

Monterey Peninsula Regional Park District
60 Garden Court, Suite 325
Monterey, CA 93940-5341



Contract for Services

This AGREEMENT is made and effective as of **July 5, 2015**, between the Monterey Peninsula Regional Park District, a special district sub-division of the State of California, herein referred to as "DISTRICT" and TBWB Strategies, herein referred to as "CONTRACTOR".

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This AGREEMENT shall commence on **July 5, 2015**, and shall remain and continue in effect until the tasks described herein under Scope of Work are completed and produced, but in no event later than **March 1, 2016**, unless terminated sooner pursuant to the provisions of this AGREEMENT.

2. SERVICES

CONTRACTOR shall complete and produce the tasks described and according to the schedule of performance set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full.

3. PERFORMANCE

CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform, complete, and produce all tasks described herein. CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONTRACTOR hereunder in meeting its obligations under this AGREEMENT. CONTRACTOR further agrees to abide by DISTRICT policies while performing work under this AGREEMENT on DISTRICT property as set forth in **Exhibit B** and attached hereto and incorporated herein as though set forth in full.

4. DISTRICT MANAGEMENT

DISTRICT's General Manager shall represent DISTRICT in all matters pertaining to the administration of this AGREEMENT, review and approval of all appropriate products submitted by CONTRACTOR, including but not limited to the authority to enlarge the list of Tasks to be Performed or to change the compensation due to CONTRACTOR. DISTRICT General Manager shall be authorized to act on DISTRICT's behalf and to execute all necessary documents that enlarge the Tasks to be Performed or change CONTRACTOR's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The DISTRICT agrees to pay CONTRACTOR in accordance with the payment rates and terms as set forth herein. This amount shall not exceed Forty-Five Thousand Dollars (**\$45,000.00**) for consulting fees plus reimbursement for out-of-pocket expenses not to exceed Three Thousand Five Hundred Dollars (**\$3,500**), unless approved in writing by the General Manager prior to incurring the out of pocket expense. This sum is for the total term of the

AGREEMENT unless additional payment is approved as provided in this AGREEMENT. Out of pocket expenses shall include travel at the IRS mileage rate, overnight accommodations, overnight mail & flyers, and shall be submitted with itemized receipts. The District does not reimburse for alcoholic beverages associated with meals.

(b) CONTRACTOR shall not be compensated for any services rendered in connection with its performance of this AGREEMENT prior to the AGREEMENT being fully executed with written signatures by both CONTRACTOR and DISTRICT.

(c) CONTRACTOR shall not be compensated for any services rendered in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the DISTRICT. CONTRACTOR shall be compensated for any additional services in the amounts and in the manner as agreed to by DISTRICT and CONTRACTOR at the time DISTRICT's written authorization is given to CONTRACTOR for the performance of said services. The DISTRICT may approve additional payment for work that does not exceed ten percent (10%) of the amount identified in the AGREEMENT, but in no event shall such sum exceed \$3,500.00 unless a subcontractor(s) is required or requested by DISTRICT to enhance or expand the project scope, in which case that additional cost would be pre-approved in writing by MPRPD prior to TBWB engaging any subcontractors or pursuing the enhancement or expansion of the project scope. Any payments for additional work in excess of the approved amount shall be CONTRACTOR's responsibility, unless approved by the DISTRICT.

(d) CONTRACTOR will submit invoices monthly for actual services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If DISTRICT disputes any of CONTRACTOR's billings, DISTRICT shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) DISTRICT may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving said suspension or termination upon CONTRACTOR with at least a ten (10) day prior written notice. Upon receipt of said notice, CONTRACTOR shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If DISTRICT suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

(b) In the event this AGREEMENT is terminated pursuant to this Section, DISTRICT shall pay to CONTRACTOR the actual value of the work performed up to the time of termination, provided that the work performed is accepted by and determined by DISTRICT to be of value. Upon termination of the AGREEMENT pursuant to this Section, CONTRACTOR will submit an invoice to the DISTRICT pursuant to Section 5.

7. DEFAULT OF CONTRACTOR

(a) CONTRACTOR failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONTRACTOR is in default for cause under the terms of this AGREEMENT, DISTRICT shall have no obligation or duty to continue compensating CONTRACTOR for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONTRACTOR.

(b) If DISTRICT's General Manager or delegate determines that CONTRACTOR is in default in the performance of any of the terms or conditions of this AGREEMENT, General Manager shall cause to be served upon the CONTRACTOR a written notice of the default. The CONTRACTOR shall have ten (10) days after receipt of said notice in which to cure the default by rendering satisfactory performance. In the event that the CONTRACTOR fails to cure its default within such period of time, DISTRICT shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled under law, in equity or under this AGREEMENT.

8. OWNERSHIP OF DOCUMENTS

(a) CONTRACTOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by DISTRICT that relate to the performance of services under this AGREEMENT. CONTRACTOR shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONTRACTOR shall provide free access to the representatives of DISTRICT or its designees at reasonable times to such books and records; shall give DISTRICT the right to examine and audit said books and records; shall permit DISTRICT to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the DISTRICT and may be used, reused, or otherwise disposed of by the DISTRICT without the permission of the CONTRACTOR. With respect to computer files, CONTRACTOR shall make available to the DISTRICT, at the CONTRACTOR's office and upon reasonable written request by DISTRICT, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for CONTRACTOR's Services, to the fullest extent permitted by law, CONTRACTOR shall indemnify, protect, defend and hold harmless DISTRICT and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of CONTRACTOR, its officers, agents, employees or sub-contractors (or any entity or individual that CONTRACTOR shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT. With respect to the design of public improvements, CONTRACTOR shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in **Exhibit C** without the written consent of CONTRACTOR.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless DISTRICT, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONTRACTOR or by any individual or entity for which CONTRACTOR is legally liable, including but not limited to officers, agents, employees or sub-contractors of CONTRACTOR.

(c) General Indemnification Provisions. CONTRACTOR agrees to obtain executed indemnity AGREEMENTs with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this AGREEMENT. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required here, CONTRACTOR agrees to be fully responsible according to the terms of this section. Failure of DISTRICT to monitor compliance with these requirements imposes no additional obligations on DISTRICT and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend DISTRICT as set forth here is binding on the successors, assigns or heirs of CONTRACTOR and shall survive the termination of this AGREEMENT or this section.

10. INSURANCE

CONTRACTOR shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in **Exhibit D** attached to and part of this AGREEMENT.

11. INDEPENDENT CONTRACTOR

(a) CONTRACTOR is and shall at all times remain as to DISTRICT a wholly independent CONTRACTOR. The personnel performing the services under this AGREEMENT on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither DISTRICT nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this AGREEMENT. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the DISTRICT. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against DISTRICT, or bind DISTRICT in any manner.

(b) No employee benefits shall be available to CONTRACTOR in connection with performance of this AGREEMENT. Except for the fees paid to CONTRACTOR as provided in the AGREEMENT, DISTRICT shall not pay salaries, wages, or other compensation to CONTRACTOR for performing services hereunder for DISTRICT. DISTRICT shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

(c) CONTRACTOR shall provide DISTRICT with a list of potential sub-contractors and sub-contractor services CONTRACTOR may engage in the performance of services under this AGREEMENT prior to DISTRICT fully executing the AGREEMENT.

12. LEGAL RESPONSIBILITIES

CONTRACTOR shall keep itself informed of State and Federal laws and regulations that in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. CONTRACTOR shall at all times observe and comply with all such laws and regulations. DISTRICT, and its officers and employees, shall not be liable at law or in equity occasioned by failure of CONTRACTOR to comply with this Section.

13. UNDUE INFLUENCE

CONTRACTOR declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of DISTRICT in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of DISTRICT will receive compensation, directly or indirectly, from CONTRACTOR, or from any officer, employee or agent of CONTRACTOR, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling DISTRICT to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of DISTRICT, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to the AGREEMENT during his/her tenure or for two years thereafter, shall have any interest, direct or indirect, in any AGREEMENT or sub-Agreement, or the proceeds thereof, for work to be performed in connection with the work performed under this AGREEMENT.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST.

(a) All information gained by CONTRACTOR in performance of this AGREEMENT shall be considered confidential and shall not be released by CONTRACTOR without DISTRICT's prior written authorization. CONTRACTOR, its officers, employees, agents, or sub-contractors, shall not without written authorization from DISTRICT Manager or unless requested by the Attorney for DISTRICT, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located with the DISTRICT. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives DISTRICT notice of such court order or subpoena.

(b) CONTRACTOR shall promptly notify DISTRICT should DISTRICT, its officers, employees, agents, or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located with DISTRICT. DISTRICT retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing, or similar proceeding. CONTRACTOR agrees to cooperate fully with DISTRICT and to provide the opportunity to review any response to discovery requests provided by CONTRACTOR. However, DISTRICT's right to review any

such response does not imply or mean the right by DISTRICT to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To DISTRICT: Monterey Peninsula Regional Park District
60 Garden Court, Suite 325
Monterey 93940-5341
Attention: Rafael Payan, General Manager

To CONTRACTOR: TBWB Strategies
400 Montgomery St, 7th Floor
San Francisco, CA 94104
Attention: Jared Boigon, Partner

17. ASSIGNMENT

- (a) CONTRACTOR shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, to any other individual, entity, or sub-contractor without prior written approval of DISTRICT.
- (b) CONTRACTOR may use its staff and assistants, under its direct supervision, to perform some or all of the services under this AGREEMENT.

18. LICENSES

At all times during the term of this AGREEMENT CONTRACTOR shall have in full force and effect all licenses required of it by law for the performance of services described herein.

19. GOVERNING LAW

DISTRICT and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this AGREEMENT. Any litigation concerning this AGREEMENT shall take place in municipal, superior, or federal district court with jurisdiction over DISTRICT.

20. ENTIRE AGREEMENT

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous AGREEMENTs, understandings, representations, and statements, oral or written, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. WORK SCHEDULED/TIME OF COMPLETION

DISTRICT and CONTRACTOR agree that time is of the essence in this AGREEMENT. DISTRICT and CONTRACTOR further agree that any failure to perform on or at the times set forth in this AGREEMENT will damage and injure the DISTRICT, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, DISTRICT and CONTRACTOR agree that any failure to perform by CONTRACTOR at or within the time set forth herein shall result in liquidated damages of 10% of the contracted amount of Thirty-Five Thousand Dollars (\$35,000.00) per day for each and every day such performance is late. DISTRICT and Consult agree that such sum is reasonable and fair. Furthermore, DISTRICT and CONTRACTOR agree that this AGREEMENT is subject to Government Code Section 53069.85, which authorizes such damages in connection with public agency contracts, and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

22. AUTHORITY TO EXECUTE THIS AGREEMENT

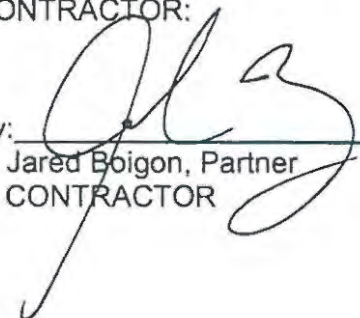
The person or persons executing this AGREEMENT on behalf of CONTRACTOR warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONTRACTOR and has the authority to bind CONTRACTOR to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

DISTRICT:

By:  8/31/2015
Kelly Sorenson Date
President

CONTRACTOR:

By:  8/19/15
Jared Boigon, Partner Date
CONTRACTOR

Approved as to Form:

Michael J. Whilden, Esq.
Attorney for Monterey Peninsula Regional District

Exhibit A: TASKS TO BE PERFORMED

The **Phase II** scope of services and work-plan will provide services from **July 5, 2015 through March 1, 2016**, unless amended. Services rendered under this agreement include the following items.

A. Public Information:

TBWB shall perform any of the following services as needed to raise awareness of District's funding needs and the potential ballot measure.

- 1) Create and regularly update a "Communications Plan" based on analysis of MPRPD poll results, ongoing MPRPD outreach to stakeholders, and based on ongoing direction and advice from MPRPD, including paid and earned media, direct stakeholder outreach, and partnership with key allies;
- 2) Create, update and monitor a "project timeline" for creating a ballot measure to bring before District voters;
- 3) Develop or review/edit informational fact sheets, FAQ's, and other public material related to MPRPD's revenue needs and potential future funding measure;
- 4) Develop or review/edit electronic communication, including email blasts, Facebook posts or ads, website content related to MPRPD's revenue needs and potential future funding measure;
- 5) Prepare or review/edit PowerPoint-style presentations for meetings related to MPRPD's revenue needs and potential future funding measure;
- 6) Write, design, and produce mailings or other paid communication to educate, inform and engage voters, as directed;
- 7) Develop strategies and plans to inform and engage key environmental stakeholders and open space user groups according to the goals and messages in the Communication Plan; and
- 8) Develop strategies and plans to inform and engage influential external groups including elected leaders, business leaders, city leaders, ethnic community leaders, faith community leaders, taxpayer groups and others according to the goals and messages in the Communication Plan;
- 9) Help direct work of any relevant contractors related to potential future funding measure, i.e., legal or engineering, as directed by District;
- 10) Update MPRPD Directors as needed, at staff direction.

B. Ongoing Feasibility Assessment:

TBWB shall continue perform any of the following services as needed to assess the electoral feasibility of the Measure:

- 1) Continue to assess and refine potential revenue measure scenarios to meet the District's funding needs, through collaboration with other District consultants and discussions with MPRPD;
- 2) Collaborate with pollster to design, conduct and analyze further opinion research of voters in the District if needed;
- 3) Continue and refine demographic analysis of voters in the District and how they break into key sub-groups by age, ethnicity, political party, length of residency, parents and other key criteria;
- 4) Continue to analyze and monitor past and upcoming elections in the District and region to understand voter turnout trends and other relevant voting patterns;
- 5) Research other local tax proposals that may be heading to an upcoming ballot that could compete with District's Measure; and
- 6) Make specific recommendations regarding an optimal election date, revenue mechanism, total authorization amount, tax rate and other important ballot measure features.

C. Ballot Measure Development:

TBWB shall perform any of the following services as needed to assist District in preparing an eventual Measure for the ballot, should the District choose to do so during the term of this Agreement:

- 1) Work with staff, legal counsel and other needed District consultants to develop a resolution calling for the election;
- 2) Develop the 75-word ballot question;
- 3) Refine any required public list of projects to be funded by the measure;
- 4) Prepare messaging that clearly articulates how these projects will benefit from the Measure;
- 5) Recommend any extra taxpayer accountability protections, such as an independent citizens' oversight committee;
- 6) Review and help refine the full text of the measure, project list, tax rate statement and any other materials that will appear in the ballot pamphlet mailed to all voters;

- 7) Help present recommendations, documents and resolutions to the Board for approval;
and,
- 8) Work with the County of Monterey Registrar of Voters Office to assist District to complete the process of qualifying for the ballot.

End of Exhibit A

Exhibit B: DISTRICT POLICIES

District Policy Regarding Animals in the Workplace

Employees and CONTRACTORS are not permitted to bring their personal animals or dogs to any Park District site, including District vehicles, while on duty or performing work for the Park District.

Violation of this policy will be deemed a violation of the Park District's Code of Conduct and will result in an automatic employee suspension without pay or contract suspension of ten (10) working days. Continued violations will result in further discipline up to and including employment or contract termination.

Exhibit C: LOCATION

The MPRPD ballot measure shall include the entirety of the registered electorate located within MPRPD's Boundaries, as prescribed by law.

Exhibit D: INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to DISTRICT in excess of the limits and coverage required in this AGREEMENT and which is applicable to a given loss, will be available to the DISTRICT.

CONTRACTOR shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 0000 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000.00 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000.00 per accident. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONTRACTOR or CONTRACTOR's employees will use personal autos in any way on this project, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000.00 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured' liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to DISTRICT for injury to employees of CONTRACTOR, sub-contractors or others involved in the Work. The scope of coverage provided is subject to approval of the DISTRICT following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000.00 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "Covered Professional Services" as designated in the policy must specifically include work performed under this AGREEMENT. The policy limit shall be no less than \$1,000,000.00 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this AGREEMENT.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by CONTRACTOR: CONTRACTOR and DISTRICT agree to the following with respect to insurance provided by CONTRACTOR.

1. CONTRACTOR agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insured's DISTRICT, its officials, employees and agents, using standard ISO endorsement No. CG 2010. CONTRACTOR also agrees to require all CONTRACTORS, and sub-contractors to do likewise.
2. No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONTRACTOR, or CONTRACTOR's employees, or agents, from waiving the right of subrogation prior to a loss. CONTRACTOR agrees to waive subrogation rights against DISTRICT regardless of the applicability of any insurance proceeds, and to require all CONTRACTORS and sub-contractors to do likewise.
3. All insurance coverage and limits provided by CONTRACTOR and available or applicable to this AGREEMENT are intended to apply to the full extent of its policies. Nothing contained in this AGREEMENT or any other AGREEMENT relating to the DISTRICT or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to DISTRICT and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any CONTRACTOR or sub-contractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the DISTRICT, as the need arises. CONTRACTOR shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect DISTRICT's protection without DISTRICT's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to CONTRACTOR's general liability policy shall be delivered to DISTRICT at or prior to the execution of this AGREEMENT. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, DISTRICT has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other AGREEMENT and to pay the premium. Any premium so paid by DISTRICT shall be charged to and promptly paid by CONTRACTOR or deducted from sums due CONTRACTOR, at DISTRICT option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to DISTRICT of any cancellation of coverage. CONTRACTOR agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties to this AGREEMENT that all insurance coverage required to be provided by CONTRACTOR or any sub-contractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to DISTRICT.

10. CONTRACTOR agrees to ensure that sub-contractors, and any other party involved with the project who is brought onto or involved in the project by CONTRACTOR, provide the same minimum insurance coverage required of CONTRACTOR. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONTRACTOR agrees that upon request, all AGREEMENTs with sub-contractors and others engaged in the project will be submitted to DISTRICT for review.

11. CONTRACTOR agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any CONTRACTOR, sub-contractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this AGREEMENT to self-insure its obligations to DISTRICT. If CONTRACTOR's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the DISTRICT. At that time the DISTRICT shall review options with the CONTRACTOR, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The DISTRICT 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 ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONTRACTOR, the DISTRICT will negotiate additional compensation proportional to the increased benefit to DISTRICT.

13. For purposes of applying insurance coverage only, this AGREEMENT will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this AGREEMENT.

14. CONTRACTOR acknowledges and agrees that any actual or alleged failure on the part of DISTRICT to inform CONTRACTOR of non-compliance with any insurance requirement in no way imposes any additional obligations on DISTRICT nor does it waive any rights hereunder in this or any other regard.

15. CONTRACTOR will renew the required coverage annually as long as DISTRICT, or its employees or agents face an exposure from operations of any type pursuant to this AGREEMENT. This obligation applies whether or not the AGREEMENT is canceled or terminated for any reason. Termination of this obligation is not effective until DISTRICT executes a written statement to that effect.

16. CONTRACTOR shall provide proof that policies of insurance required herein expiring during the term of this AGREEMENT have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from CONTRACTOR's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to DISTRICT within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of CONTRACTOR under this AGREEMENT. CONTRACTOR expressly agrees not to use any statutory immunity defenses under such laws with respect to DISTRICT, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. 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 limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this AGREEMENT and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this AGREEMENT to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

21. CONTRACTOR agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge DISTRICT or CONTRACTOR for the cost of additional insurance coverage required by this AGREEMENT. Any such provisions are to be deleted with reference to DISTRICT. It is not the intent of DISTRICT to reimburse any third party for payment of premiums or other amounts with respect thereto.

22. CONTRACTOR agrees to provide immediate notice to DISTRICT of any claim or loss against CONTRACTOR arising out of the work performed under this AGREEMENT. DISTRICT assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve DISTRICT.

◆ ◆ End of Document ◆ ◆