements, data, documents, designs, drawings, exhibits, maps, models, computer files, reports, studies, surveys, notes, and other work, materials or documents prepared or used to prepare Contractor's work product in the course of providing the Work pursuant to this Agreement ("**Contractor Work Product**") shall become the sole property of City once the Contractor has received payment. City may duplicate, disclose, disseminate, use, reuse or otherwise dispose of Contractor Work Product in whole or in part in any manner it deems appropriate, without the permission of Contractor. With respect to computer files, Contractor shall make available to the City, at Contractor's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of

accessing, compiling, transferring and printing computer files. Contractor may retain copies of such Contractor Work Product as a part of its record of professional activity.

6. **TERMINATION.**

6.1 **Termination Without Cause.** This Agreement may be terminated by either party for any reason upon ten (10) days prior written notice by the terminating party to the other party. In the event of a termination, the date of termination shall be deemed to be the first business day occurring after the expiration of the notice period. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

6.2 **Termination With Cause.** City may terminate this Agreement with cause, effective immediately upon written notice of such termination to the other party and failure of the breaching party to correct to the City's satisfaction within five (5) days of receiving such notice, based upon the occurrence of any of the following events:

- Material breach of this Agreement by Contractor;
- Cessation of Contractor, or subcontractors under his or her control, to be licensed, as required;
- Failure to substantially comply with any applicable federal, state or local law or regulation;
- Filing by or against Contractor of any petition under any law for the relief of debtors; and,
- Filing of a criminal complaint against Contractor for any crime, other than minor traffic offenses.

6.3 **Performance and Payment Upon Termination.** In the event this Agreement is terminated, with or without cause, City shall pay Contractor for the outstanding balance owed for Work performed up to the time of termination. Upon termination of the Agreement, Contractor shall submit an invoice to City as provided for herein and shall submit to the City all of its files for any billable or non-billable matters in which the Contractor is involved under the scope of this Agreement.

6.4 **Termination Upon Mutual Consent.** This Agreement may also be terminated by mutual consent of the Parties and in accordance with the terms and conditions of any plan of termination established by the Parties. In the event of a termination by mutual consent, the date of termination shall be such date as is agreed upon by the Parties. The Parties may agree to suspend or terminate a portion of this Agreement and such suspension or termination shall not make void or invalidate the remainder of this Agreement.

7. **DISPUTE RESOLUTION.** If any dispute, claim or disagreement shall arise relative to the interpretation or enforcement of this Agreement, the Parties shall use commercially reasonable efforts to settle the dispute, claim or disagreement. To this end, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and

equitable solution satisfactory to both Parties. If they do not reach such a solution within a period of thirty (30) days, then, upon notice by either party to the other, the dispute, claim or disagreement shall be submitted to final, binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator shall have the authority to assess arbitration costs and expenses against either or both Parties. The decision in the arbitration shall be binding on all Parties, and judgment on any arbitration award may be entered in any court of competent jurisdiction.

8. **INSURANCE.** Prior to the beginning of the Work and for the duration of this Agreement, Contractor shall maintain insurance coverage as specified in the attached Exhibit C, which is incorporated by this reference as though set forth in full.

9. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any of its officials, employees and agents ("**Indemnified Parties**") from and against any and all losses, liabilities, obligations, claims, penalties, damages, costs, interest, actions, judgments, suits and expenses or disbursements of any kind or nature whatsoever, including attorneys' fees and costs ("**Claims**"), which in any way relate to this Agreement or to the performance of this Agreement by any individual or entity for whom Contractor is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Contractor ("**Agents**"). Contractor shall also indemnify, defend and hold harmless Indemnified Parties from and against any and all Claims which arise out of the negligence, recklessness, strict liability or willful misconduct of the Contractor and Agents.

10. **RELEASE OF INFORMATION.**

10.1 **Confidentiality.** All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released except to the City, directly or indirectly, by Contractor without City's prior written authorization. Contractor, its officers, employees or subcontractors shall not voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Work performed under this Agreement unless requested by the City Attorney or authorized in writing by the City Manager or his designee. Response to a subpoena or court order shall not be considered "voluntary" provided that Contractor shall give City prompt written notice of any such court order or subpoena. The provisions of this Paragraph shall survive the termination of this Agreement.

10.2 **Notice and Cooperation.** Contractor shall promptly notify the City Manager and City Attorney in writing if Contractor, its officers, employees, agents or subcontractors are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any person or party related to this Agreement and/or Contractor's related Work. City has no obligation to, but may exercise discretion to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide the City an opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not grant or imply a right of City to control, direct, dictate or rewrite said response.

11. **RELATIONSHIP TO CITY.**

- 11.1 **Independent Contractor.** Contractor is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the Work under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, subcontractors, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, subcontractors or agents are in any manner officers, employees or agents of City. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.
- 11.2 **No Employee Privileges.** No City employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages or other compensation to Contractor for performing Work hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing Work hereunder.
- 11.3 **Contractor Duty to City.** Contractor understands and agrees that its responsibility to provide complete and accurate Work is owed solely to City and that its accountability under this contract shall likewise be solely to City and not to any City applicants or any other third person or entity.
- 11.4 **Interest of Contractor.** Contractor agrees to comply with all applicable conflict of interest codes. Contractor represents and warrants to City that it presently has no interests, and covenants that it shall not acquire any interests, direct or indirect, financial or otherwise, which would conflict with the performance of the Work to be provided by Contractor under this Agreement. Contractor further covenants that, in the performance of this Agreement, no subcontractor or employee having such an interest shall be employed by Contractor. Contractor certifies that neither he nor any of his officer, employees, subcontractors, or agents has or will have any prohibited financial interest under this Agreement.
- 11.5 **Undue Influence.** Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement or financial inducement. No officer or employee of City will receive compensation, directly or indirectly, from Contractor or any officer, employee, subcontractor or agent of Contractor, in connection with the award of this Agreement or any Work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

- 11.6 **Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the City and the Contractor and will not confer any rights upon any person not expressly a party to this Agreement.

12. GENERAL PROVISIONS.

- 12.1 **Further Assurances.** City and Contractor each agree to cooperate with one another, to use their best efforts, to act in good faith, and to promptly perform such acts and execute such documents or instruments as are reasonably necessary and proper to consummate the transactions contemplated by this Agreement.

- 12.2 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if personally served or on the second day after mailing if mailed by first-class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To City:

Dave Durlinger, City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013-2698
P: (805) 684-5405
F: (805) 684-5304

To Contractor:

[Insert contact name]
[Insert company name]
[Insert address]
[Insert city, state and zip]
P: [Insert number]
F: [Insert number]

Any party may change their address for the purpose of this paragraph by giving the other party written notice of the new address in the above manner.

- 12.3 **Legal Responsibilities.** Contractor shall keep itself informed of state, federal and laws and regulations which in any manner affect those employed by it or in any way affect the performance of its Work pursuant to this Agreement. The Contractor shall reasonably observe and comply with such laws and regulations. The City and its officers and employees shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.
- 12.4 **Notice of Claims.** City agrees to timely notify Contractor of the receipt of any third party claim related to the Agreement.
- 12.5 **Licenses.** At all times during the term of this Agreement, Contractor and all officer employees, subcontractors or agents of Contractor shall have in full force and effect, all licenses required by law for the performance of Work described in this Agreement.
- 12.6 **Labor Conditions.** City is a public entity in the state of California, and therefore, City and Contractor are subject to the provisions of the Government Code and the Labor Code of the state of California. All provisions of law applicable to public contracts and/or this Agreement are incorporated herein by this reference and are made a part of this Agreement to the same extent as if they were fully stated in the Agreement and shall be

complied with by Contractor. Copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on. This Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

- 12.7 **Labor Requirements.** Contractor shall abide by all federal and California laws and regulations regarding wages, including, without limitation, the Fair Labor Standards Act and the California Labor Code, which, in part, mandate that 8 hours' labor constitutes a legal days' work, and require Contractor to pay the general prevailing wage rates. The California statutory provisions for penalties for failure to pay prevailing wages will be enforced and the statutory provisions for penalties for failure to comply with California's wage and hour laws will be enforced. In addition, Contractor must secure the payment of workers' compensation to its employees as provided by California law. Contractor must also comply with the statutory requirements relating to the employment of apprentices. Additionally, Contractor is required to comply with all statutory requirements relating to certified payroll records, including the maintenance of the records, their certification, and their availability for inspection.
- 12.8 **Discrimination.** No person shall be excluded from employment in the performance of this Agreement on the grounds of race, creed, color, sex, age, marital status, sexual orientation or place of national origin. Contractor shall comply with all local, state, and federal laws relating to equal employment opportunity rights.
- 12.9 **Assignment.** Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City, which shall have the sole discretion to consent to any proposed assignment. Specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- City and Contractor each binds itself, its successors, assigns and legal representatives to the other party, its successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in this Agreement.
- 12.10 **Waiver.** No waiver of a provision of this Agreement shall constitute a waiver of any other provision, whether or not similar. No waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 12.11 **Force Majeure.** Neither Contractor nor City shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
- 12.12 **Construction of Terms.** All parts of this Agreement shall in all cases be construed according to their plain meaning and shall not be construed in favor or against either of

the parties. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. In the event of any provision shall be adjudged invalid, void or unenforceable, the parties hereto agree to enter into a supplemental agreement to effectuate the intent of the parties and the purposes of this Agreement.

- 12.13 **Controlling Law.** The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement, with venue proper only in the County of Santa Barbara, State of California.
- 12.14 **Authorization.** All officers and individuals executing this and other documents on behalf of the respective parties hereby certify and warrant that they have the capacity and have been duly authorized to execute said documents on behalf of the entities indicated.
- 12.15 **Entire Agreement.** This Agreement, along with its attached exhibits, which are incorporated herein by this reference, constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be altered, amended or modified only by a supplemental writing executed by the parties to this Agreement and by no other means. Each party waives any future right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver or estoppel.
- 12.16 **Counterparts.** This Agreement may be executed in counterparts, each of which shall remain in full force and effect as to each party.
- 12.17 **Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement at the place and as of the date first written above.

"CITY"
City of Carpinteria

"CONTRACTOR"
[Insert company name]

By: _____
[Insert name], Mayor

By: _____
[Insert authorized name], [Insert title]

ATTEST:
City of Carpinteria

By: _____
Fidela Garcia, CMC, City Clerk

APPROVED AS TO FORM:
City of Carpinteria

By: _____
Peter N. Brown, on behalf of
Brownstein Hyatt Farber Schreck, LLP
acting as City Attorney of the City of Carpinteria

DRAFT

EXHIBIT A
BASIC WORK

DRAFT

EXHIBIT B

PAYMENT RATES AND SCHEDULE

DRAFT

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

1. General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
2. Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$5,000,000 combined single limit for each accident.
3. Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
4. Pollution and remediation liability insurance. Contractor shall maintain pollution and remediation liability insurance with limits of at least \$2,000,000.

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

5. Other provisions or requirements

- A. Proof of insurance. Contractor 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. 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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. Duration of coverage. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees or subconsultants.
- C. Primary/non-contributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
- D. City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

- E. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- F. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- G. Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- H. 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 Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- I. Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.^[1]
- J. Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
- K. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved in writing.
- L. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- M. Pass Through Clause. Contractor agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.
- N. City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.
- O. Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a

^[1] It may be difficult to obtain notice of cancellation to an additional insured from an insurer. As a precaution, you should require such notice and be prepared to eliminate the requirement, or contract with a different vendor, depending on your perception of the risk.

deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

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

DRAFT

EXHIBIT D

WORKERS' COMPENSATION STATEMENT

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Acknowledged and Agreed:

DRAFT