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Date Received: _____ Permit No.: _____

Time Received: _____ City Secretary No.: _____

**AGREEMENT
FOR MAINTENANCE OF NON-STANDARD
IMPROVEMENTS**

THIS AGREEMENT FOR MAINTENANCE OF NON-STANDARD IMPROVEMENTS ("Agreement"), is by and between the **City of Fort Worth**, a Texas home rule municipal corporation ("City") and _____ ("Developer"). City and Developer are sometimes referred to as a Party or Parties. This Agreement will be effective as of the Effective Date established herein.

**SECTION 1
DESCRIPTION OF PROPERTY**

1.01 Developer is the owner of certain property in Fort Worth, Tarrant County, Texas, located _____, Tarrant County, and depicted on "*Exhibit A*", attached and incorporated into this Agreement (the "Developer Property").

1.02 The City and Developer hereby agree that Developer will provide, furnish, and perform the services specified herein on City-owned sidewalks and right-of-ways (the "Project Site") located adjacent to the Developer Property, as further described in this Agreement in "*Exhibit B*", attached and incorporated into this Agreement.

**SECTION 2
DUTIES AND RESPONSIBILITIES**

2.01 Developer shall commence, carry on, and provide the services contemplated in the Contracts (as defined herein) in accordance with this Agreement and its attachments and all applicable laws. In providing such services, Developer shall take such steps as are appropriate to ensure that the work involved is properly coordinated with any related work performed by the City or the City's authorized representative.

Commented [ORD1]: The Developer is responsible for all work as related to the location and structure(s) as depicted within Exhibit(s). The Developer is also responsible for coordinating with the City if necessary.

2.02 Developer represents that it has or will secure, at its own expense, all materials, supplies, machinery, equipment, tools, superintendence, labor, personnel, insurance, and other accessories and services necessary to provide maintenance of the following elements ("Improvements"), all of which are to be installed pursuant to and as more particularly described in the contract for construction services by the Developer.

Commented [ORD2]: The Developer is responsible for supplying all necessary resources associated with maintaining the item(s) outlined below in Section 2.02a

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a. **Description of items to be maintained –**

2.03 Developer shall maintain the areas described in Section 2.02 in good working condition so that the Improvements perform their design function. If pursuant to notice from the City, Developer is made aware of any deficiency in the safe and proper functioning of the Improvements described in Section 2.02 then Developer shall promptly inspect the Improvements and submit an inspection report to the City. Such inspection report shall (i) note any areas described in Section 2.02, or portions thereof, which need maintenance or replacement to perform their design function and (ii) address the corrective actions to be taken by Developer in accordance with Section 2.06 of this Agreement.

Commented [ORD3]: The items outlined in the agreement shall be maintained; if the City notifies the Developer of an issue, the Developer shall inspect and provide a report with plan of action to repair to the City.

2.04 The City shall be responsible for maintaining its streets and travel lanes excluding the special pavement treatments described above in accordance with normal City policies and procedures. The City shall take such steps as are appropriate to ensure that the work involved is properly coordinated with any related work performed by Developer or the Developer's authorized representative.

Commented [ORD4]: This is applicable in specific situations.

2.05 In the event that any City-owned property, such as utilities, curbs, equipment, turf, trees, etc., are damaged or destroyed during maintenance of the improvements due to negligence or acts of omissions by Developer, Developer shall be responsible for all repairs or replacements of same.

Commented [ORD5]: The Developer is responsible for the repair and/or replacement of damaged property if the damage occurs while maintaining the designated items outlined in the agreement.

2.06 In the event Developer, its successor or assigns, fails to maintain the areas described in Section 2.02 in the manner required by this Agreement, City shall provide written notice of the non-compliant conditions to Developer, its successor or assigns. Developer, its successors or assigns, shall make any necessary repairs to comply with this Agreement within thirty (30) days of receipt of such written notice or, if such repairs are not reasonably able to be completed within thirty (30) calendar days, Developer shall have, within that period, begun work on such repairs and shall diligently pursue them to completion, provided, however, that if the non-compliant conditions creates a condition which poses an immediate threat to life, health, or property such repair shall be completed within thirty (30) days of receipt of written notice. If Developer, its successors or assigns, does not make such repairs as provided herein, the City may enter upon the Project Site and take whatever steps reasonably necessary to correct the non-compliant conditions and to charge the costs of such repairs to Developer, its successors and assigns.

Commented [ORD6]: If the items within the agreement are not maintained the City will provide notice and the Developer will have a specific timeframe to complete repairs. The City may take whatever steps are necessary to resolve the situation and charge the Developer the cost associated.

2.07 The City is not obligated to repair the Improvements beyond a level of City's standard specifications. In the event, however, the City pursuant to this Agreement performs any work of any nature that is Developer's obligation hereunder and which Developer has failed to perform, or the City expends any funds in performance of said work for labor, use of

Commented [ORD7]: If the Developer fails to make repairs as outlined, the City will improve the item(s) outlined in the agreement to city standard. Any cost outside of the standard improvement cost will be the responsibility of the Developer. If the payment for this cost is not submitted by the Developer, the City will take all legal action available to recover the cost.

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equipment, supplies, materials, and the like that is Developer's obligation hereunder and which Developer has failed to perform, Developer, its successors or assigns, shall reimburse the City, within thirty (30) days of the City making such demand, for the costs attributable to such work performed by the City including: (i) the cost difference between the City's standard street specifications and the Improvements installed by the Developer and (ii) the total cost of any repairs that are outside of the street pavement area. In the event that Developer or its successors or assigns fails to pay the City for the costs incurred under this section, the City may take whatever legal steps are necessary to recover from Developer all reasonable and actual costs incurred by the City for the work performed.

SECTION 3

TERM OF AGREEMENT

The term of this Agreement shall commence upon the Effective Date and shall continue until the earlier of (i) Developer's permanent removal of the Improvements from the Project Site and restoration of the Project Site to the then-existing City standards or (ii) the earlier termination of this Agreement as provided herein.

Commented [ORD8]: The agreement will remain effective until the item(s) outlined in the agreement are removed or improved.

SECTION 4

TITLE AND CONSTRUCTION

The Parties acknowledge that the Improvements to be maintained as provided in this Agreement are the subject of the Contracts and that all necessary reviews, approvals, consents, inspections and modifications of such Improvements, if any, have been or will be made pursuant to those Contracts. Subject to the provisions of the Contracts, Developer shall retain ownership of the landscaping, special sidewalk and pavement pavers, benches, project signage, special lighting and other Improvements installed or located in the City right-of-way pursuant to the Contracts.

Commented [ORD9]: Contractual requirements as it relates to example improvements.

SECTION 5

RIGHT OF ACCESS

5.01 City through its Manager, Transportation and Public Works Director, police and fire personnel, and other designated representatives, has the right at any time to enter any portion of the Project Site (without causing or constituting a termination of the use or an interference of the use of the Project Site by Developer) for the purpose of inspecting and maintaining same and taking any and all measures necessary for the proper conduct and operation of City property; provided this shall not authorize or empower the City to direct the activities of Developer or assume liability for Developer's activities.

Commented [ORD10]: The City may inspect the property at any time to ensure proper conduct and operation of City property.

5.02 The City will have the right but not the obligation to make routine inspections of the

Commented [ORD11]: The City reserves the right to make routine inspections if determined to be necessary.

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Project Site. In the event the City observes non-compliance of an area or a condition which poses a threat to life, health, or property, the City shall notify Developer in writing in accordance with Section 2.06 of this Agreement.

**SECTION 6
INDEMNIFICATION**

6.01 DEVELOPER, ITS SUCCESSORS OR ASSIGNS, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO DEVELOPER'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO MAINTENANCE OR THE PERFORMANCE OF DEVELOPER'S OBLIGATIONS UNDER THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY OR ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S GOVERNMENTAL IMMUNITY AS FURTHER PROVIDED BY THE LAWS OF TEXAS.

Commented [ORD12]: The City is not liable for the item(s) contractually approved to be constructed within the public property.

6.02 Developer, its successors or assigns, covenants and agrees that City shall in no way nor under any circumstances be responsible for any property belonging to Developer, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers, which may be stolen, destroyed, or in any way damaged, and the Developer hereby releases the City from any and all such claims. The City does not guarantee police protection and will not be liable for any loss or damage sustained by Developer, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers on the Project Site. It is further agreed that the acceptance of this release shall not constitute a waiver by the City of Fort Worth of any defense of governmental immunity, where applicable. or any other defense recognized by the statutes

Commented [ORD13]: The City is not liable for the item(s)/Developer's property outlined in the agreement.

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and court decisions of this State.

SECTION 7
INSURANCE

Developer shall not commence work under this Agreement until it has obtained and provided documentation thereof for the insurance required by **Exhibit C**, attached hereto and incorporated herein. Developer shall be responsible for delivering to the City Developer's certificate of insurance for approval. Any contractors performing maintenance on the Improvements shall also provide to Developer and City documentation of insurance required by **Exhibit C**.

Commented [ORD14]: The City requires the Developer to provide a Certificate of Insurance as related to this agreement.

SECTION 8
INDEPENDENT CONTRACTOR

Developer shall perform all work and services hereunder as an independent contractor and not as an officer, agent, servant or employee of the City. Developer shall have exclusive control of, and the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, and employees and sub-consultants/subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Developer, its officers, agents, employees and sub consultants/subcontractors, and doctrine of *respondent superior* has no application as between the City and Developer.

Commented [ORD15]: The Developer and all current and/or future employees, contractors, and all other possible stakeholders associated with the developer are considered independent contractors. The execution of a Maintenance Agreement does not create, imply, or construe employment with and/or partnership with the City of Fort Worth. The City is not liable for providing the Developer's stakeholders with employment benefits, development related payments, or any reporting requirements the developer may have.

SECTION 9
LICENSES AND PERMITS

Developer shall comply with all federal, state and local laws, rules and regulations as well as with all regulations, restrictions and requirements of the police, fire and health departments now or hereafter in effect which are applicable to its operations. Developer shall obtain and keep in effect at its own cost and expense all licenses, permits, and taxes incurred or required in connection with this Agreement and its operations hereunder.

Commented [ORD16]: The Developer is required to comply with any and all rules and/or regulations, in addition to obtaining all necessary permits as applicable.

SECTION 10
LIENS

Commented [ORD17]: The Developer may not create a lien to be filed on City property. If a lien is created or filed, the Developer will dismiss it within 30 days of receiving notice from the City.

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Developer, its successors or assigns, agrees that it shall do no act nor make any contract that may create or be the foundation for any lien upon or interest in the City's property, and any such contract or lien attempted to be created shall be void. Should any purported lien on City property be created or filed, Developer, its successors or assigns, at its sole expense, shall discharge same within thirty (30) days after notice from City to do so.

SECTION 11 TERMINATION AND DEFAULT

11.01 Subject to the provisions of Section 11.02 below, in the event Developer fails to comply with any of the terms and conditions of this Agreement after notice and the passage of the appropriate cure period provided in this Agreement, City shall have the right, and without further notice, to declare this Agreement immediately terminated and to enter into and take full possession of the City's interest in the Project Site, save and except such personal property and equipment as may be owned by Developer. In the event of such termination of this Agreement by the City, all rights, duties and privileges of Developer hereunder shall cease and terminate.

Commented [ORD18]: If the need arises, the City may take possession of the improvement and terminate the maintenance responsibility of the Developer.

11.02 Developer shall be notified by written correspondence of Developer's failure to comply with any of the terms and conditions of this Agreement. Developer shall have thirty (30) calendar days from the date of written correspondence to correct deficiencies or, if such deficiencies are not reasonably able to be corrected within thirty (30) calendar days, Developer shall have, within that period, begun work on such corrections and shall diligently pursue them to completion.

Commented [ORD19]: The City will notify the Developer of deficiencies; this will begin a 30-day timeframe for Developer to resolve with corrective action.

11.03 Upon termination, the parties shall be released from all obligations contained in this Agreement except for any indemnification obligations pursuant to Section 6 of this Agreement occurring prior to the effective date of such termination.

Commented [ORD20]: When the agreement terminates, all contractual liability terminates.

11.04 Termination notice shall be considered rendered three business days after being placed in the United States Postal Service for delivery to the other party in accordance with Section 13.

Commented [ORD21]: Mailed termination notices are consider submitted 3 days after being post marked.

SECTION 12 NON-DISCRIMINATION/DISABILITIES

Developer, in its installation or maintenance of the Improvements, of occupancy or use of the Project Site, shall not discriminate against any person or persons because of race, age, gender, religion, color, national origin, sexual orientation, or disability nor will Developer permit its officers, agents, employees or subcontractors to engage in such discrimination.

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**SECTION 13
NOTICES**

Any notice required shall be sufficient if deposited in the U.S. Mail, postage prepaid and addressed to the other party as follows:

CITY:

City of Fort Worth
Transportation & Public Works Department
Attn: Assistant Director
200 Texas Street
Fort Worth, Texas 76102

With copy to:

City Attorney's Office
200 Texas Street
Fort Worth, Texas 76102

DEVELOPER:

**SECTION 14
VENUE AND JURISDICTION**

This Agreement shall be governed by the laws of the State of Texas. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this Agreement shall be in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

SECTION 15

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[ASSIGNMENT]

15.01 Developer agrees that it will not assign all or any part of its rights, privileges or duties hereunder without the prior written consent of the City and any attempted assignment of same without such prior consent of the City shall be void except that Developer may, without prior written consent, assign any or all of its rights, privileges or duties hereunder to an affiliate (defined as an entity under common control with Developer) or to an authorized Public Improvement District whose boundaries include the Project Site ("Allowed Assignment") or to the purchaser of the Developer Property as provided in Section 15.03, below. In the event of an Allowed Assignment, Developer will notify the City within thirty (30) days of such assignment. If notice of an Allowed Assignment is not provided within thirty (30) days to the City such assignment shall be void. In the event of an assignment permitted above, Developer shall automatically be released from any further obligation or liability under this Agreement. Notwithstanding the foregoing, or anything in this Agreement to the contrary, it is understood and agreed that Developer will contract or subcontract various parts of its obligations hereunder to others to perform on behalf of Developer, and such contracting or subcontracting is expressly permitted hereunder.

Commented [ORD22]: An amendment is required to assign contractual liabilities established within the agreement. Assignments that do not include an amendment are not recognized by the City as valid.

15.02 Subject to the limitations contained herein, the covenants, conditions and agreements made and entered into by the parties hereunder are declared to be for the benefit of and binding on their respective successors, representatives and permitted assigns, if any.

15.03 Notwithstanding anything herein to the contrary, no provision of this Agreement shall be construed to prohibit or restrict Developer's ability to sell, lease, pledge or otherwise transfer the Developer Property or any part thereof. Upon any such transfer of the Developer Property, the benefits and obligations of this Agreement shall run with the Developer Property, or portion thereof, and bind Developer's successors in interest in proportion to the interest in the Developer Property so transferred.

Commented [ORD23]: Maintenance Agreements run with the land.

**SECTION 16
[WAIVER, SECTION HEADINGS, AND SEVERABILITY]**

16.01 In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Developer or City in connection with the rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Commented [ORD24]: If a court rules that any part of this agreement is invalid, all other parts remain valid.
If the City waives a default or breach of this agreement, that does not imply all defaults or breaches are waived.

16.02. The waiver by the City of any default or breach of a term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other breach of that term, covenant or condition or any other term, covenant or condition of this Agreement, regardless of when the

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breach occurred.

16.03 The headings in this Agreement are inserted for reference only, and shall not define or limit the provisions hereof.

SECTION 17
[RECORDATION]

This Agreement shall be recorded in the Real Property Records of the applicable county and shall be a covenant running with the land binding upon all parties having any right, title or interest in the Developer Property and Project Site, or any part thereof, including their heirs, successors and assigns, and shall inure to the benefit of the owners of the Developer Property and Project Site and to the City.

Commented [ORD25]: This agreement is recorded in the County of record to reflect on the property records.

SECTION 18
[ENTIRE UNDERSTANDING]

18.01 This written instrument including all Attachments, Schedules, and Exhibits attached hereto constitutes the entire agreement by the Parties concerning this Agreement and the obligations of the Parties, and any prior or contemporaneous oral or written agreement that purports to vary from the terms hereof shall be void. This Agreement cannot be modified or amended without the written consent of all the Parties.

Commented [ORD26]: This agreement will include all relevant and necessary documentation. No adjustments or changes will be made without all parties in agreement, solidified in an amendment to be recorded in the County of record.

18.02 Neither this Agreement nor any provision hereof may be modified except by an instrument in writing, signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

18.03. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall be one and the same instrument. Electronic signatures and facsimile, pdf or other copies of original signatures shall be binding as originals.

Commented [ORD27]: There will be multiple identical versions of the agreement and all will be considered original.

[Signature Pages and Exhibits Follow]

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IN WITNESS WHEREOF, the Parties have each executed this Agreement by each party's duly authorized representative. This Agreement shall be effective upon the execution and date subscribed by the City's designated City Manager ("Effective Date").

CITY OF FORT WORTH

DEVELOPER:

By: _____
Dana Burghdoff
Assistant City Manager

By: _____

Date: _____

Date: _____

Approved as to Form and Legality

By: _____
Douglas Black
Assistant City Attorney

M&C: _____

Date: _____

Contract Compliance Manager

By signing, I acknowledge that I am the person responsible or the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

ATTEST

By: _____
Janette S. Goodall
City Secretary

Rebecca D. Owen
Planning Manager

Date: _____

Date: _____

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*****THIS PAGE FOR OFFICIAL CITY USE ONLY*****

THE STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jessica McEachern, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of the City of Fort Worth, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20_____.

Notary Public in and for the State of Texas

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THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as _____ a Texas _____ company, as the act and deed of said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20_____.

Notary Public in and for the State of Texas

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**EXHIBIT A
PROPERTY DESCRIPTION**

DRAFT

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**EXHIBIT B
DETAILS OF IMPROVEMENTS**

DRAFT

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EXHIBIT C

CITY OF FORT WORTH
STANDARD INSURANCE REQUIREMENTS

(1) INSURANCE LIMITS

- a. Commercial General Liability – Insured shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance as follows:

\$1,000,000 each occurrence
\$2,000,000 aggregate

If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this Project or location.

- i. City shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless City specifically approves such exclusions in writing.
- ii. Insured waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with Agreement.

- b. Business Auto – Insured shall maintain business auto liability and, if necessary, commercial umbrella liability insurance as follows:

\$1,000,000 each accident (or reasonably equivalent limits of coverage if written on a split limits basis).

Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the Project.

If Insured owns no vehicles, coverage for hired or non-owned is acceptable.

Insured waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Insured pursuant to this Agreement or under any applicable auto physical damage coverage.

- c. Workers’ Compensation – Insured shall maintain workers compensation and employers liability insurance and, if necessary, commercial umbrella liability insurance as follows:

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Coverage A: statutory limits
Coverage B: \$100,000 each accident
\$500,000 disease - policy limit
\$100,000 disease - each employee

Insured waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by Engineer pursuant to this Agreement.

- d. Professional Liability (Errors & Omissions) – If appropriate, Insured shall maintain professional liability insurance as follows:

\$1,000,000 - Each Claim Limit
\$2,000,000 - Aggregate Limit

Professional Liability coverage may be provided through an endorsement to the Commercial General Liability policy, or a separate policy specific to Professional E&O. Either is acceptable if coverage meets all other requirements. Coverage shall be claims-made, and maintained for the duration of the contractual agreement and for three (3) years following completion of services provided. The policy shall contain a retroactive date prior or equal to the Effective Date of the Agreement or the first date of services to be performed, whichever is earlier. An annual certificate of insurance shall be submitted to City to evidence coverage.

(2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that Insured has obtained all required insurance shall be attached to Agreement concurrent with its execution. Any failure to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- b. Applicable policies shall be endorsed to name City as an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term City shall include its employees, officers, officials, and agents as respects the contracted services. Applicable policies shall each be endorsed with a waiver of subrogation in favor of City with respect to the Project.
- c. Certificate(s) of insurance shall document that insurance coverage limits specified in this Agreement are provided under applicable policies documented thereon. Insured's insurance policy(s) shall be endorsed to provide that said insurance is primary protection and any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery. Insured's liability shall not be limited to the specified amounts of insurance required herein.
- d. Other than worker's compensation insurance, in lieu of traditional insurance, City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups. City must approve in writing any alternative coverage for it to be accepted.

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- e. A minimum of thirty (30) days' notice of cancellation or material change in coverage shall be provided to City. A ten (10) days' notice shall be acceptable in the event of non-payment of premium.
- f. Insurers must be authorized to do business in the State of Texas and have a current A.M. Best rating of A: VII or equivalent measure of financial strength and solvency.
- g. Any deductible or self-insured retention in excess of \$25,000 that would change or alter the requirements herein is subject to approval in writing by City, if coverage is not provided on a first-dollar basis. City, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to City.
- h. In the course of the Agreement, Insured shall report, in a timely manner, to City's Contract Compliance Manager any known loss or occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- i. City shall be entitled, upon its request and without incurring expense, to review Insured's insurance policies including endorsements thereto and, at City's discretion, Insured may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of this Agreement. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the Project until final payment and termination of any coverage required to be maintained after final payments.
- l. City shall not be responsible for the direct payment of any insurance premiums required by Agreement.
- m. Subcontractors of Insured shall be required by Insured to maintain the same or reasonably equivalent insurance coverage as required for Insured. Upon City's request, Insured shall provide City with documentation thereof.