

**AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH
AND GENERAL PUMP COMPANY**

The following contract (“Contract”) is made and entered into as of October 1, 2019 (“Effective Date”), by and between the City of Manhattan Beach, a California municipal corporation (“City”) and General Pump Company, Inc., a California corporation (“Contractor”). Contractor’s license number is #496765 (C57, C61/D21, A); Contractor’s DIR registration number is 1000002769.

City and Contractor are referred to herein as the “Parties.”

In consideration of the Parties’ performance of the promises, covenants, and conditions stated herein, the Parties agree as follows:

1. **GENERAL SCOPE OF WORK; TERM; TERMINATION:** Contractor shall procure and furnish all necessary labor, tools, materials, and expertise for Booster Pump Repair (the “Work”) as more particularly described in the Scope of Work and Fee Schedule attached hereto as **Exhibit A**. All Work is to be performed in good and workmanlike manner and in accordance with any further written instructions, if any, of the Director of Public Works or her designated representative. The term of this Contract shall commence upon the Effective Date and, unless terminated as provided herein, shall continue until (a) all required work is completed, (b) fully executed releases as to any and all lien rights of any and all subcontractors have been received by City, and (c) the time within which any liens, stop notices or other claims for payment by subcontractors, laborers, and/or materialmen can be asserted against City has expired.

City may terminate this Contract, without cause, at any time by providing Contractor with not less than ten days’ prior written notice. Provided Contractor is not then in breach, Contractor will be paid for work satisfactorily completed and for all deliverables received.

2. **TIME OF COMPLETION; LIQUIDATED DAMAGES.** Notwithstanding any other provision of this Contract, the completion date for this Work shall be on or before December 1, 2019 (“Completion Date”). Time is of the essence in this Contract.

APPLICABLE – or – NOT APPLICABLE

Contractor agrees to the assessment of liquidated damages in the amount of \$250 for each calendar day the work remains incomplete beyond the Completion Date. City may deduct the amount thereof from any monies due or that may become due Contractor under this Contract. Progress payments made after the scheduled Completion Date shall not constitute a waiver of liquidated damages. Liquidated damages are not intended to compensate City for consequential damages which City may incur from other Contractor delay claims resulting from Contractor’s delay in the performance of this Contract.

3. **INCORPORATION OF STANDARD SPECIFICATIONS.** The 2018 edition of “Standard Specifications for Public Works Construction” (“Standard Specifications”) is incorporated herein by this reference. In the event of any conflict between this Contract and the Standard Specifications, the provisions of this Contract shall control.

4. **INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY:** All Exhibits attached hereto are incorporated herein by reference. The documents, payment bond, City insurance requirements, together with this written Contract (and all Exhibits, documents and laws referenced therein), shall constitute the entire agreement between the Parties as to the subject matter of this Contract. In the event of any conflict between this Contract and any Exhibit hereto, the provisions of this Contract shall control.

5. **PAYMENT:** Terms of payment and other applicable terms and conditions are listed in **Exhibit A**. City shall pay to Contractor for furnishing the material and doing the prescribed work according to the unit prices and/or lump sum set forth in **Exhibit A**. In no event shall Contractor be paid more than \$49,883.58 (the “Maximum Compensation”).

6. **RETENTION:** Five percent (5%) of any progress payment will be withheld as retention. City shall withhold not less than five percent (5%) of the Maximum Compensation from the final payment until at least thirty-five (35) days after recordation of the Notice of Completion, or recordation of a notice of completion or cessation, but not later than the period permitted by Public Contract Code Section 7107. In accordance with Public Contract Code Section 22300, and at the request and expense of Contractor, substitution of securities equivalent to the amount withheld is permitted. No such substitutions shall be accepted until all related documents are approved by the City Attorney.

7. **INSURANCE:** Contractor shall not commence work under this Contract until it has obtained insurance with the minimum required limits and coverage as specified in **Exhibit B – City Insurance Requirements**, in a company or companies acceptable to City. Contractor shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. Contractor shall provide evidence of the required insurance to City’s Risk Manager as specified in **Exhibit B**.

8. **PREVAILING WAGES:** Notwithstanding any statement to the contrary in Contractor’s proposal or quote, City and Contractor acknowledge that this project is a public work to which prevailing wages apply. The document titled “Labor Code and Prevailing Wage Requirements” is attached hereto as **Exhibit C**. Contractor shall comply with all provisions of **Exhibit C**.

9. **BONDS.**
 - a. **PAYMENT BOND:** REQUIRED – or – NOT REQUIRED

Contractor shall obtain and submit a signed and notarized copy to City of a payment bond in an amount that is not less than 100% of the Maximum Compensation, and nothing in this Agreement shall excuse this requirement.

 - b. **PERFORMANCE BOND: NOT REQUIRED**

10. **RESOLUTION OF DISPUTES:** In the event that a dispute arises between City and Contractor regarding whether the conditions materially differ, or cause a decrease or increase in Contractor’s cost of or time required for performance of any part of the Work,

Contractor shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all work to be performed under this Contract. Contractor shall retain any and all rights that pertain to the resolution of disputes and protests between the Parties. In the event of any dispute or controversy with City over any matter whatsoever, Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. This includes disputed time extension requests and prices for changes. The disputed work will be categorized as an “unresolved dispute” and payment, if any, shall be as later determined by mutual agreement or a court of law. Contractor will keep accurate, detailed records of all disputed work, claims and other disputed matters.

All claims arising out of or related to the Contract Documents or this project, and the consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims. Manhattan Beach Municipal Code Chapter 2.56, governing claims and actions against City, shall govern the procedures of the claim process, and the provisions of Manhattan Beach Municipal Code Chapter 2.56 are hereby incorporated herein.

All such claims are also subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. Thus, the Contractor or any Subcontractor must file a claim in accordance with the Government Claims Act and Municipal Code Chapter 2.56 as a prerequisite to filing a construction claim in compliance with Section 9204 and Article 1.5 (if applicable), and must then adhere to Article 1.5 and Section 9204, as applicable, pursuant to the definition of “claim” as individually defined therein.

11. INDEMNIFICATION, HOLD HARMLESS, AND DUTY TO DEFEND.

a. Indemnities.

- 1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except

for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by judicial decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

- 2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).
 - 3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.
- b. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Contract, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
 - c. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the

deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

d. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

12. **NON-DISCRIMINATION:** No discrimination shall be made in the employment of persons upon public works because of age, disability, race, color, religion, sex, sexual orientation or national origin of such persons, and every Contractor for public works violating this Section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of Section 1735 of that Code.

13. **LICENSES:** Contractor is aware of California Labor Code Sections 1777.1 and 1777.7, which prohibit Contractor or any subcontractors who have been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code, from bidding on, being awarded, or performing work as a contractor or subcontractor on a public works project for specified periods of time.

Pursuant to Public Contract Code Section 6109 and California Business and Professions Code Section 7028.15, Contractor shall be licensed as required by the Contractors' State License Board of the State to perform the work. Pursuant to Public Contract Code Section 3300 and at all times during the term of this Contract, Contractor shall possess a Class C-61/ D21 California contractor's license.

Contractor has investigated and will ensure that any subcontractor possesses a valid specialty trade license in its trade as required by law.

14. **WARRANTY.** The warranty applicable to the Work pursuant to this Contract shall be as set forth in:

A. Section 3-13.3 of the Standard Specifications.

B. **Exhibit A.**

15. **ANTITRUST CLAIMS:** Pursuant to Public Contract Code Section 7103.5, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code) arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time City tenders final payment to Contractor without further acknowledgment by the Parties.

16. **OWNERSHIP OF DOCUMENTS AND WORK PRODUCT:** All documents, plans, specifications, reports, photographs, images, video files and media created or developed

by Contractor pursuant to this Contract (“Written Products”) shall be and remain the property of City without restriction or limitation upon its use, duplication or dissemination by City. All Written Products shall be considered “works made for hire,” and all Written Products and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Contractor shall not obtain or attempt to obtain copyright protection as to any Written Products.

Contractor hereby assigns to City all ownership and any and all intellectual property rights to the Written Products that are not otherwise vested in City pursuant to the paragraph directly above.

Contractor warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the services and the production of all Written Products produced under this Contract, and that City has full legal title to and the right to reproduce the Written Products. Contractor shall defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials, harmless from any loss, claim or liability in any way related to a claim that City’s use of any of the Written Products is violating federal, State or local laws, or any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the services and Written Products produced under this Contract. In the event the use of any of the Written Products or other deliverables hereunder by City is held to constitute an infringement and the use of any of the same is enjoined, Contractor, at his or her expense, shall: (a) secure for City the right to continue using the Written Products and other deliverables by suspension of any injunction, or by procuring a license or licenses for City; or (b) modify the Written Products and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Contract. This covenant shall survive the termination of this Contract.

Upon termination, abandonment or suspension of the project, Contractor shall deliver to City all Written Products and other deliverables related to the project. If Contractor prepares a document on a computer, Contractor shall provide City with that document both in a printed format and in an acceptable electronic format.

17. **THIRD-PARTY CLAIM:** Pursuant to Public Contract Code Section 9201, City has full authority to compromise or otherwise settle any claim relating to this Contract at any time. City shall timely notify Contractor of the receipt of any third-party claim relating to this Contract. City shall be entitled to recover its reasonable costs incurred in providing the notification required by Public Contract Code Section 9201(b).

18. **INDEPENDENT CONTRACTOR:** Contractor is and shall at all times remain, as to City, a wholly independent contractor. The personnel performing the Services under this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, officials, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's employees except as set forth in this Contract, and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to City in such a manner and to such persons, firms, or corporations as Contractor wishes except as expressly provided in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent.

Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Contract. Contractor shall fully comply with the workers' compensation law regarding Contractor and its employees, and Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Contract any amount due to City from Contractor as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section.

19. **ASSIGNMENT:** Contractor shall not assign or transfer any interest in this Contract or any part thereof, whether by assignment or novation, without City's prior written consent. Any purported assignment without written consent shall be null and void; and Contractor shall hold harmless, defend and indemnify City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from any unauthorized assignment.
20. **GOVERNING LAW AND VENUE:** Should either party to this Contract bring legal action against the other, the validity, interpretation, and performance of this Contract shall be controlled by and construed under the laws of the State, excluding California's choice of law rules. Venue for any such action relating to this Contract shall be in the Los Angeles County Superior Court.
21. **ATTORNEYS' FEES:** If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Contract or because of an alleged dispute, breach, default or misrepresentation in connection with this Contract, the prevailing party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to any other relief to which the party may be entitled.
22. **NOTICES:** Except as otherwise required by law, any notice, request, direction, demand, payment, consent, waiver, approval or other communication required or permitted to be given hereunder to City shall not be effective unless it is given in writing and shall be

delivered (a) in person or (b) by certified mail, postage prepaid, and addressed to City at the address stated below, or at such other address as City may hereafter notify Contractor in writing as aforementioned:

To CITY:

Shawn Igoe
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone number: (310) 802-5315
Email: sigoe@citymb.info

To CONTRACTOR.

Michael Bodart
General Pump Company, Inc.
159 North Acacia Street
San Dimas, California 91773
Telephone number: 909-599-9606 x260
Email: mbodart@genpump.com

Freddy Ramirez
General Pump Company, Inc.
159 North Acacia Street
San Dimas, California 91773
Telephone number: 909-599-9606 x121
Email: framirez@genpump.com

If sent by mail, any notice, tender, demand, delivery or other communication shall be deemed effective three business days after it has been deposited in the United States mail. For purposes of communicating these time frames, weekends and federal, State, religious, County of Los Angeles or City holidays shall be excluded. No communication via facsimile or electronic mail shall be effective to give any such notice or other communication hereunder.

23. **EXHIBITS:** All Exhibits constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.
24. **ENTIRE AGREEMENT:** This Contract, including any other documents incorporated herein by reference, represents the entire integrated agreement between City and Contractor and supersedes all prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral. This Contract may only be modified or amended, or provisions or breach may be waived, by written agreement signed

by both Parties. The provision of this Contract shall govern over any inconsistent provisions contained in any Exhibit.

25. **NON-WAIVER OF TERMS, RIGHTS AND REMEDIES:** Waiver by either party of any one or more of the conditions of performance under this Contract shall not be a waiver of any other condition of performance under this Contract. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.
26. **SEVERABILITY:** Whenever possible, each provision of this Contract shall be interpreted in such a manner as to be valid under applicable law. If any term or portion of this Contract is determined by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remaining provisions of this Contract shall nevertheless continue in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the Parties hereto have caused these present to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CITY OF MANHATTAN BEACH,
a California municipal corporation

CONTRACTOR
General Pump Company, Inc.,
a California corporation

By: 
Bruce Moe, City Manager

By: 
Michael Bodart, President

ATTEST:

 10-15-19

Liza Tamura, City Clerk

**PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:


Quinn M. Barrow, City Attorney

APPROVED AS TO FISCAL CONTENT:

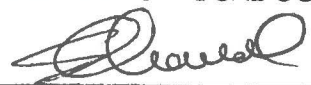
By: 
Steve S. Charelian
Finance Director

Exhibit A

SCOPE OF WORK AND FEE SCHEDULE



WELL & PUMP SERVICE SINCE 1952
Serving Southern California and Central Coast

159 N. ACACIA STREET * SAN DIMAS, CA 91773
 PHONE: (909) 599-9606 * FAX: (909) 599-6238

CAMARILLO, CA 93010 * PHONE: (805) 482-1215
www.genpump.com

Lic. #496765

June 18, 2019

Via Email

City of Manhattan Beach
 1400 Highland Avenue
 Manhattan Beach, CA. 90266
 Attn: Shawn Igoe

Subject: Peck Reservoir Booster-4

General Pump Company (GPC) is pleased to submit this proposal for the above referenced project. The scope of work associated in this proposal is as hereinbelow:

❖ Pull Booster Pump							
• Rotary Crane & 2-Men Crew	Est	9.0	Hrs @	\$	349.00 /Hr	-	\$ 3,141.00
• Overtime Adder	Est	1.0	Hrs @	\$	174.50 /Hr	-	\$ 174.50
							<u>Total - \$ 3,315.50</u>
❖ Inspect Booster Pump							
• Shop Labor	Est	11.0	Hrs @	\$	109.00 /Hr	-	\$ 1,199.00
							<u>Total - \$ 1,199.00</u>
❖ Clean and Reassemble Booster Pump with New Motor							
• Shop Labor	Est	28.0	Hrs @	\$	109.00 /Hr	-	\$ 3,052.00
• 125HP 460V 4-Pole 10" SME Sub Motor	Qty	1	@	\$	32,994.00 /Ea	-	\$ 32,994.00
• 125HP SS Motor/Pump Coupling	Qty	1	@	\$	630.00 /Ea	-	\$ 630.00
• Motor Splice Kit	Qty	1	@	\$	225.00 /Ea	-	\$ 225.00
• Neoprene Base Gasket	Qty	1	@	\$	30.00 /Ea	-	\$ 30.00
• FF Non-Asb Discharge Gasket	Qty	1	@	\$	7.50 /Ea	-	\$ 7.50
• Materials to Refurbish Discharge Head	Qty	1	@	\$	120.00 /Ls	-	\$ 120.00
• Consumables (Grease, Sealer, Solvent, Etc...)	Qty	1	@	\$	112.50 /Ls	-	\$ 112.50
• Tax @ 9.50%	Qty	1	@	\$	3,241.31 /Ea	-	\$ 3,241.31
• Factory Freight	Qty	1	@	\$	225.00 /Ls	-	\$ 225.00
							<u>Total - \$ 40,637.31</u>
❖ Install Booster Pump							
• Rotary Crane & 2-Men Crew	Est	9.0	Hrs @	\$	349.00 /Hr	-	\$ 3,141.00
• Overtime Adder	Est	1.0	Hrs @	\$	174.50 /Hr	-	\$ 174.50
							<u>Total - \$ 3,315.50</u>

PROPOSAL

Page 1

❖ Perform Start-up

- Service Truck & 1-Electrician
- Electrical Connection Kit
- Tax @ 9.50%

Est	7.0	Hrs @	\$	164.00 /Hr	-	\$	1,148.00	
Qty	1	@	\$	245.00 /Ea	-	\$	245.00	
Qty	1	@	\$	23.28 /Ea	-	\$	23.28	
							Total - \$	1,416.28

GRAND TOTAL INCLUDING TAX - \$ 49,883.58

Any additional labor/materials or deviation from the work mentioned above will result in further negotiations, and a change order will be required before performing the negotiated work.

GPC's standard terms & conditions apply and all invoices are net 30 days from invoice date.

Should you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

GENERAL PUMP COMPANY

Freddy Ramirez

Freddy Ramirez
Project Manager

WARRANTY STATEMENT

GPC warrants all products on this contract to be free of defects in materials and workmanship for a period of one (1) year from the start-up date and final testing. This warranty does not cover cosmetic damage or damage due to acts of God, accident, misuse, abuse, negligence, or modifications of, or to any part of the product. Warranty does not cover damage due to improper operation, improper maintenance, or attempted repairs by anyone other than a facility authorized by GPC.

Exhibit B

CITY INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Contract carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Contract with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this **Exhibit B**.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Contract, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this **Exhibit B** shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under Section 6 of the Contract.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Contract shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Contract shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Contract during the term of this Contract. The commercial general and automobile liability policies required under this Contract shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under Contract is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Contract in full force and effect during the term of this Contract, or in the event any of Contractor's policies do not comply with the requirements under **Exhibit B**, City may either immediately terminate this Contract or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Contract, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Contract. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 10 of this Contract.

K. Broader Coverage/Higher Limits. If Contractor maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Contract to maintain insurance coverage that meets all of the requirements of this **Exhibit B**.

Exhibit C

LABOR CODE AND PREVAILING WAGE REQUIREMENTS

1. Contractor acknowledges that the project as defined in this Contract between Contractor and the City, to which this Terms for Compliance with California Labor Law Requirements is attached and incorporated by reference, is a “public work” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Contractor acknowledges that this Contract is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations (“DIR”) implementing such statutes. Contractor shall perform all work on the project as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 of this **Exhibit C**.

3. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Contract are on file at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Contract.

4. The project is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

5. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Contract by Contractor or by any subcontractor.

6. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records. Contractor and each subcontractor shall comply with and be bound by the provisions of Labor Code Section 1771.4(a)(3), which requires that each Contractor and each subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner at least monthly, in a format prescribed by the Labor Commissioner.

7. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations.

Prior to commencing work under this Contract, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract.

8. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

9. Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

“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.”

10. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

11. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with this Contract, including without limitation the payment of all consequential damages, attorneys' fees,

and other related costs and expenses. All duties of Contractor under this Section shall survive termination of this Contract.