

**AMENDED AND RESTATED COOPERATION AGREEMENT BY AND
AMONG THE CITY OF MANHATTAN BEACH, OCEANOGRAPHIC
TEACHING STATIONS, INC. AND THE HARRISON GREENBERG
MEMORIAL FOUNDATION**

THIS AMENDED AND RESTATED COOPERATION AGREEMENT ("Agreement") is entered into as of August 1, 2017 by and among the CITY OF MANHATTAN BEACH, a municipal corporation ("City"), OCEANOGRAPHIC TEACHING STATIONS, INC., a California non-profit corporation ("OTS"), and THE HARRISON GREENBERG MEMORIAL FOUNDATION, a California corporation ("Foundation"). Collectively, City, OTS, and Foundation are referred to herein as the "Parties."

RECITALS

A. The State of California owns the Manhattan State Beach Pier. Pursuant to an operating agreement with the State of California dated August 1, 1988 (the "Operating Agreement"), City has management responsibility for the pier, including a structure situated at the west end of the pier described in Exhibit B-4 of the Operating Agreement and popularly referred to as the "Roundhouse".

B. City has entered into an agreement with OTS dated September 6, 2005 (the "OTS Agreement"), pursuant to which OTS operates an aquarium in the Roundhouse. The aquarium is open to the general public and offers classes on marine science, both at the Roundhouse and through an outreach program.

C. Foundation has offered to raise and contribute sufficient funds (the "Foundation Grant") to fund a major renovation of the Roundhouse Aquarium (the "Renovation Project"). To date, Foundation has pledged \$1,250,000 towards the Renovation Project. Foundation will undertake additional fundraising efforts to meet the total project cost, currently estimated at between \$1,600,000 and a maximum of \$2,500,000, or in an additional amount at the Foundation's sole and complete discretion, all subject to the terms and conditions of this Agreement.

D. City has offered to provide \$150,000 in funding towards the design and other soft costs of the Renovation Project and \$100,000 of in-kind services, such as staff time for permitting, plan check, and inspection of the Renovation Project.

E. Section 7 of the Operating Agreement authorizes City, with the approval of the State of California, to undertake projects to improve the property which is the subject of the Operating Agreement.

F. The Parties entered into that certain Cooperative Agreement dated July 19, 2016 ("Original Agreement") to fund, manage, design and construct the Renovation Project. The Original Agreement contemplated that City would manage and oversee the design and construction of the Renovation Project.

G. The Parties now desire to amend the Original Agreement to allow the Foundation to engage construction contractors, vendors and a construction manager to implement the Renovation

Project, and to revise certain other aspects of the Original Agreement. For that reason, the Parties have agreed to enter into this Amended and Restated Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. GRANT CONDITIONS.

(a) City agrees that it shall:

(i) Use Foundation Grant funds solely to support the Renovation Project. Any income derived from the temporary investment of Foundation Grant funds shall be used for the Renovation Project and for no other purpose;

(ii) Maintain a systematic record on a fund-accounting basis of the disbursement of funds and expenditures incurred under the terms of this Agreement and make substantiating documents available to Foundation upon request; and

(iii) Without limiting City's obligations pursuant to Paragraph (i) above, not use any of the Foundation Grant (A) to intervene in any election, to support or oppose any political party or candidate for public office, or to engage in any lobbying or voter registration; (B) to make any grant to any other organization or to any individual; or (C) to undertake any activity for any purpose other than one that is made for exclusively public purposes as defined in Section 170(c)(1) of the Internal Revenue Code of 1986 as amended.

(b) Notwithstanding anything to the contrary herein, the granting of any portion of the Foundation Grant is contingent upon compliance by City with the terms and conditions of this Agreement, as determined by Foundation in its reasonable discretion.

(c) If City intends to terminate or modify the Renovation Project or take action that is inconsistent with the terms and conditions of this Agreement, City will immediately notify Foundation, and Foundation shall determine at its sole discretion whether to cancel the Foundation Grant. In that event, Foundation may terminate this Agreement in accordance with Section 13, any remaining Foundation Grant funds designated for the Renovation Project shall be returned to Foundation in accordance with paragraphs (b) and (c) of Section 13, and no further Foundation Grant amounts shall be due or owing.

2. ENGAGEMENT OF PROFESSIONAL FIRMS, CONTRACTORS, AND VENDORS.

(a) Project management and design firms will be engaged by City, in accordance with the terms and conditions of this Agreement. Construction contractors, fixtures and equipment ("F&E") vendors, and a construction management firm will be engaged by the Foundation in accordance with the terms and conditions of this Agreement.

(b) The Parties agree that it is necessary to contract with one or more design firms to complete the design of the Renovation Project, and that the services of such other professional firms as engineering, CEQA/permitting, and marine specialists (collectively,

“Professional Firms”) will be needed. The Parties further agree that the Renovation Project will benefit from the expertise of a Project Manager with the requisite experience to oversee development and construction of the Renovation Project. The services of the Project Manager will be provided as needed, and the Project Manager shall be compensated in accordance with a specified budget. The Project Manager shall meet on a regular basis, and in any event not less than once a month, with a coordination committee, consisting of one or more representatives of City, Foundation and OTS. City will be responsible for (i) engaging and selecting the Project Manager and other Professional Firms with input from OTS and Foundation and (ii) issuing all Request-for-Proposals (“RFPs”) for that purpose. City shall obtain the consent of Foundation and OTS prior to issuance of RFPs for any design firms, which consent shall not be unreasonably withheld.

(c) Foundation will be responsible for issuing formal or informal requests for bids or proposals for the necessary construction contractors, F&E vendors, and the construction manager, and will award contracts and purchase orders to the selected contractors and vendors in compliance with applicable state law, with input from OTS and City.

(d) All Parties acknowledge that OTS has unique experience and expertise in acquiring and operating exhibit tanks, life-support systems, exhibit lighting and related equipment (collectively, “Marine Equipment”). Accordingly, OTS and City shall participate in the preparation by Foundation of any RFPs for Marine Specialists. Upon receipt of the proposals, Foundation shall provide the proposals to OTS and City for their review and input. In the event that Foundation receives a written objection to a Marine Specialist from OTS or City within five days of Foundation’s delivery of the proposals to OTS and City, Foundation will remove that Marine Specialist from consideration. For purposes hereof, “Marine Specialist” shall mean an individual or firm who specializes in the design, fabrication or installation of Marine Equipment.

3. DEPOSIT OF FUNDS PRIOR TO CONSTRUCTION.

(a) City will coordinate the procurement of a Project Manager. Prior to City entering into a contract with the Project Manager, Foundation shall deposit the “First Deposit” with City. The First Deposit shall be in an amount that the Parties agree is sufficient to pay the cost of the Project Manager through completion of design and permitting of the Renovation Project, including a ten (10) percent contingency amount. City shall have no obligation to contract with the Project Manager until Foundation has made the First Deposit.

(b) Prior to City entering into a contract with firms for design and other necessary professional services, Foundation shall deposit the Second Deposit with City. The Second Deposit shall be in an amount that the Parties agree is sufficient to pay the cost of the professional services through completion of design of the Renovation Project, including a twenty (20) percent contingency amount. City shall have no obligation to contract with those professional firms until Foundation has made the Second Deposit.

(c) Foundation Grant funds shall be deemed trust funds impressed with an obligation to be expended by City solely for the Renovation Project. City shall establish a separate fund for the Renovation Project, which is separate from the general funds of City (the “Roundhouse Fund”), and shall deposit all Foundation Grant funds and funds from other sources

for the Renovation Project into the Roundhouse Fund. All interest accruing to monies in the Roundhouse Fund shall remain in the Roundhouse Fund.

(d) City shall have authority to use the monies in the Roundhouse Fund to pay the costs of the Project Manager, design firm(s), planning and environmental firms, and related expenses. Within fifteen (15) days after each month-end, City shall provide OTS and Foundation a monthly report detailing expenditures from the Roundhouse Fund during the prior month, and identifying any anticipated shortfall. In addition, City shall, upon reasonable request, provide the other Parties copies of statements of work, invoices and other Renovation Project related documents.

4. FUNDS FOR CONSTRUCTION.

(a) Once a final design and final cost estimates have been approved by Foundation, OTS and City, and all necessary governmental and regulatory approvals have been obtained, Foundation shall document available funds in an amount that the Parties agree is necessary to complete construction of the Renovation Project, including a twenty (20) percent contingency amount and the expenses authorized by paragraph (d) hereunder (the "Renovation Grant"), provided that the total funds needed shall not exceed the fund balance available of the Foundation Grant. City, with input from Foundation and OTS, will determine if the amount of the Foundation Grant plus other third party funds available to City are sufficient to complete the Renovation Project. Foundation shall have no obligation to solicit bids or enter into contracts for the construction of the Renovation Project until such determination.

(b) Once bids for the construction work have been received, if the total of the amount of the selected bids, plus a twenty (20) percent contingency amount and the estimated total of the expenses authorized by paragraph (d) hereunder, exceeds the amount of the Renovation Grant pursuant to paragraph (a) of this Section 4, Foundation will, in its sole and absolute discretion, have the option to either (i) fund the balance of the funds necessary to complete construction of the Renovation Project (the "Funding Shortage" together with the Renovation Grant, collectively, the "Renovation Grants") or (ii) terminate this Agreement in accordance with Section 13. If Foundation terminates this Agreement, any remaining Foundation Grant funds designated for the Renovation Project shall be returned to Foundation in accordance with paragraph (b) of Section 13, and no further Foundation Grant amounts shall be due or owing.

(c) Once bids for the construction work have been received, if the total of the amount of the selected bid, plus a twenty (20) percent contingency amount and the estimated total of the expenses authorized by paragraph (d) hereunder, does not exceed the amount of the Renovation Grant pursuant to paragraph (a) of this Section 4, or if Foundation agrees to cover any Funding Shortage as provided in paragraph (b) of this Section 4, then the Parties shall promptly agree upon a final budget for the Renovation Project (the "Final Budget"). Any material variance from the total amount of the Final Budget must be approved in writing by Foundation, City and OTS. Foundation shall have no obligation to enter into contracts with contractors or F&E vendors to complete construction of the Renovation Project, and demolition or other physical alteration of the current Roundhouse shall not begin, until all Parties have agreed on the Final Budget.

(d) Funds from the Renovation Grants may only be used to pay for construction of the Renovation Project and for such ancillary purposes as are agreed upon by the Parties in writing. The Parties hereby agree that funds from the Renovation Grants shall be used to pay for arrangements to preserve the animal specimens currently housed at the Roundhouse and temporary facilities to enable the Roundhouse to continue operations during the construction period, and consulting on the Renovation Project by OTS staff (to the extent such consulting is requested by City, Foundation or the Project Manager), all in accordance with the Final Budget.

(e) Foundation shall use the Renovation Grants for the purposes specified in this Section 4. Within fifteen (15) days after each month-end, Foundation shall provide OTS and City a monthly report detailing expenditures from the Renovation Grants during the prior month, and identifying any anticipated shortfall. In addition, Foundation shall, upon reasonable request, provide the other Parties copies of statements of work, invoices and other Renovation Project related documents.

5. PROJECT DESIGN. The final architectural drawings shall be prepared by the selected design firms, under the supervision of City. The final architectural drawings shall be based on the Design Development Drawings approved by City Council at its August 1, 2017 meeting. City shall have the right of approval of the design of the Renovation Project, with input and approval from OTS and Foundation. All Parties agree that the materials to be used in the Renovation Project shall be environmentally compatible with the mission and operation of an aquarium and shall not be toxic to marine life.

6. APPROVALS. City will be responsible for obtaining all necessary approvals for the Renovation Project from the California Department of Parks and Recreation, the California Coastal Commission and any other agencies from whom approvals may be required. City shall be responsible for compliance with the California Environmental Quality Act.

7. PREVAILING WAGE. This Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code. Foundation shall cause the construction contractor and all other contractors performing "public works" to comply with the applicable provisions of the California Labor Code and related regulations. Foundation shall cause provisions substantially similar to those set forth in **Exhibit A** to be incorporated into the construction contract, and all other contracts which involve services that constitute public works.

8. NO CREDITOR RIGHTS. No third party or any of City's creditors or any trustee shall have any right or claim in the Foundation Grant or the proceeds of any part thereof by any purported assignment or transfer at any time. No other party may rely upon the terms and conditions of the Foundation Grant. City recognizes that the Foundation Grant is being made solely for the purposes herein set forth and with the understanding that accomplishment of the Foundation Grant's purposes must be performed by City or under its direction.

9. INDEMNIFICATION.

(a) Foundation shall indemnify, hold harmless and defend OTS from and against any and all liability, loss, damage, expense and cost (including attorneys' fees) of every

nature and causes of action arising out of or in connection with this Agreement or the Renovation Project, except for claims arising from the negligence or willful misconduct of OTS.

(b) Foundation shall indemnify, hold harmless and defend City from and against any and all liability, loss, damage, expense and cost (including attorneys' fees) of every nature and causes of action arising out of or in connection with this Agreement or the Renovation Project, except for claims arising from the negligence or willful misconduct of OTS.

(c) Foundation shall cause the indemnification provisions in all contracts it enters into relating to the Renovation Project to run in favor of City to the same extent as the Foundation is indemnified. All such indemnification clauses shall include the following as indemnified parties – the City of Manhattan Beach 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.

10. INSURANCE.

(a) Foundation shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as specified in **Exhibit B**.

(b) Foundation shall cause the insurance provisions in all contracts it enters into relating to the Renovation Project to run in favor of City to the same extent as Foundation is insured. All insurance required of such contractors and vendors shall name City as an additional insured.

11. NO AGENCY. Nothing herein shall be considered to create an agency, partnership or joint venture relationship between or among any of the Parties to this Agreement.

12. NO PERSONAL BENEFIT. The Foundation Grant shall be used solely for the Renovation Project and no City official, employee, consultant or agent may obtain any personal benefit as a result of the Foundation Grant.

13. TERMINATION.

(a) Any Party may terminate this Agreement upon fifteen (15) days' written notice to the other Parties, prior to agreement on the Final Budget pursuant to paragraph (c) of Section 4. After agreement on the Final Budget, this Agreement may be terminated only upon mutual consent of all Parties.

(b) If this Agreement is terminated prior to award of the construction contract, the remaining balance in the Roundhouse Fund after all contracted professional services have been paid shall be returned to Foundation within ten (10) days; and no further Foundation Grant amounts shall be due or owing.

(c) If this Agreement is terminated after award of construction contracts and related vendor contracts, the remaining balance in the Roundhouse Fund after (i) all contracted professional services have been paid, and (ii) the contractors and related vendors have been paid, including payment to properly restore the site to pre-existing condition or to an alternate condition

agreed upon by the Parties, shall be returned to Foundation within ten (10) days and no further Foundation Grant amounts shall be due or owing.

(d) Upon termination of this Agreement and completion of all payments specified in paragraphs (b) and (c) of this Section 13, Foundation shall have no further obligation to contribute funds pursuant to this Agreement.

14. MISCELLANEOUS. Foundation's obligations hereunder are conditioned on the execution of this Agreement by the Parties. Nothing in this Agreement shall be deemed to grant to City or OTS any right related to any of the trademarks, trade name or goodwill of Foundation or any of its affiliates. This Agreement and its rights and obligations may not be assigned by City or OTS to any third party. This Agreement may not be modified except in a writing signed by the Party against who enforcement is sought. This Agreement is the entire agreement of the Parties on the subject hereof and supersedes all other agreements, understandings, communications, etc., whether written or oral.

15. ACKNOWLEDGMENTS. The Parties hereby acknowledge and agree that:

(a) No construction may begin until animals housed at the existing Roundhouse Aquarium have been temporarily relocated to other facilities, which will allow for continued operations and will accommodate the teaching curriculum;

(b) OTS will be responsible for the operations and maintenance of the Roundhouse Aquarium after construction completion to a standard acceptable to City;

(c) The improvements to the Roundhouse resulting from the Renovation Project shall be the property of the State of California; and

(d) There will be no signage on the exterior of the Roundhouse, other than signage approved by City. There will be no exterior commercial advertising.

(e) A memorial plaque recognizing the contributions of Foundation shall remain displayed in the Roundhouse so long as the Roundhouse Aquarium remains in operation. The memorial plaque shall be set flush with the finished floor, and shall be of a size and configuration deemed appropriate by the project architect. The memorial plaque shall be subject to the review and approval of each of the Parties, and any necessary approval by the California Department of Parks and Recreation.

16. NOTICES.

(a) All notices and demands shall be given in writing by certified or registered mail, postage prepaid, and return receipt requested, by personal delivery or by overnight courier. Notices shall be considered given upon the earlier of (a) personal delivery; (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested; or (c) one business day following deposit with an overnight courier. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Attention: Mark Danaj, City Manager
Telephone: (310) 802-5053
E-mail Address: mdanaj@citymb.info

OTS: Oceanographic Teaching Stations, Inc.
P.O. Box 1
Manhattan Beach, California 90267
Attention: President
Email Address: roundhouse.aquarium@gmail.com

With a copy to:

Hillel T. Cohn
Morrison & Foerster LLP
707 Wilshire Boulevard
Los Angeles, California 90017
Email Address: hcohn@mofocom

Foundation: The Harrison Greenberg Memorial Foundation
330 South Sepulveda Boulevard
Manhattan Beach, California 90266
Attention: Robin Curren and Michael Greenberg
Telephone: (310) 318-3100
Email Address: robinskechers.com

With a copy to:

David C. Ulich
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071
Email Address: dulich@sheppardmullin.com

17. ORIGINAL AGREEMENT. This Agreement supersedes the Original Agreement in its entirety.

18. COUNTERPARTS. This Agreement may be executed in any number of counterparts by the Parties hereto. Each of such counterparts shall be deemed to be an original and all such counterparts shall constitute but one and the same instrument.

19. ATTORNEYS' FEES. If any dispute arises between the Parties hereto regarding the interpretation or the enforcement of this Agreement, the prevailing party or parties shall recover from the losing party or parties all reasonable expenses, attorneys' fees and court costs incurred by the prevailing party or parties.

20. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of California. Foundation has signed this Agreement in Manhattan Beach; all Parties have obligations hereunder to perform in Manhattan Beach, and all Parties consent to venue and personal jurisdiction in the County of Los Angeles, State of California.

21. WAIVER. Except as otherwise provided in this Agreement, no waiver on the part of any party of any right it may have shall be implied from any failure to take action. To be effective, any such waiver must be in writing and signed by the party to be charged with the waiver. One waiver shall not be interpreted as a waiver of the obligations to comply with the applicable or related provisions in the future.

22. EXHIBITS. All exhibits described in this Agreement which are attached hereto are incorporated herein by this reference.


23. HEADINGS. The headings of the paragraphs of this Agreement are for the convenience of reference only and are not and shall not be used to define or limit the terms hereof.

24. SEVERABILITY. In case one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein unless the effect thereof would materially alter the benefits or burdens hereof the Parties hereto.


IN WITNESS WHEREOF, the Parties hereto have executed this Cooperation Agreement as of the day and year first above written.

[signatures begin on next page]

CITY OF MANHATTAN BEACH (City),
a California municipal corporation

By: 
Mark Danaj, City Manager

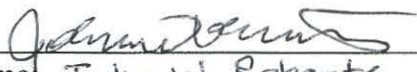
ATTEST:

By:  10-18-17
Liza Tamura, City Clerk

APPROVED AS TO FORM:

By: 
Quinn M. Barrow, City Attorney

Oceanographic Teaching Stations, Inc. (OTS),
a California non-profit corporation

By: 
Name: John W. Roberts
Title: President

The Harrison Greenberg Memorial Foundation
(Foundation), a California corporation

By: _____
Name: _____
Title: _____

APPROVED BY FINANCE DEPARTMENT:

By: 
Name: Bruce Moe
Title: Finance Director

CITY OF MANHATTAN BEACH (City),
a California municipal corporation

By: _____
Mark Danaj, City Manager

ATTEST:

By: _____
Liza Tamura, City Clerk

APPROVED AS TO FORM:

By: _____
Quinn M. Barrow, City Attorney

Oceanographic Teaching Stations, Inc. (OTS),
a California non-profit corporation

By: _____
Name:
Title:

The Harrison Greenberg Memorial Foundation
(Foundation), a California corporation

By: _____
Name: *Michael Greenberg*
Title: *President*

EXHIBIT A

TERMS FOR COMPLIANCE WITH CALIFORNIA LAW REQUIREMENTS

1. This Agreement calls for services that, in whole or in part, constitute “public works” 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 Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, as to those Services that are “public works”, 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. Contractor shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.
4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor shall post job site notices, as prescribed by DIR regulations.
5. 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.
6. 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. The Contractor shall, as a penalty to City, forfeit \$200.00 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.
7. 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 City of the location of the records.

8. 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.

9. The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, the Contractor shall immediately notify City.

10. 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. The Contractor shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the 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.

11. 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."

12. 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.

13. 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 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 the termination of the Agreement.

EXHIBIT B

INSURANCE SPECIFICATIONS

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

1) Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 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 Foundation is a limited liability company, the commercial general liability coverage shall be amended so that Foundation and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) 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 Foundation has no employees while performing services under this Agreement, workers' compensation policy is not required, but Foundation shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Agreement 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 this Agreement.

C. Additional Insured. The commercial general liability policy 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 Agreement 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 Foundation's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Agreement shall not prohibit Foundation and Foundation's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Foundation 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, Foundation shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Foundation shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Foundation shall not cancel, reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement. The commercial general liability policy required under this Agreement 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 this Agreement is canceled or reduced in coverage or limits, Foundation 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 Foundation does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Foundation's policies do not comply with the requirements under this Agreement, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Foundation's expense, the premium thereon. Foundation shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Foundation.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Foundation 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 Agreement. The endorsements are subject to City's approval. Foundation may provide complete, certified copies of all required insurance policies to City. Foundation shall maintain current endorsements on file with City's Risk Manager. Foundation 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. Foundation shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Foundation shall not be construed as a limitation of Foundation's liability or as full performance of Foundation's duty to indemnify City under Section 9 of this Agreement.

K. Subcontractor Insurance Requirements. Foundation shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Agreement.