

**SERVICE AGREEMENT  
WITH VIDIFLO, LLC FOR  
AUDIO-VISUAL MAINTENANCE, TRAINING AND DESIGN SERVICES**

C-4148

THIS SERVICE AGREEMENT ("Agreement") is made and entered into as of this 1st day of July, 2012 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and VIDIFLO, LLC, a California limited liability company ("Contractor"), whose principal place of business is 5318 E. 2<sup>nd</sup> St. #576, Long Beach, CA 90803, 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 desires to engage Contractor to perform regularly scheduled maintenance services for audio-visual equipment, training on its Scala Video Bulletin Board System and Leitronix Record and Playback Server, and design management services for new equipment ordering, installation and commissioning ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by the City for the Project, and is familiar with all conditions relevant to the performance of services and has committed to perform all work required for the price specified 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 Effective Date, and shall terminate on June 30, 2014, unless terminated earlier as set forth herein.

**2. SCOPE OF WORK**

2.1 City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement. Contractor shall perform all the work described in the Scope of Work attached hereto as Exhibit A and incorporated herein by this reference ("Services" or "Work").

2.2 Contractor shall perform all Work required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary for the Project.

2.3 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 Contractor shall perform the Services in accordance with the schedule included in Exhibit A. The failure by Contractor to strictly adhere to the schedule may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor'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 within two (2) calendar days of the occurrence of the delay so that all delays can be addressed.

3.3 Contractor 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 two (2) 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 Contractor's control.

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

### 4. COMPENSATION

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis, in accordance with the provisions of this Section and the Schedule of Rates included with Exhibit A. No rate changes shall be made during the term of this Agreement without the prior written approval of the City. Contractor's total compensation for Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Fifty-One Thousand Dollars and 00/100 (\$51,000.00)** without written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name of the person and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task from the Scope of Work attached hereto 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 Contractor no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically approved in the Scope of Work and Schedule of Rates attached hereto. Unless otherwise approved, such costs shall be limited and include nothing more than the actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Contractor in the performance of this Agreement.

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

## **5. PROJECT MANAGER**

5.1 Contractor 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. Contractor designated Rich Rosensweig to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any key 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 Contractor, 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. Contractor warrants this 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 City Manager's Office. The Public Information Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one (1) 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 Contractor's Work schedule.

## **8. STANDARD OF CARE**

8.1 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor 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 the highest industry standards. For purposes of this Agreement, the phrase "highest industry standards" shall mean those standards of practice recognized by one (1) or more first-class firms performing similar work under similar circumstances.

8.2 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, Contractor certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the highest industry standard.

8.3 Contractor represents and warrants to City that it has, shall obtain, and shall keep in full force and 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 Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor 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 Contractor'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, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents 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 any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, 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 Contractor to indemnify the Indemnified Parties from any Claim arising from the sole 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 Contractor.

## **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No

civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

## **11. COOPERATION**

Contractor 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 Contractor on the Project.

## **12. CITY POLICY**

Contractor 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**

Contractor 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**

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement 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.

## **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 Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. 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 subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval 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 Contractor, 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 Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Contractor 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 Contractor will be at City's sole risk and without liability to Contractor. Further, any and all liability arising out of changes made to Contractor's deliverables under this Agreement by City or persons other than Contractor is waived against Contractor and City assumes full responsibility for such changes unless City has given Contractor prior notice and has received from Contractor written consent for such changes.

## **18. COMPUTER DELIVERABLES**

All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

## **19. 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 expressly authorizes in writing the release of information.

## **20. INTELLECTUAL PROPERTY INDEMNITY**

The Contractor shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or

copyright, including costs, contained in Contractor's Documents provided under this Agreement.

## **21. RECORDS**

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor 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 Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor 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 Contractor under this Agreement.

## **22. WITHHOLDINGS**

City may withhold payment to Contractor 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. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor 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 Contractor which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Contractor, the additional design, construction and/or restoration expense shall be borne by Contractor. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

## **24. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS**

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

## **25. CONFLICTS OF INTEREST**

25.1 The Contractor 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, Contractor 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. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

## 26. NOTICES

26.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, to City by Contractor 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 Contractor to City shall be addressed to City at:

Attn: Tara Finnigan, Public Information Manager  
City Manager's Office  
City of Newport Beach  
3300 Newport Blvd.  
PO Box 1768  
Newport Beach, CA 92658  
Phone: 949-644-3035  
Fax: 949-644-3020

26.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Rich Rosensweig  
VIDIFLO, LLC  
5318 E. 2<sup>nd</sup> Street, #576  
Long Beach, CA 90803  
Phone: 562-743-3499  
Email: rich@vidiflo.com

## 27. NOTICE OF CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 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, 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 and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all materials purchased and Documents created in performance of this Agreement.

## 29. STANDARD PROVISIONS

29.1 Compliance with all Laws. Contractor 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 Contractor 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 Contractor 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, State of California.

29.9 Equal Opportunity Employment. Contractor 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, age or any other impermissible basis under law.

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 (1) and the same instrument.

**[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: 10/29/12

By: [Signature] (for)  
Aaron C. Harp  
City Attorney mb 10-29

CITY OF NEWPORT BEACH,  
a California municipal corporation

Date: 11/1/12

By: [Signature]  
Dave Kiff  
City Manager

ATTEST:

Date: 11.13.12

By: [Signature]  
Leilani I. Brown  
City Clerk

CONTRACTOR: VIDIFLO, LLC,  
a California limited liability company

Date: 11/4/2012

By: [Signature]  
Rich Rosensweig  
Chief Executive Manager/Member



Date: 11/4/12

By: [Signature]  
Susan Madsen  
Member

[END OF SIGNATURES]

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

A12-00715

**EXHIBIT A  
SCOPE OF WORK**

# VIDIFLO, LLC

AUDIOVISUAL, TELEPRESENCE & BROADCAST SYSTEMS

October 23, 2012

Vidiflo, LLC proposes to provide the following services for the City of Newport Beach:

1. Perform Semi-Monthly NBTV and Council Chamber Production System Check
  - a. Power up and Test Microphones and Audio Loudspeakers in Chamber.
  - b. Connect Computer-To-Video Scan Converter in Chamber (for Laptop Computer Presentations through Video Projector.
  - c. Power up and Test 3- Pan/Tilt/Zoom Wall Mounted Cameras
    - i. Check Video White Balance and Video Levels.
    - ii. Check Pan/Tilt/Zoom Manual and Preset Operation
  - d. Power up and Test Compix Character Generator/Title
  - e. Verify Video Switching Performance of ProductionView Switcher.
  - f. Perform an On-Air Test of the Chamber System and Verify feeds to both Time Warner Cable and Cox (Cox through SlingBox)
  - g. Perform and Verify a Video Server and DVD Recorder program test for video and audio.
  - h. Verify Scala Bulletin Board Operation, and login capabilities
  - i. Perform Quarterly Cleaning of Video Screens, Fans and Operator Keyboards.

Fee for this service is \$280.00 per visit.

2. Perform as needed Emergency Service Calls to ascertain and resolve any issues with the NBTV Playback and Council Chamber TV System.

Fee for this service is \$280.00 per visit plus parts during normal 8am to 5pm business hours, \$340.00 per visit (plus parts) from 5pm to 11pm Monday through Friday, and \$400 per visit from 11pm to 7am M-F, Weekends and Holidays.

3. Perform consulting services as requested by the Public Information Officer relating to NBTV and Council Chamber Production System.

Fee for this service is \$110.00 per Hour, with a 2 Hour Minimum charge.

4. Billing shall be on a monthly basis for prior month's services. ~~Payment Terms shall be Net 20 Days.~~

## EXHIBIT B

### 1. INSURANCE REQUIREMENTS

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

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

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 Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

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. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation 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 contract. 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 contract to change the amounts and types of insurance required by giving the Contractor sixty (60) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

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

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 Contractor or any subcontractor 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 Contractor'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 Contractor or reimbursed by Contractor upon demand.

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

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