

C-5145

**AMENDMENT NO. TWO TO
PROFESSIONAL SERVICES AGREEMENT
WITH TRAKER DEVELOPMENT, LLC, FOR
MARINA PARK PROJECT**

THIS AMENDMENT NO TWO TO AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of the 24th day of ~~September~~ ^{October}, 2012, by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation and Charter City ("City"), and TRAKER DEVELOPMENT, LLC, a California Limited Liability Company ("Consultant"), whose address is 260 Newport Center Drive, Suite 410, Newport Beach, CA 92660, and is made with reference to the following:

RECITALS

- A. On May 10, 2012 City and Consultant entered into a Professional Services Agreement ("Agreement") for provision of professional estimating and value engineering services and constructability review for Marina Park ("Project").
- B. On August 6, 2012 City and Consultant entered into Amendment No. One to the Agreement to increase the scope of services and total compensation for the next phase of work on the Project ("Amendment No. One").
- C. City desires to enter into this Amendment No. Two to increase the scope of work and increase the total compensation.
- D. City and Consultant mutually desire to amend this Agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. SERVICES TO BE PERFORMED

Section 2 of the Agreement, as previously amended, shall be supplemented to include the Marina Park – Additional Services Request #2 dated September 12, 2012, attached hereto as Exhibit A and incorporated herein by reference. City may elect to delete certain tasks of this Exhibit A at its sole discretion.

2. COMPENSATION TO CONSULTANT

Section 4.1 of the Agreement shall be amended in its entirety and replaced with the following: City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and Exhibit A, as amended and supplemented. Consultant's total compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed Fifty-Three Thousand Four Hundred Forty Dollars and 00/100 (\$53,440.00) without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement, as amended, shall remain unchanged and shall be in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 9/25/12

By: [Signature]
Aaron C. Harp
City Attorney MB 9/25

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: [Signature]
David A. Webb
Public Works Director

**TRAKER DEVELOPMENT, LLC
a California limited liability company**

Date: 10/11/12

Attest: [Signature]
City Clerk

By: [Signature]
Jim Trammell
Principal

Date: 10/11/12



By: [Signature]
Louis Baker
Principal

[END OF SIGNATURES]

Attachments: Exhibit A: Marina Park – Additional Services Request #2 dated 9/12/12

EXHIBIT A
SERVICES TO BE PERFORMED

Phone: 949.999.0834
Fax: 949.999.0883

September 12th, 2012 (revised)

Mr. Dave Webb, Public Works Director
City of Newport Beach
Public Works Department
3300 Newport Blvd.
Newport Beach, Ca

Re: Marina Park – Additional Services Request #2: preconstruction services from 100% DD thru completion of Working Drawings

Dear Mr. Webb,

Per your request, see below Scope of Services and Billing Rates for the next phase of work on the Marina Park project.

- 1) 100% DD Budget Estimate detailed update on Buildings and Park including meetings: 55 hours
- 2) VE Meetings, estimating and scheduling: 25 hrs
- 3) Buildings/Park CD Estimate(s): 70 hrs
- 4) Marina estimates: 20 hours

TOTAL Estimated Hours = 170 hours

Exclusions:

- a) reprographics

Total Cost = \$27,200 (170 hrs @ \$160/hr)

Current Contract Amount = \$26,240

New Contract Amount = \$53,440

It is anticipated that this effort will take approximately 6 months.

Please let me know if you should need anything further and I look forward to moving things forward on this exciting project to the next phase.

Best regards,

Jim Trammell, Principal, P.E.

**AMENDMENT NO. ONE TO
PROFESSIONAL SERVICES AGREEMENT
WITH TRACKER DEVELOPMENT, LLC FOR
MARINA PARK PROJECT**

C-5145

THIS AMENDMENT NO ONE TO AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 6th day of July, 2012 by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation and Charter City ("City"), and Tracker Development, LLC, a California limited liability company ("Consultant"), whose address is 260 Newport Center Drive, Suite 410, Newport Beach, CA 92660 and is made with reference to the following:

RECITALS

- A. On May 10, 2012 City and Consultant City and Consultant entered into a Professional Services Agreement ("Agreement") for professional estimating and value engineering services and constructability review for the Marina Park Project ("Project").
- B. City desires to enter this Amendment No. One to increase the Scope of Services and total compensation for the next phase of Work on the Marina Park Project as described herein.
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City and Consultant mutually desire to amend this Agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. SERVICES TO BE PERFORMED

Exhibit A of the Agreement shall be supplemented to include the additional Services described in the Scope of Services and Billing Rates attached hereto as Exhibit A and incorporated herein by reference.

2. COMPENSATION TO CONSULTANT

Section 4.1 of the Agreement shall be amended in its entirety and replaced with the following: City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Scope of Services and Billing Rates attached hereto as Exhibit A and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Twenty Six Thousand Two Hundred and Forty Dollars and 00/100 (\$26,240.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

3. INSURANCE

Section 14 of the Agreement shall be amended in its entirety and replaced with the following: Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit B, and incorporated herein by reference.

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 7/23/12

By: [Signature]

Aaron C. Harp
City Attorney

VSA
11/11

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 8/3/12

By: [Signature]

Stephen G. Badum
Public Works Director

ATTEST:

Date: 8.6.12

By: [Signature]

Leilani I. Brown
City Clerk

CONSULTANT: Tracker Development,
LLC, a California limited liability company

Date: _____

By: [Signature]

Jim Trammell
Principal

Date: 8/1/12

By: [Signature]

Louis Baker
Principal



[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Insurance Requirements

A12-00271 Amd No. 1

EXHIBIT A



Phone: 949.999.0834
Fax: 949.999.0833

Jim Trammell
Principal
260 Newport Center Drive
Suite 410
Newport Beach, CA 92660

July 6th, 2012

Mr. Dave Webb, Deputy Public Works Director
City of Newport Beach
Public Works Department
3300 Newport Blvd.
Newport Beach, Ca

Re: Marina Park – Additional Services Request #1: preconstruction services from 100% DD thru completion of Working Drawings

Dear Mr. Webb,

Per your request, see below Scope of Services and Billing Rates for the next phase of work on the Marina Park project.

Working Drawings Phase - Preconstruction Services (approx. 4 months)

- a) Meetings
- b) Estimating and value engineering
- c) Constructability review (key element of this phase)

Total estimated hours = 60 hrs (15 hrs/mo)

Exclusions:

- a) reprographics
- b) estimate at 90% Working Drawings (estimate update at completion of 100% DD is included in Base Contract amount)

Total Cost = \$9,600 (60 hrs @ \$160/hr)

Current Contract Amount = \$16,640

New Contract Amount = \$26,240

It is anticipated that this effort will take approximately 4 months and I am ready to commence immediately upon acceptance.

Please let me know if you should need anything further and I look forward to moving things forward on this exciting project to the next phase.

Best regards,

Jim Trammell, Principal, P.E.



www.trakerdevelopment.com

EXHIBIT B

1. INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1.1 Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

1.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

1.3 Coverage Requirements.

1.3.1 Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

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

1.3.2 General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

1.3.3 Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

1.3.4 Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars

(\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

1.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

1.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

1.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

1.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

1.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

1.5.1 Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

1.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant sixty (60) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

1.5.3 Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

1.5.4 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

1.5.5 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

1.5.6 City Remedies for Non Compliance If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

1.5.7 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

1.5.8 Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

C-5745

**PROFESSIONAL SERVICES AGREEMENT WITH
TRAKER DEVELOPMENT, LLC.
FOR MARINA PARK PROJECT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 10th day of ~~May~~ May, 2012 by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and TRAKER DEVELOPMENT, LLC, a California limited liability company ("Consultant"), whose address is 260 Newport Center Drive, Suite 410, Newport Beach, California, 92660, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City is planning to reuse the existing Marina Park property to construct a Marina, Sailing and Community Center Buildings, and Community Park.
- C. City desires to engage Consultant to provide professional estimating and value engineering services, and constructability review for the Marina Park Project ("Project").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member of Consultant for purposes of Project shall be Jim Trammell, P.E.
- F. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the above written date, and shall terminate on December 31, 2013, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference. Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Work" or "Services"). The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

3.2 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.3 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit A and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Sixteen Thousand Six Hundred Forty Dollars and no/100 (\$16,640.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in writing in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:

4.3.1 The actual costs of subconsultants for performance of any of the Services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.

4.3.2 Approved reproduction charges.

4.3.3 Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit A.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Jim Trammell to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the **Public Works Department**. David Webb, P.E., Deputy Public Works Director, or his designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his authorized representative shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

7.1 In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

7.1.1 Provide access to, and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

7.1.2 Provide blueprinting and other Services through City's reproduction company for bid documents. Consultant will be required to coordinate the required bid documents with City's reproduction company. All other reproduction will be the responsibility of Consultant and as defined above.

7.1.3 Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards. All Services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties) from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The

policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

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

14.2 Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

14.2.1 Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Consultant's bid.

14.3 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

14.4 Coverage Requirements.

14.4.1 Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Consultant's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Consultant shall require each subconsultant to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

14.4.1.1 Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change.

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

14.5 General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

14.6 Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

14.7 Professional Liability (Errors & Omissions) Coverage. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) limit per claim and in the aggregate.

14.8 Other Insurance Provisions or Requirements.

14.8.1 The policies are to contain, or be endorsed to contain, the following provisions:

14.8.1.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

14.8.1.2 Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

14.8.1.3 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

14.8.1.4 Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

14.9 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement.

14.10 Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of City. Consultant shall not subcontract any portion of the Work to be performed under this Agreement without the prior written authorization of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

19. OPINION OF COST

Any opinion of the construction cost prepared by Consultant represents his/her judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to consultant or contractor bids or actual cost to City.

20. INTELLECTUAL PROPERTY INDEMNITY

The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United

States' letters patent, trademark, or copyright infringement, including costs, contained in Consultant's drawings and specifications provided under this Agreement.

21. RECORDS

Consultant shall keep records and invoices in connection with the Work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this paragraph is intended to limit City's rights under the law or any other sections of this Agreement.

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

25. CONFLICTS OF INTEREST

25.1 The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

25.2 If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

26. NOTICES

26.1 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: David Webb
Public Works Department
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658
Phone: (949) 644-3328
Fax: (949) 644-3318

26.2 All notices, demands, requests or approvals from CITY to Consultant shall be addressed to Consultant at:

Attention: Jim Trammell
TRAKER DEVELOPMENT, LLC.
260 Newport Center Drive, Suite 410
Newport Beach, CA 92660
Phone: (949) 999-0834
Fax: (949) 999-0883

27. CLAIMS

The Consultant and the City expressly agree that in addition to any claims filing requirements set forth in the Agreement, the Consultant shall be required to file any claim the Consultant may have against the City in strict conformance with the Tort Claims Act (Government Code sections 900 *et seq.*).

28. TERMINATION

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written

notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

28.2 Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

29. STANDARD PROVISIONS

29.1 Compliance With all Laws. Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.2 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

29.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

29.6 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

29.7 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29.8 Controlling Law And Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

29.9 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

29.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

29.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 5/7/12

[Handwritten signature]

By: _____
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 5/10/12

[Handwritten signature]

By: _____
Stephen G. Badum
Public Works Director

[Handwritten initials: KGA 5/13]

ATTEST:

Date: 5-25-12

[Handwritten signature]

By: _____
Leilani I. Brown
City Clerk

CONSULTANT: TRAKER
DEVELOPMENT, LLC., a California
Limited Liability Company

Date: 5/10/12

[Handwritten signature]

By: _____
Jim Trammell
Principal

Date: 5/10/12

[Handwritten signature]

By: _____
Louis Baker
Principal



[END OF SIGNATURES]

Attachment: Exhibit A – Scope of Services and Billing Rates

EXHIBIT A

April 26th, 2012

Mr. Dave Webb, Deputy Public Works Director
City of Newport Beach
Public Works Department
3300 Newport Blvd.
Newport Beach, Ca

Re: Marina Park – 50% Design Development Phase, Preconstruction Fees

Dear Mr. Webb,

Per your request, see below Scope of Services and Billing Rates for the next phase of work on the Marina Park project. It is my understanding that the requested services is for the buildings/park portion of the project only and does not include the Marina expansion at this time.

50% DD Phase – Preconstruction Services

- a) Meetings/misc: 30 hours
- b) Estimating and value engineering: 55 hours
- c) Constructability review: 19 hours

Total estimated hours = 104

Total Cost = \$16,640 (104 hours @ \$160/hr)

Current Contract Amount = (expired)

New Contract Amount = \$16,640

It is anticipated that this effort will take approximately 2 ½ months and I am ready to commence immediately upon acceptance.

Please let me know if you should need anything further and I look forward to moving things forward on this exciting project to the next phase.

Best regards,

Jim Trammell, Principal, P.E.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/10/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Benton Insurance Agency PO Box 802350 Valencia, CA 91380-2350 License: 0773180	CONTACT NAME: Shellie Benton	
	PHONE (A/C, No. Ext): 661-222-7001	FAX (A/C): 661-222-7741
	EMAIL: shellie@benton.pro	
	ADDRESS: _____	
	PRODUCER CUSTOMER ID #:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED TRAKER DEVELOPMENT 260 NEWPORT CENTER DR, #410 NEWPORT BEACH, CA 92660	INSURER A:	KINSALE INSURANCE COMPANY
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			0100005108-0	3/22/2012	3/22/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ Excluded
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
B	AUTO MOBILE LIABILITY						PRODUCTS - COMP/OP AGG \$ Excluded
	<input type="checkbox"/> ANY AUTO						
	<input type="checkbox"/> ALL OWNED AUTOS						COMBINED SINGLE LIMIT (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
C	<input type="checkbox"/> UMBRELLA LIABILITY <input type="checkbox"/> OCCUR						
	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> CLAIMS-MADE						EACH OCCURRENCE \$
	<input type="checkbox"/> DEDUCTIBLE						AGGREGATE \$
	<input type="checkbox"/> RETENTION \$						
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER \$
							E.L. EACH ACCIDENT \$
							E.L. DISEASE-EA EMPLOYEE \$
E							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Newport Beach named as Additional Insured for General Liability per attached Blanket Endorsement form #CAS5010-0110 Job: Marina Park

CERTIFICATE HOLDER

Attn: Tania Moore Fax: 949-644-3318
City of Newport Beach
PO Box 1768
Newport Beach, CA 92660

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE
Mark Benton *Mark Benton*

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT

<i>Attached To and Forming Part of Policy</i> 0100005108-0	<i>Effective Date of Endorsement</i> 01/26/12 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Traker Development
<i>Additional Premium:</i>	<i>Return Premium:</i>	

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE**

- A. **SECTION II - WHO IS AN INSURED** is amended to include any person or organization you are required to include as an additional insured on this policy by written contract in effect during the policy period and executed prior to the "occurrence" of the "bodily injury" or "property damage" but only for the vicarious liability imposed on the Additional Insured provided that such liability is caused by the sole negligent conduct of the Named Insured and is proximately caused by "your work" or "your product" for the Additional Insured.
- B. The insurance provided to the Additional Insured under this endorsement is limited as follows:
 - 1. In the event the written contract requires limits of insurance in excess of the limits of insurance provided by this policy, the limits of insurance provided by this policy shall apply and not the limits required by the written contract. This endorsement shall not increase the limits of insurance stated in the declarations of this policy.
 - 2. This insurance does not apply to "bodily injury" or "property damage" arising out of "your work" or "your product" included in the "products-completed operations hazard" unless you are required to provide such coverage by written contract. If such insurance is required by written contract, the insurance provided to the Additional Insured is limited to the alleged or actual vicarious liability imposed on the Additional Insured as a result of the alleged or actual negligent conduct of the Named Insured as a result of liability solely caused by "your work" or "your product" for the Additional Insured.
 - 3. Any insurance provided by this endorsement to an Additional Insured shall be excess over any other valid and collectible insurance available to the Additional Insured whether primary, excess, contingent or on any other basis unless a written contract specifically requires that this insurance apply on a primary or primary and noncontributory basis.
 - 4. Where there is no duty to defend the Named Insured, there is no duty to defend the Additional Insured. Where there is no duty to indemnify the Named Insured, there is no duty to indemnify the Additional Insured.
 - 5. This insurance does not apply to "bodily injury" or "property damage," arising out of the sole negligence of the Additional Insured or any employees of the Additional Insured.
- C. Duties of the Additional Insured in the event of "occurrence", claim or "suit":
 - 1. The Additional Insured must promptly give notice of an "occurrence", a claim which is made or a "suit", to any other insurer which has insurance for a loss to which this insurance may apply.
 - 2. The Additional Insured must promptly tender the defense of any claim made or "suit" to any other insurer which also issued insurance to the Additional Insured as a Named Insured or to which the Additional Insured may qualify as an Additional Insured for a loss to which this insurance may apply.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/19/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Mills Insurance Services 22471 Aspan Street #200 Lake Forest, CA 92630 License #: 0211234		CONTACT NAME: Kathryn Asbury PHONE (A/C, No, Ext): 949-770-1221 FAX (A/C, No): 949-770-2540 E-MAIL ADDRESS: kathryn@millsins.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED Traker Development LLC DBA Traker Development LLC 260 NEWPORT CENTER, SUITE 410 NEWPORT BEACH, CA 92660		INSURER A: Mercury Casualty Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES CERTIFICATE NUMBER: 00037866-72144 REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

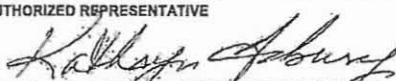
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/POP AGG \$ \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	N	N	BA040000000051	04/17/2012	04/17/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

***EXCEPT 10 DAYS NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM. PLEASE REFER TO THE ISSUED POLICY FOR TERMS, CONDITIONS AND EXCLUSIONS.**

CERTIFICATE HOLDER

CANCELLATION

CITY OF NEWPORT BEACH ATTN: PUBLIC WORKS 3300 NEWPORT BLVD NEWPORT BEACH, CA 92663	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  (KFA)
---	---

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INSURANCE BINDER

DATE (MM/DD/YYYY)

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

AGENCY Mills Insurance Services 22471 Aspan Street #200 Lake Forest, CA 92630		COMPANY Mercury Insurance Company	BINDER # BA040000000051
PHONE (A/C, No., Ext): 949-770-1221	FAX (A/C, No.): 949-770-2540	DATE EFFECTIVE TIME 04/16/2012 05:45	EXPIRATION TIME 05/16/2012 X 12:01 AM NOON
CODE: 044631	SUB CODE:	<input type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:	
AGENCY CUSTOMER ID: 00029766	INSURED TRAKER DEVELOPMENT, LLC JAMES TRAMMELL 260 NEWPORT CENTER DR #410 NEWPORT BEACH, CA 92660	DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location) 2010 FORD ESCAPE XLT 1FMCU0DG0AKA53355	

COVERAGES

LIMITS

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPEC				
GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR		EACH OCCURRENCE		\$
		DAMAGE TO RENTED PREMISES		\$
		MED EXP (Any one person)		\$
		PERSONAL & ADV INJURY		\$
		GENERAL AGGREGATE		\$
	RETRO DATE FOR CLAIMS MADE:	PRODUCTS - COMP/OP AGG		\$
VEHICLE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS		COMBINED SINGLE LIMIT		\$ 1,000,000
		BODILY INJURY (Per person)		\$
		BODILY INJURY (Per accident)		\$
		PROPERTY DAMAGE		\$
		MEDICAL PAYMENTS		\$
		PERSONAL INJURY PROT		\$
		UNINSURED MOTORIST		\$ 300,000
		UNINSURED MOTORIST (per accident)		\$
VEHICLE PHYSICAL DAMAGE - DEF <input checked="" type="checkbox"/> COLLISION: 1000 <input checked="" type="checkbox"/> OTHER THAN COL: 1000	<input type="checkbox"/> ALL VEHICLES <input checked="" type="checkbox"/> SCHEDULED VEHICLES	<input checked="" type="checkbox"/> ACTUAL CASH VALUE		
		STATED AMOUNT		\$
GARAGE LIABILITY ANY AUTO		AUTO ONLY - EA ACCIDENT		\$
		OTHER THAN AUTO ONLY:		
		EACH ACCIDENT		\$
		AGGREGATE		\$
EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE		\$
		AGGREGATE		\$
		SELF-INSURED RETENTION		\$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		WC STATUTORY LIMITS		
		E.L. EACH ACCIDENT		\$
		E.L. DISEASE - EA EMPLOYEE		\$
		E.L. DISEASE - POLICY LIMIT		\$
SPECIAL CONDITIONS / OTHER COVERAGES		FEES		\$
		TAXES		\$
		ESTIMATED TOTAL PREMIUM		\$

NAME & ADDRESS

	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	
	LOAN #	
	AUTHORIZED REPRESENTATIVE	

CONDITIONS

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

Applicable in California

When this form is used to provide insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

Applicable in Delaware

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

Applicable in Florida

Except for Auto insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

Applicable in Maryland

The insurer has 45 business days, commencing from the effective date of coverage to confirm eligibility for coverage under the insurance policy.

Applicable in Michigan

The policy may be cancelled at any time at the request of the insured.

Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

Applicable in the Virgin Islands

This binder is effective for only ninety (90) days. Within thirty (30) days of receipt of this binder, you should request an insurance policy or certificate (if applicable) from your agent and/or insurance company.

**CERTIFICATE OF INSURANCE
CHECKLIST
City of Newport Beach**

This checklist is comprised of requirements as outlined by the City of Newport Beach. *

Date Received: 4-25-12 Dept./Contact Received From: Tania
 Date Completed: 5-17-12 Sent to: Tania By: Joel
 Company/Person required to have certificate: Traker Development
 Type of contract: All Other

I. GENERAL LIABILITY

- EFFECTIVE/EXPIRATION DATE: 3-22-12/3-22-13
- A. INSURANCE COMPANY: Kinsale Insurance Company
- B. AM BEST RATING (A- : VII or greater): A-: VII
- C. ADMITTED Company (Must be California Admitted):
 Is Company admitted in California? Yes No
- D. LIMITS (Must be \$1M or greater): What is limit provided? 1,000,000
- E. ADDITIONAL INSURED ENDORSEMENT – please attach Yes No
- F. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers or Recreation) Yes No
- G. ADDITIONAL INSURED FOR PRODUCTS AND COMPLETED OPERATIONS ENDORSEMENT (completed Operations status does not apply to Waste Haulers) Yes No
- H. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? Yes No
- I. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? Yes No
- J. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? Yes No
- K. ELECTED SCMAF COVERAGE (RECREATION ONLY): N/A Yes No
- L. NOTICE OF CANCELLATION: N/A Yes No

II. AUTOMOBILE LIABILITY

- EFFECTIVE/EXPIRATION DATE: 4-17-12/4-17-13
- A. INSURANCE COMPANY: Mercury Casualty
- B. AM BEST RATING (A- : VII or greater) A+: XIII
- C. ADMITTED COMPANY (Must be California Admitted):
 Is Company admitted in California? Yes No
- D. LIMITS - If Employees (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers): What is limits provided? 1,000,000
- E. LIMITS Waiver of Auto Insurance / Proof of coverage (if individual) (What is limits provided?) N/A
- F. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste Haulers only): N/A Yes No
- G. HIRED AND NON-OWNED AUTO ONLY: N/A Yes No
- H. NOTICE OF CANCELLATION: N/A Yes No

III. WORKERS' COMPENSATION

EFFECTIVE/EXPIRATION DATE: No Employees

- A. INSURANCE COMPANY: _____
- B. AM BEST RATING (A- : VII or greater): _____
- C. ADMITTED Company (Must be California Admitted): Yes No
- D. WORKERS' COMPENSATION LIMIT: Statutory Yes No
- E. EMPLOYERS' LIABILITY LIMIT (Must be \$1M or greater) _____
- F. WAIVER OF SUBROGATION (To include): Is it included? Yes No
- G. SIGNED WORKERS' COMPENSATION EXEMPTION FORM: N/A Yes No
- H. NOTICE OF CANCELLATION: N/A Yes No

ADDITIONAL COVERAGE'S THAT MAYBE REQUIRED

IV. PROFESSIONAL LIABILITY

N/A Yes No

V POLLUTION LIABILITY

N/A Yes No

V BUILDERS RISK

N/A Yes No

**HAVE ALL ABOVE REQUIREMENTS BEEN MET?
IF NO, WHICH ITEMS NEED TO BE COMPLETED?**

Yes No

Approved, pending Risk Management approval of exemption for Products/Completed operations item as Traker only provides cost estimation and non-admitted carrier.

Approved:



5-25-2012

Agent of Alliant Insurance Services
Broker of record for the City of Newport Beach

Date

RISK MANAGEMENT APPROVAL REQUIRED (Non-admitted carrier rated less than _____;

Self Insured Retention or Deductible greater than \$ _____) N/A Yes No

Reason for Risk Management approval/exception/waiver:

Approved:

Risk Management

Date

* Subject to the terms of the contract.