

LICENSE AGREEMENT INSTALLATION OF SHUTTLE SERVICE CHARGING STATIONS

THIS AGREEMENT is made this October 18th, 2016 ("Agreement Date") between the CITY OF MANHATTAN BEACH, a municipal corporation ("City"), and ALLSOP AND KNAPP, LLC, a California limited liability company, dba THE DOWNTOWNER ("Operator").

RECITALS

- A. Operator is engaged in the business of providing free transportation service to the public in Manhattan Beach ("Shuttle Service") utilizing a ride-hailing mobile application similar to one used by Uber and Lyft and using six-passenger electric shuttle buses.
- B. City is the owner of the Metlox Parking Garage located at 1200 Morningside Drive in Manhattan Beach ("Metlox Garage").
- C. Operator seeks to charge and park its vehicles at the Metlox Garage, including the right to install electric vehicle charging stations.
- D. Concurrently herewith, Operator and City are entering into a License Agreement ("Pilot Program Agreement") for the a six-month Pilot Program whereby, in exchange for the right to park and charge its vehicles at the Metlox Garage, Operator agrees to certain parameters for the Shuttle Service, and agrees to authorize City to control all of the advertising on one of the vehicles, as more particularly set forth therein.
- E. Pursuant to this Agreement, City is authorizing Operator to install three electric vehicle charging stations in the Metlox Garage, subject to the terms and conditions hereof.

NOW, THEREFORE, City and Operator agree as follows:

1. License Granted

For the consideration provided for herein and subject to the terms and conditions of this Agreement, City hereby grants to Operator a revocable, non-exclusive license to install three electric vehicle charging stations ("Charging Stations") in the area behind the main escalator at the Metlox Garage, as depicted on Exhibit A ("Shuttle Parking Area"), including the right to connect the Charging Stations to the electric power in the Metlox Garage.

Operator shall have no rights to install any signage, fixtures, structures, or other improvements on or about the Parking Structure, including the Shuttle Parking Area, except as expressly authorized by this Agreement.

2. Installation of Electric Charging Stations

The Charging Stations shall be of the model and type described in Exhibit B, or such other type as may be approved in writing by the City Representative. The Charging Stations shall be installed by licensed contractors, with all costs borne by Operator, including the obligation to pay prevailing wages in compliance with Labor Code Section 1720 *et seq.* Operator acknowledges

that it has read and agrees to comply with the prevailing wage requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference.

Operator shall cause its contractors to indemnify City for any injury arising from the installation of the Charging Stations, and to name the City as an additional insured on insurance policies of a type and in amounts acceptable to City's Risk Manager.

Operator shall comply with all requirements of Southern California Edison and City in the installation and operation of the Charging Stations, including obtaining City building permits. The Charging Stations shall be placed in the Shuttle Parking Area, at a location or locations approved in writing by the City Representative. Concurrently with installation of the Charging Stations, Operator shall install a sub-meter, such that the parties are able to verify the amount of electricity used by the Charging Stations.

Operator shall maintain the Charging Stations in good repair, in accordance with all manufacturer recommendations and requirements, so as to maintain any warranties in full effect.

Operator shall cause the installation of temporary stanchions (each with a weighted base) and chains to direct pedestrian traffic from the crosswalk opening near the Shuttle Parking Area, to the satisfaction of the City Representative. In the event that the term of this Agreement is extended, City will require fixed brushed stainless steel stanchions with chains. In that event, City will cause the installation of the stanchions, and charge Operator for the associated costs. Operator shall reimburse City for all such costs within 30 days of an invoice therefor from City.

3. Party Representatives

For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Operator Representative shall be Sam Knapp, Principal (the "Operator Representative"). The Operator Representative shall directly manage Operator's Services under this Agreement. Operator shall not change the Operator Representative without City's prior written consent.

4. Release

City makes no representation or warranty regarding the availability of electricity at the Parking Structure for the Charging Stations, or the suitability of the Parking Structure for the parking of the Shuttle Vehicles. Operator has been provided the opportunity to examine the Parking Structure and the proposed Shuttle Parking Area, and determined that it is appropriate for its needs. Operator hereby releases City from all claims or other liability arising from the loss of electricity at the Parking Structure, or from damage to the Shuttle Vehicles or Charging Stations arising from any cause.

5. Indemnification

Operator agrees to indemnify, defend and hold harmless City and its elective or appointed boards, officers, agents, attorneys and employees (collectively, the "City Indemnitees") from any and all claims, liabilities, expenses or damages of any nature, including, but not limited to,

attorneys' fees arising out of, or in any way connected with Operator's, or its agents', officers', employees', subcontractors' or independent contractors' performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of City, as determined by final arbitration or court decision or by the agreement of the parties. Operator shall defend the City Indemnitees, with counsel of City's choice, at Operator's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against the City Indemnitees. Operator shall reimburse the City Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits of any such insurance do not act as a limitation upon the amount of indemnification to be provided by Operator. All duties of Operator under this Section shall survive termination of this Agreement.

6. Insurance

(a) Operator agrees to maintain the following types of insurance coverage and limits provided below:

(1) **Commercial General Liability Insurance:** A policy for occurrence coverage, including all coverages provided by and to the extent afforded by insurance services office form CG0001 ed. 11/88 or 11/85. The limit for all coverages under this policy shall be no less than One Million Dollars (\$1,000,000) per occurrence, and a general aggregate limit of Two Million Dollars (\$2,000,000). City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide City with 30 days' prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance or self-insurance maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed by Operator under this Agreement. Operator further agrees to submit to City an endorsement form executed by the applicable insurance underwriters and in a form approved by City's Risk Manager.

(2) **Commercial Auto Liability Insurance:** A policy including all coverages provided by and to the extent afforded by Insurance Services Office Form CA0001, ed. 12/93, including Symbol 1 (any auto), with a combined single limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide City with 30 days' prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk-financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed by Operator under this Agreement. Operator further agrees to submit to City an endorsement form executed by the applicable insurance underwriters and in a form approved by City's Risk Manager.

(3) **Workers' Compensation:** A policy, which meets all statutory benefit requirements of the Labor Code, or other applicable law of the State of California: The minimum coverage limits for said insurance shall be no less than One Million Dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of City.

(4) **Proof of Insurance:** Prior to the exercise of the license granted by this Agreement, Operator 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 Section 6. The endorsements are subject to City's approval. Operator may provide complete, certified copies of all required insurance policies to City. Operator shall maintain current endorsements on file with City's Risk Manager. Operator shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Operator shall furnish such proof at least two weeks prior to the expiration of the coverages.

(5) **Other:** The procuring of such required policies of insurance by Operator shall not be construed to limit Operator's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payments of premiums or other amounts with respect thereto. Any deductibles or self-insured retentions must be declared to and approved by City. Any deductible exceeding any amount acceptable to City shall be subject to the following changes:

(i) Either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to City, its employees, officials and agents (with additional premium, if any, to be paid by Operator); or

(ii) Operator shall provide satisfactory financial guaranty for payment of losses and relative investigations, claim administration, and defense expenses to City.

(6) **Subcontractor Insurance Requirements.** Operator shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 6.

(b) Operator agrees to not engage in any act(s), which may result in a cancellation of the insurance coverages provided above.

7. Term

(a) The term of this Agreement shall commence on the Agreement Date and end concurrently with the expiration or termination of the Pilot Program Agreement. Notwithstanding the preceding sentence, the term of this Agreement shall expire (without the need for notice pursuant to Section 8) if Operator has not satisfied the conditions in paragraph (b) of this Section 7 by the date that is 15 days after the date of this Agreement.

(b) Operator shall have no right to commence installation of the Charging Stations until it has delivered to the City Representative the following:

(i) Evidence satisfactory to City's Risk Manager of the insurance required by Section 6;

(ii) The Agreement Security specified in Section 10, in form acceptable to the City Attorney; and

(iii) The executed Pilot Program Agreement.

8. Termination

(a) Operator's failure to comply with any of the terms and conditions of this Agreement shall be cause for City to immediately terminate this Agreement. Upon the occurrence of such default by Operator, City may, at its option, grant to Operator a ten-day period within which to cure such default. Should this option to cure be granted to Operator by City whether the default has been cured, shall be left to the sole determination and discretion of City.

(b) It shall be a default of this Agreement and grounds for termination if the Charging Stations are not installed and operational, in compliance with all requirements of this Agreement, on or before January 17, 2017.

(c) Either party may terminate this Agreement for any reason or no reason upon providing the other party with 30 days' written notice of the same.

9. Effect of Expiration of the Term or Termination

Upon the expiration or earlier termination of the term of this Agreement, Operator shall cause the restoration of the Shuttle Parking Area to its condition prior to the Agreement Date, including removal of the Charging Stations.

10. Agreement Security

(a) Prior to the date specified in Section 7 of this Agreement, Operator shall deliver to City performance security (the "Agreement Security") in the amount of Ten Thousand Dollars (\$10,000) as security for Operator's faithful performance of all obligations of this Agreement. The Agreement Security may be comprised of cash, an irrevocable letter of credit, or a performance bond. If a letter of credit is utilized to satisfy the Agreement Security requirement, it shall be drawn upon a financial institution with an office within 100 miles of City, in a form acceptable to the City Attorney. If a performance bond is utilized to satisfy the Agreement Security requirement, it shall be in a form acceptable to the City Attorney. The Agreement Security shall be released within 30 days after both (i) the expiration of the Term of this Agreement; and (ii) Operator's satisfactory performance of all obligations hereunder.

(b) In the event Operator shall for any reason become unable to, or fails in any way to perform as required by this Agreement or the Pilot Program Agreement, City may declare a portion or all of the Agreement Security, as may be necessary to recompense and make City whole, forfeited to City. Upon partial or full forfeiture of the Agreement Security, Operator shall restore the Agreement Security to its original amount within ten days of City's notice to do so.

Failure to restore the Agreement Security to its full amount within ten days shall be a material breach of this Agreement.

(c) Notwithstanding any provision hereof to the contrary, ten days following City providing Operator with written notice of its failure to pay City any amount owing under this Agreement or the Pilot Program Agreement, the Agreement Security may be utilized by City for purposes including, but not limited to: (1) payment of sums due under the terms of this Agreement which Operator has failed to timely pay to City; and (2) reimbursement of costs borne by City to correct violations of this Agreement not corrected by Operator.

11. Independent Contractor

Operator agrees that it is an independent contractor and that it is solely responsible for any and all City, state and federal tax withholdings for any and all monies it receives in its performance of its obligations under this Agreement and agrees to fully indemnify and hold harmless City as to any claims made by any municipal, state and federal agencies concerning tax withholdings. It is further understood by Operator that this Agreement does not create a joint venture, partnership or similar relationship between it and City.

12. Notice

A notice, demand, request, consent, approval or communication that any party is required to give the other or to any other person or entity pursuant to this Agreement shall be in writing and either served personally or sent by registered or certified U.S. Mail, return receipt requested, at the following addresses:

- (a) As to Operator, the notice shall be addressed to:

Allsop and Knapp, LLC, dba The Downtowner
Attn: Sam Knapp
1240 West Balboa Boulevard, #C
Newport Beach, CA 92101

- (b) As to City, the notice shall be addressed to:

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
Attn: City Manager

With a copy to:

City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

(c) Should the mailing address of one of the parties change, such party must notify the others of the same in writing within ten days of the date of the address change.

(d) All required notices issued pursuant to this Agreement shall be presumed communicated within 48 hours from the date of deposit in the U.S. Mail, except for those occurrences where notices have been personally served with a verified proof of service form evidencing such service.

13. Authorization to Execute

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

14. Assignment

This Agreement is personal to Operator and may not be assigned to any other person or party without City's express written consent, which may be withheld for any reason.

15. California Law

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Superior Court.

16. Miscellaneous

(a) Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any prior understanding or written or oral agreement(s) between the parties relating to the subject matter hereof. This Agreement may not be modified or any provision waived except by a written instrument signed by a duly authorized officer or representative of each of the parties hereto. No oral explanation or oral information by either of the parties hereto will alter the meaning or interpretation of this Agreement.

(b) City not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Operator.

(c) No Waiver; Severability. Failure of either party to enforce at any time during the term of this Agreement any provision hereof shall in no way be construed to be a waiver of such provision nor in any way effect the validity of this Agreement. In the event that any provision of this Agreement shall be deemed to be unenforceable by any arbitrator or court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

(d) Exhibits. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

(e) Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees

and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

(f) Headings. Headings to paragraphs of this Agreement are for convenience of reference only and shall not be construed to alter or affect the meaning of any provision of this Agreement.

IN WITNESS THEREOF, parties hereto have executed this Agreement on the day and year first shown above.

City of Manhattan Beach ("City")

Allsop and Knapp, LLC, a California limited liability company, dba The Downtowner ("Operator")

By:



Mark Danaj, City Manager

By:

Its:


CFO

ATTEST:

 10-18-16
Liza Tamura, City Clerk

By:

Its:

APPROVED AS TO FORM:


Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:



Bruce Moe, Finance Director

EXHIBIT A

Depiction of Shuttle Parking Area

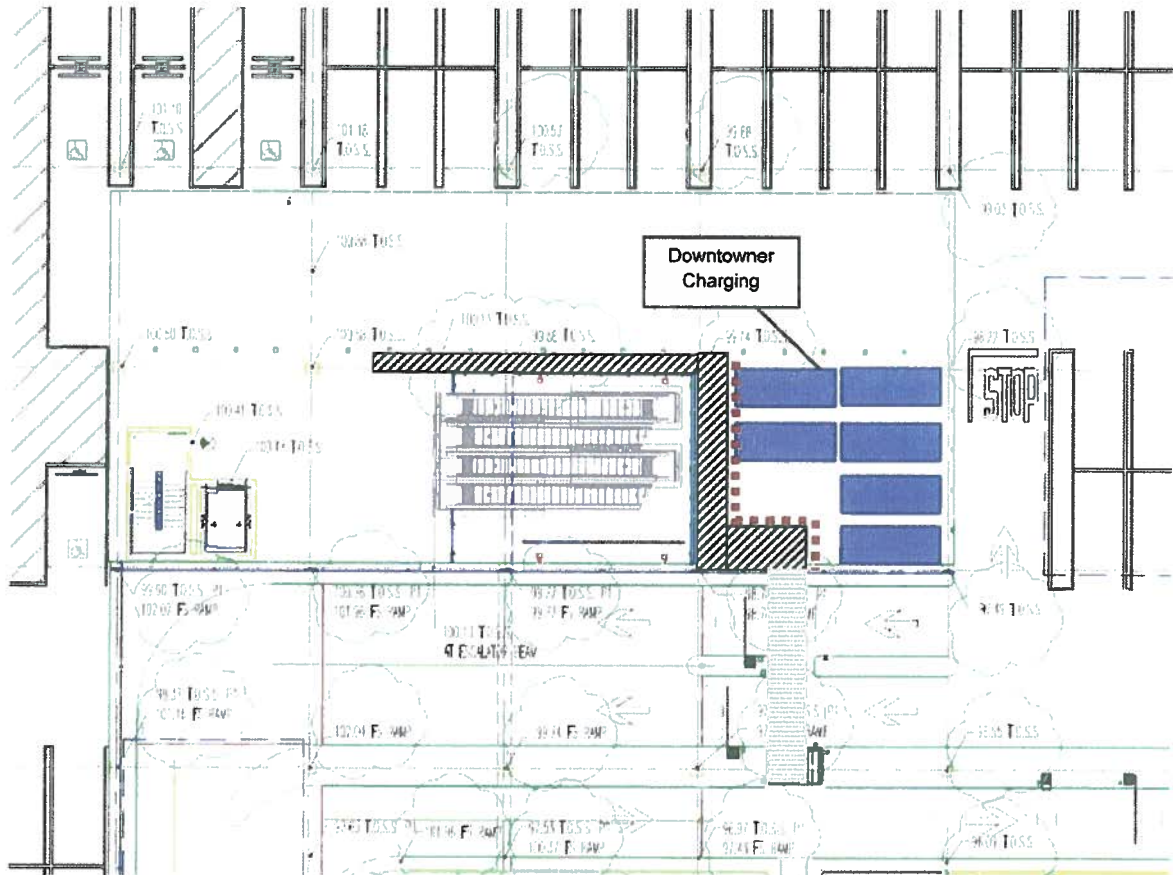


EXHIBIT B

Description of Electric Vehicle Charging Stations

Electrical Scope of Work

1. Install qty. 3 – 1” EMT conduits from panel CP in electrical room to southwest corner below escalators.
2. Provide qty. 3 – 50 amp 3 phase circuit breakers and install in panel CP.
3. Install qty. 3 – 50 amp circuits, each circuit will have qty. 3 – #6 wires and qty. 1 #10 ground.
4. Core qty. 3 – 2” holes in the north wall of the electrical room.
5. Seal conduit penetrations with non-shrink grout.
6. Connect qty. 3 chargers
7. Any anchoring to the finished deck shall be done with countersunk stainless steel drop anchors so that in the event the anchored items are removed, they will be capped with stainless steel tapered machine bolts that are flush with the concrete surface with the ability to removed and re-used at a later date.
8. A meter shall be provided as noted in previous documents so that the City can accurately read the usage of the charging stations.
9. All conduit, wire and equipment (excluding the chargers and their pedestals) shall remain in place and will become the property of the City of Manhattan Beach.
10. All conduits will be unistrut (or equal) rack mounted and all conduits shall have steel compression fittings.
11. Any job walks shall include the City Facilities Supervisor (Sean Roberts) and he will direct the bidders as to the path to take and materials to be used. All proposals shall be reviewed by the City Facilities Supervisor to ensure that the construction conditions are met.
12. All construction schedules shall be approved by the City Facilities Supervisor and conform to conditions provided when the building permit is issued.
13. A permit shall be obtained from City’s Building Department, with payment of all required permit fees.

Special Condition Requirements

1. No work may be performed on Sundays or holidays without prior approval from the City Representative.
2. Traffic control must be provided while working in the traffic lanes or any time traffic patterns are disrupted.
3. Blocking off Morningside entrance to parking structure during conduit installation and coring will be required, which will require a flag person at the top and bottom of the entry ramp.

EXHIBIT C

CALIFORNIA LABOR LAW REQUIREMENTS

1. Contractor acknowledges that the project as defined in this Agreement between Contractor and the City, to which this Agreement to Comply 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"), and that this Agreement 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 above.
3. The project is subject to compliance monitoring and enforcement by the DIR. Pursuant to Labor Code Section 1771.4, Contractor shall post job site notices, as prescribed by regulation.
4. 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 Agreement 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 Agreement.
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 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 Agreement 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 (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform City of the location of the records.
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 Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors

shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

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 City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement 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. California 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 the City) the 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 the Agreement, 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 the Agreement.