

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT FOR DEMOLISHING, REPAVING, AND RESTRIPIING OF PARKING LOT BETWEEN YUMA COUNTY AND CITY OF YUMA

This INTERGOVERNMENTAL AGREEMENT ("**Agreement**" hereinafter) is entered into this ____ day of _____, 2019 ("Effective Date"), by and between **YUMA COUNTY**, a political subdivision of the State of Arizona ("**County**") and the **CITY OF YUMA**, a municipal corporation of the State of Arizona ("**City**"). **County** and **City** are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, the City owns the parking lot within the Mall Maintenance District ("MMD") located north of East 2nd Street between South Maiden Lane and South Gila Street in Yuma, Arizona ("**City Property**"), as depicted in **Exhibit "A"** attached to and, by this reference, made a part of this Agreement; and,

WHEREAS, the City has agreed that the County staff and customers are able to continue to use and park on the City Property within the MMD at no cost to the County unless and until the City adopts a paid parking requirement in the MMD; and,

WHEREAS, the County intends to contract to demolish, repave and restripe the City Property and has offered to pay for and perform the administrative tasks in the selection of and contracting with a contractor to demolish, repave and restripe the City Property through the County's selected contractor (collectively, the "**Reconstruction Work**"); and,

WHEREAS, the County and the City desire to enter into a formal intergovernmental agreement to clarify the Parties' rights and responsibilities with regard to the design, construction, installation, maintenance, and repair of the Reconstruction Work; and,

WHEREAS, both the City and the County have determined that it is in the best interests of the Parties and the general public to enter into this Agreement; and,

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to A.R.S. §§11-951 *et seq.* and 11-251, and have agreed to enter into this Agreement by resolution.

AGREEMENT

NOW, THEREFORE, in consideration of the stipulations, covenants and agreements hereinafter set forth, do hereby agree as follows:

I. PURPOSE AND INTENT

The purpose of this Agreement is for the reconstruction of City Property, described in **Exhibit “A”** attached hereto, that is located within the MMD.

II. COUNTY OBLIGATIONS

A. Repaving Work. The County will cause to have constructed on the City owned parking lot within the MMD located north of East 2nd Street between South Maiden Lane and South Gila Street in Yuma, Arizona (“**City Property**”), as depicted in **Exhibit “A”** attached to and, by this reference, made a part of this Agreement, a “replace in kind” project for the City Property. The scope of work states the contractor will remove existing asphalt, re-compact subgrade (replace base course as necessary) and replace asphalt per existing section (likely 2”), and re-stripe as it was originally, which shall collectively constitute the “Reconstruction Work”. All shade structures, curb, gutter, sidewalks and street-lighting shall remain in place unless otherwise consented to in writing by the City Engineer.

B. Administrative Responsibilities. The County is only providing the following administrative services on behalf of the City for the Reconstruction Work being constructed on the City Property: solicitation of bids, award and execution of contract for the Reconstruction Work. The County shall not be liable for any claims arising out of the City’s responsibilities pursuant to this Section and Section III.A.

Costs. The County shall pay for the actual cost of the Reconstruction Work as approved by the parties and conducted on the City Property. The County and City shall review and approve all change orders, and neither party shall unreasonably withhold the approval or denial of such change orders.

III. CITY OBLIGATIONS

A. Grant and Use of Temporary Construction Easement. The City hereby grants, conveys, and dedicates to the County a temporary non-exclusive construction easement in, upon, under, and across the City Property (“**Temporary Easement Premises**”). The County, its employees, contractors, subcontractors, and agents may use the Temporary Easement Premises during the performance, construction, and installation of the Reconstruction Work, subject to the terms and conditions of this Agreement, together with all reasonable rights of ingress and egress over, along, upon, over, and across the Temporary Easement Premises and the immediately abutting area of the City Property, if necessary, for the exercise of the rights herein granted. The Temporary Easement Premises may not be used or operated in a manner that materially interferes with the City’s management or customary use of the City Property; provided, however, that the performance, construction, and installation of the Reconstruction Work shall not be considered material interference if performed in accordance with the terms of this Agreement.

B. Zoning and Permits Required. The City will provide at no cost to the County all proper zoning clearance and/or building permits required for the Reconstruction Work prior to the start of any work.

C. Termination of Temporary Construction Easement. The Temporary Construction Easement will terminate upon the completion of the Reconstruction Work and the acceptance of the Reconstruction Work by the City.

D. Maintenance, Improvements, and Repairs. The City by and through the MMD, will be responsible for all costs to maintain, improve, and repair the City Property after completion of the project.

IV. MUTUAL OBLIGATIONS

A. Term and Termination. This Agreement will be in full force and effect in perpetuity unless this Agreement is terminated pursuant to, and in accordance with, the following:

1. Either Party has the right, for any reason, to terminate this Agreement, at least five (5) business days before bid award of the Reconstruction Work, by sending written notice to the other Party. In the event the City terminates the Agreement pursuant to this Section IV(A)(1), the City must reimburse the County for the County's costs in accordance with this Section and this provision will survive expiration or termination of this Agreement.
2. If a material breach of this Agreement has occurred or is occurring, a Party may serve written notice thereof upon the Party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The breaching Party will have thirty (30) calendar days within which to cure the violation, provided that the thirty (30) day cure period will be extended for a reasonable time if the breaching Party has undertaken to cure the breach within the thirty (30) day period and continues to diligently and in good faith complete the corrective action. If the breaching Party fails to cure the breach within such cure period, the non-breaching Party may immediately terminate this Agreement.

B. Insurance Requirements.

1. Each Party must maintain liability insurance in reasonable amounts, and with reputable companies as are reasonably acceptable to the other Party to protect each Party against claims arising directly or indirectly out of or in connection with the construction and installation of the Repair Work pursuant to this Agreement. Each Party must name the other Party and its elected and appointed officials, officers, employees and agents as additional insureds.
2. Each Party must require all of its contractors and subcontractors hired to perform any work on the City Property or the Temporary Easement Premises

to maintain insurance in the types and amounts specified in **Exhibit “B,” Contractor Proof of Insurance in compliance with City Insurance Requirements**, attached to and incorporated as part of this Agreement, and with reputable companies as are reasonably acceptable to both Parties to protect the Parties against claims arising directly or indirectly out of, or in connection with, the contractor’s and subcontractor’s performance, construction, or installation of the Reconstruction Work pursuant to this Agreement. The parties must cause any contractor or subcontractor performing the construction and installation of the Reconstruction Work on the City Property to name the County and City, and their elected and appointed officials, officers, employees, and agents as additional insureds on all required insurance policies and prior to commencing any such activity will provide to the County and City a copy of a Certificate of Insurance (valid ACORD form or equivalent) evidencing the same and must require any contractor or subcontractor to provide evidence that the policy of insurance is endorsed to include the County and City as additional insureds, that the contractor or subcontractors policy of insurance is primary and non-contributory, and that subrogation against the County and City is waived. An authorized representative of the insurer must sign the certificates.

3. A Party’s failure to maintain insurance policies as required by this Agreement is a material breach of this Agreement.

C. Indemnification.

1. To the maximum extent permitted by law, each Party (as “**Indemnitor**”) agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “**Claims**”) arising out of actions taken in performance of this Agreement to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
2. The County requires each contractor who performs any work on the Temporary Easement Premises (whether such work is related to the performance, construction, and installation of the Repair Work), to indemnify, defend and hold harmless the County and the City to the same extent as required of the Parties under Section IV.C.1.

D. Mechanics Liens. The parties must keep the property free from any liens arising from work performed, materials furnished or obligations incurred by the parties. Upon completion of any approved construction activity, copies of signed lien waivers will be supplied to the City.

V. MISCELLANEOUS.

A. NOTICES: Except as otherwise provided in this Agreement, all notices to the other Party required under this Agreement must be in writing and sent to the following personnel:

Yuma County:

Susan Thorpe
Yuma County Administrator
198 S. Main Street
Yuma, AZ 85364
(928) 373-1010
Susan.Thorpe@yumacountyaz.gov

City of Yuma:

John Simonton
Yuma City Administrator
One City Plaza
Yuma AZ 85364
928-373-5011
John.Simonton@yumaaz.gov

B. RELATIONSHIP OF THE PARTIES: Each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other party. Each Party is solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. This Agreement must not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement must be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Nothing contained in this Agreement confers any right to any person or entity not a party to this Agreement.

C. PROPERTY DISPOSITION CLAUSE. The parties do not anticipate the joint acquisition of property attributable to the exercise of each party's duties and obligations pursuant to this Agreement. Any property acquired during the term of this Agreement will be returned to the purchasing party no more than thirty (30) calendar days from the effective date of termination of this Agreement.

D. WAIVER OF TERMS AND CONDITIONS: The failure of either Party to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein will not be considered as thereafter waiving such terms, conditions, rights or privileges, and they will remain in full force and effect.

E. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona. The venue will be solely the appropriate state court in Yuma County.

F. NON-ASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise and qualifications of the Parties. Neither Party may assign its interest in this Agreement, in whole or in part, without the prior written consent of the other Party. Neither Party may assign any monies due or to become due to it hereunder without the prior written consent of the other Party.

G. ENTIRE AGREEMENT: This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement will be valid unless made in writing and signed by the Parties.

H. SEVERABILITY: If any part, term or provision of this Agreement is held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof will not be affected.

I. CONFLICTS OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest will apply to this Agreement.

J. OTHER DUTIES IMPOSED BY LAW: Nothing in this Agreement will be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.

K. COMPLIANCE WITH CIVIL RIGHTS: The Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

L. IMMIGRATION LAW COMPLIANCE. Both parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to their employment of their employees, and with the requirements of A.R.S. § 23-214 (together the "State and Federal Immigration Laws"). A breach of the foregoing warranty shall be deemed a material breach of this Agreement, and the parties will have the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The parties retain the legal right to inspect the papers of each contractor, subcontractor or employee of either who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

M. E-VERIFY, RECORDS AND AUDITS: To the extent applicable under A.R.S. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A Party's or a subcontractor's breach of the above-mentioned warranty will be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of each other Party and each other Party's subcontractors who work under this Agreement to ensure that the other party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by each other Party. The Parties and their respective subcontractors will cooperate with each other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and

waiving their respective rights to keep such papers and records confidential.

N. ISRAEL BOYCOTT: To the extent required by law, the Parties hereby acknowledge and affirm that, pursuant to A.R.S. § 35-393 *et seq.*, each party is not currently engaged in, and for the duration of this agreement will not engage in, a boycott of Israel.

O. INTERPARTY DISPUTE RESOLUTION: If a dispute between the Parties arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within sixty (60) days, the Parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation. The Parties shall mutually agree upon a mediator. Each party agrees to bear its own costs of mediation, and to split the mediator fee. If mediation fails, any claim or action arising out of this Agreement shall be brought in the Yuma County Superior Court in Yuma, Arizona.

P. WAIVER OF JURY TRIAL. The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement.

Q. WORKER'S COMPENSATION: Each Party will comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party will be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party will have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

R. COMPLIANCE WITH LAWS AND POLICIES: The Parties must comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of this Agreement and any disputes hereunder. Furthermore, the Parties agree to abide by each Party's policies to the extent appropriate and required or permitted by law.

S. NO JOINT VENTURE: It is not intended by this Agreement to, and nothing contained in this Agreement will, be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

T. NO THIRD-PARTY BENEFICIARIES: Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement or affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

U. HEADINGS: The section headings throughout this Agreement should not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

YUMA COUNTY

Susan K. Thorpe
County Administrator

Date

ATTEST

County Administrator/Clerk of the Board

Date

APPROVED AS TO FORM
AND WITHIN THE POWERS AND
AUTHORITY GRANTED UNDER THE
LAWS OF ARIZONA TO YUMA COUNTY

Jon R. Smith, County Attorney

Date

CITY OF YUMA

John Simonton
Interim City Administrator

Date

ATTEST

Lynda L. Bushong
City Clerk

Date

APPROVED AS TO FORM

Richard Files, City Attorney

Date

Exhibit "A"
Location of Premises for Reconstruction Work

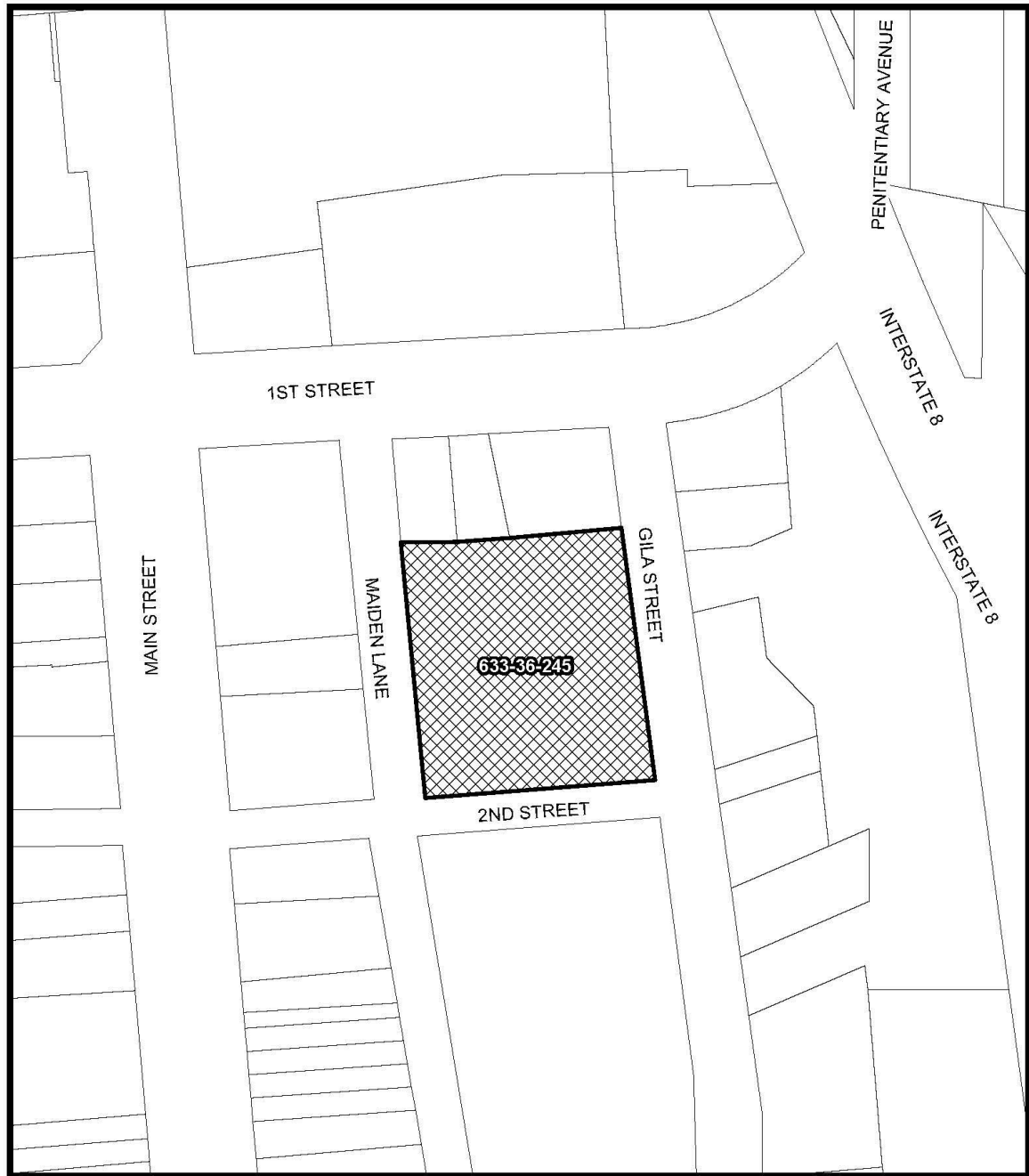


EXHIBIT A



LOCATION OF SUBJECT PROPERTY



Exhibit "B"
Contractor Proof of Insurance in compliance with
City Insurance Requirements

Insurance

General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of the Contractor, the Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein is considered a material breach of this Agreement and may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage Parts of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. The Contractor's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute to it.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years

past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the Contractor. The Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Contractor shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and the Contractor. The Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Contractor's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be the Contractor's responsibility to forward renewal certificates and declaration page(s) to the City

thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the bid number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate bid number and title or reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- a. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- b. Auto Liability - Under ISO Form CA 20 48 or equivalent.
- c. Excess Liability - Follow Form to underlying insurance.

2. The Contractor's insurance shall be primary insurance as respects performance of the Agreement.

3. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the Contractor under this Agreement.

Required Insurance Coverage.

A. Commercial General Liability. The Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. The Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance. Such insurance shall include coverage for loading and off-loading hazards substances. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

C. Workers' Compensation Insurance. The Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over the Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

D. Umbrella/Excess Liability. The Contractor shall carry Umbrella/Excess Liability insurance with an unimpaired limit of not less than \$4,000,000 per occurrence combined limit Bodily Injury and Property Damage that "follows form" and applies in excess of the Commercial General Liability, Commercial/Business Automobile Liability and Employer's Liability, as required above.

E. Additional Coverage. To the fullest extent permitted by law, if the Contractor maintains higher insurance limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limit maintained. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially change without thirty (30) days' prior written notice to the City.

If the City requires testing of equipment or other similar operations, the Contractor is responsible for providing appropriate insurance as may be deemed necessary by the City.