

CONSTRUCTION CONTRACT FOR

CITY OF HUGHSON – _____ PROJECT

This Agreement (“**Agreement**”) is made and entered into this [DATE] day of [MONTH], [YEAR], by and between the City of Hughson, a California municipal corporation (“**City**”), and [CONTRACTOR], a [ENTITY] (“**Contractor**”).

SECTION I - PURPOSE

Contractor shall provide certain construction services (further described in this Agreement) required by City in connection with the project described in Exhibit “A” attached hereto and by this reference incorporated herein (“**Project**”), on the terms and conditions set forth in this Agreement.

SECTION II – TERM

Section 2.1. Term. The term of this Agreement shall be from the date of execution of this Agreement to [DATE], unless earlier terminated as provided herein.

SECTION III – SCOPE OF SERVICES

Section 3.1. Scope of Services. The scope of services to be provided by Contractor is set forth on Exhibit “A” attached hereto and by this reference incorporated herein (“**Services**”). Contractor represents it has the qualifications, experience, licenses, and facilities necessary to properly perform the Services in a competent and professional manner, and warrants it will perform the Services as set forth herein in a competent, professional and satisfactory manner. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations.

Section 3.2. Schedule of Services. Contractor shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines, including any schedule of services set forth in Exhibit “A.”

Section 3.3. Permits, Licenses, Fees, and Other Charges. Contractor shall, in accordance with applicable laws and ordinances, obtain at its his/her/its expense all permits and licenses necessary to accomplish the Services. Failure to maintain a required license or permit may result in immediate termination of this Agreement.

SECTION IV – COMPENSATION

Section 4.1. Total Compensation. The total compensation shall not exceed [AMOUNT] without written approval by City (“**Contract Amount**”). Extra Work may be authorized, as described below, and if authorized, will be compensated in the manner set forth in this Agreement.

Section 4.2. Payment Application. Contractor shall receive compensation including authorized reimbursements, for all Services rendered pursuant to the schedule of values set forth in Exhibit "B" attached hereto and incorporated herein by reference. On or about the tenth day of each month after the start of the work, an amount equal to ninety-five percent (95%) of the value of all Services completed as of the 20th day of the preceding month, based on the quantities of Services completed, as determined by the City, or City's agent, less the aggregate of all previous payments made to the Contractor.

Section 4.3. Lien Waivers. It is further agreed by the parties that before each payment is made as provided above, receipts and releases of liens of all kinds for all labor and materials and all other indebtedness connected with the work shall be presented to the City by the Contractor upon the request of the City.

Section 4.4. Final Payment. Sixty (60) days after completion of the Agreement and its acceptance by the City, the balance of the Agreement price will be paid. Such final payment will not be made until completion of the Project and acceptance of the whole by the City.

Section 4.5. Substitution of Securities. Contractor may substitute securities in lieu of retained funds in accordance with Public Contract Code section 22300.

Section 4.6. Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization by City.

Section 4.7 Claims Resolution and Civil Action Procedures. Public Contract Code sections 20104 – 20104.6 govern all public works claims of \$375,000 or less which arise between a contractor and a local agency. Public Contract Code section 20104(b)(2) it is stated that "**Claim**" means a separate demand by the contractor for (a) a time extension; (b) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (c) an amount the payment of which is disputed by the local agency. Exhibit "C" attached to this Agreement contains copies of the following: Claims Resolutions Procedures set forth in Public Contract Code section 20104.2, and Civil Action Procedures set forth in Public Contract Code section 20104.4.

SECTION V – CONTRACTOR RESPONSIBILITIES

Section 5.1. Contractor agrees as follows:

- a. To do all the work and furnish all the labor, material, equipment and appliances to complete the Services in accordance with this Agreement.
- b. To do and perform the Services diligently as directed by the City until completion is evidenced by written acceptance by the City.
- c. All Services performed by Contractor shall be subject to the approval of City.

- d. To remedy, at his/her/its expense, any defects in the Services which shall appear within a period of twelve (12) months from the date of the final acceptance of the Services.
- e. Time is of the essence for all work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the City will sustain in the event of and by reason of Contractor's delay in completing the Services included in this Agreement within the time limit agreed upon or such extensions thereof as may be granted; therefore, pursuant to Public Contract Code section 7203, Contractor shall forfeit to City [AMOUNT] per calendar day as liquidated damages for each and every calendar day's delay beyond the time herein prescribed, or such extensions thereof as may be granted, for completion of all the Services included in this Agreement.
- f. If the total Contract Amount as set forth in this Agreement is in excess of \$25,000, then Contractor shall provide a Faithful Performance Bond and a Labor and Materials Bond, in the sum of 100% of the contract price pursuant to the requirements of Civil Code section 9550.

SECTION VI – PUBLIC WORKS REQUIREMENTS

Section 6.1. Public Works Acknowledgement. Contractor acknowledges the Project is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with section 1720) of the California Labor Code (Chapter 1).

Section 6.2. Prevailing Wages. Contractor is aware of the requirements of California Labor Code section 1720, et. seq., ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interest parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1777.6 and 1777.7, 1813, and 1815 of the Labor Code within this Agreement, and Contractor shall therefore comply with the Labor Code sections to the fullest extent required by law. Contractor shall defend, indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with Prevailing Wage Laws. The statutory provisions for penalties for failing to comply with the Prevailing Wage Laws and labor laws will be enforced, as well as that for failing to pay prevailing wages.

Section 6.3. Registration and Labor Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and all subcontractors must be registered with the Department of Industrial Relations ("**DIR**"). Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be

Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

Section 6.4. Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provision of Labor Code section 3700 which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing performance of the Services.

SECTION VII – INSURANCE

Section 7.1. The Contractor shall, at Contractor's sole cost and expense, obtain and maintain the types and limits of insurance set forth in Exhibit "D" (attached hereto and by this reference incorporated herein) until the expiration of the period for correction of Services as set forth in Section 5.1.d.

Section 7.2. The Contractor shall, at Contractor's sole cost and expense, abide by all terms and conditions set forth in Exhibit "D" attached to this Agreement.

SECTION VIII – INDEMNIFICATION

To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to the City) the City, its officials, officers, employees, agents and independent contractors serving in the role of City's officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with the Services or any work undertaken or in connection with this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. Contractor shall pay and satisfy any judgment, award, or decree that may be rendered against City or its directors, officials, officers, employees, volunteers, and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents, or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its directors, officials, officers, employees, agents, or volunteers. Notwithstanding the foregoing, to the extent Contractor's services are subject to Civil Code section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

SECTION IX – GENERAL PROVISIONS

Section 9.1. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY: CITY OF HUGHSON
POST OFFICE BOX 9
HUGHSON, CA 95326
ATTN: CITY MANAGER

CONTRACTOR: [CONTRACTOR NAME]
[CONTRACTOR ADDRESS]
[CITY, STATE ZIP]
ATTN: [OFFICIAL], [OFFICIAL TITLE]

Section 9.2. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

Section 9.3. Waiver. It is expressly understood and agreed that a waiver of any of the conditions or covenants of this Agreement shall not be considered a waiver of any of the provisions hereof.

Section 9.4. Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Section 9.5. Governing Law; Forum. This Contract shall be governed by the laws of the State of California, regardless of where it was executed. Any dispute that arises under or relates to this Agreement (whether contract, tort, or both) shall be resolved in a superior court located in Stanislaus County, California.

Section 9.6. Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

Section 9.7. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

Section 9.8. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. City and Contractor each warrants to the other that the individual or individuals who have signed this Agreement on the behalf of City or Contractor, as the case may be, has or have the legal power, right, and authority to make this Agreement and bind each respective party.

Section 9.9. Attorney Fees. In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks

a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

Section 9.10 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF HUGHSON,
a California municipal corporation

[CONTRACTOR]

By: [OFFICIAL NAME]
Its: CITY MANAGER

By: [CONTRACTOR OFFICIAL NAME]
Its: [CONTRACTOR OFFICIAL TITLE]

Date: _____

Date: _____

Approved as to form:

By: [OFFICIAL]
Its: CITY ATTORNEY

Date: _____

EXHIBIT A

PROJECT DESCRIPTION:

SCOPE OF SERVICES:

EXHIBIT B

PAYMENT – SCHEDULE OF VALUES:

EXHIBIT C

COPY OF PUBLIC CONTRACT CODE SECTIONS ON CLAIMS RESOLUTION PROCEDURES AND CIVIL ACTION PROCEDURES (as of January 2019)

20104.2 Claims; requirements; tort claims excluded

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1

(commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

20104.4 Civil Action Procedures; mediation and arbitration; trial de novo; witnesses

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

EXHIBIT D

INSURANCE PROVISIONS

SECTION 1 REQUIRED INSURANCE COVERAGES FOR CONTRACTORS AND SUBCONTRACTORS

SECTION 1.1 Contractor, and each subcontractor, throughout the term of the Project, or longer as required below, will procure and maintain in full force and effect, at its sole cost and expense, the following insurance with limits not less than specified herein or as required by law, whichever is greater:

(a) Workers' Compensation Insurance

(i) **Minimum Scope and Limits.** Workers' Compensation Insurance with employer's liability insurance with limits of the following:

Coverage A. Statutory Benefits - State of Hire

Coverage B. Employers' Liability of not less than:

Bodily Injury by accident: \$1,000,000 each accident

Bodily Injury by disease: \$1,000,000 policy limit

Bodily Injury by disease: \$1,000,000 each employee

(ii) **Waiver of Subrogation.** Worker's Compensation Insurance must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against City and City's lender(s). A waiver of subrogation shall be effective as to any person even if such person (A) would otherwise have a duty of indemnification, contractual or otherwise, (B) did not pay the Worker's Compensation Insurance premium directly or indirectly, and (C) does or does not have an insurable interest in the property damaged.

(b) Automobile Liability

Insurance to include coverage equivalent in scope to ISO form CA 00 01 with not less than \$1,000,000 combined single limit, each accident covering all owned, hired and non-owned autos. If Contractor or any subcontractor does not have any company-owned vehicles, a copy of the declaration page from the personal auto liability policy of the principal(s) of Contractor or each subcontractor making such claim will be acceptable. Hired and non-owned auto coverage of Contractor and each subcontractor must be evidenced through a general liability policy or auto policy.

(c) Comprehensive/Commercial General Liability for Construction Manager and Contractor

(i) **Minimum Limits.** Contractor shall carry Comprehensive General Liability or Commercial General Liability insurance ("CGL") covering all operations by or on behalf of Contractor providing CGL coverage (equivalent in coverage to ISO form CG 00 01) for bodily injury and property damage, shall not be less than:

Each Occurrence Limit	\$2,000,000
Personal Advertising Injury Limit	\$1,000,000
Products and Completed Operations	\$2,000,000
General Aggregate Limit	\$4,000,000

endorsements: (ii) **Minimum Scope.** The policy must include the following scope or

1. Standard ISO CG0001 10 01 Contractual Liability coverage, or its equivalent.
2. Separation of Insureds clause.
3. Broad Form Property Damage coverage.
4. A Waiver of Subrogation, to apply in favor of City and any City lender(s).
5. Coverage must be on an "occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable.
6. Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy.
7. Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU).
8. The CGL policy may not be subject to a self-insured retention ("SIR") or deductible that exceeds \$25,000. In the event City has been notified of a claim arising from the Project, City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. In the event the amounts owed to Construction Manager or Contractor is insufficient to meet the SIR/deductible or the Project is completed, City shall be entitled to deduct the remaining balance of the SIR/deductible from amounts owed to Contractor for its work. If any policy is subject to a SIR, then such SIR shall contain or be endorsed to provide that the SIR may be satisfied through payments made by (A) the named insured, or (B) City or (C) any additional insureds, co-insurers, and/or insureds other than the First Named Insured. The policy must also state that the Allocated Loss Adjustment Expenses will satisfy the SIR or deductible.

(iii) **Additional Insured Endorsements.** The Contractor will obtain an Additional Insured Endorsement naming the City and its lender(s) as an additional insured.

(d) CGL for Subcontractors.

(i) **Minimum Limits.** Subcontractors are required to obtain CGL insurance coverage with CGL coverage (equivalent in coverage to ISO form CG 00 01) for bodily injury and property damage, shall not be less than:

	Insurance Limits
Each Occurrence	\$2,000,000
Personal Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$4,000,000

(ii) **Minimum Scope.** The policy must include the following provisions:

1. Standard ISO CG0001 10 01 Contractual Liability coverage, or its equivalent.
2. Separation of Insureds clause.
3. Broad Form Property Damage coverage, including completed operations, or its equivalent.
4. An Additional Insured Endorsement (equivalent to ISO form CG 20 10 11 85 or ISO form CG 20 10 10 02 (or earlier edition form), plus ISO form CG 2037 10 01) naming as additional insured: City and any City lender(s).
5. A Waiver of Subrogation, to apply in favor of City and any City lender(s).
6. Coverage must be on an "occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable.
7. Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy.

8. Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU).

9. There shall be no exclusion for attached, residential or condominium projects.

10. Products and Completed Operations coverage shall be maintained for the longer of (a) ten (10) years following completion of the Contractor's work or in the case of subcontractors, the subcontractors' work, and (b) the applicable statute of limitations and/or repose for the jurisdiction of the site of the Project.

11. There shall be no exclusion for subsidence.

12. There shall be no "pollution" exclusions or its equivalent.

(e) Professional Liability Insurance.

1. **Minimum Limits.** If Contractor or any subcontractor performs or contracts to perform any design/build work in connection with the Project, Contractor or such subcontractor, or its design subconsultant, must have Professional (Errors and Omissions) Liability insurance in limits not less than \$2,000,000 each claim and in the aggregate, with a deductible or SIR amount not greater than \$50,000.

2. **Minimum Scope.** Such insurance shall include prior acts coverage sufficient to cover the Services and the work in connection therewith, and contractual liability to cover liability assumed under the Agreement, or in the case of a subcontractor, the subcontract. Such policy may be written on a "claims made" basis provided that the policy has a retroactive date of placement prior to or coinciding with the commencement of any professional services performed on any part of the Services and is to be maintained during the term of the Agreement or any subcontract in connection with the Agreement, in the case of subcontractors, and for a period of ten (10) years after substantial completion of the Project. There shall be no exclusion for attached, residential or condominium projects, or public works projects. Such Contractor or subcontractor performing design/build Work is required to obtain evidence to City that their current Professional Liability policy has no impairment on the aggregate limits before commencing any design/build work.

(f) Property Insurance.

1. **Coverages.** Contractor and subcontractors performing work in connection with the Project are required to maintain Property Insurance coverage for physical damage (including loss of use therefrom), of their property, supplies and equipment (whether or not owned by them) that are not covered under the City's Builder's Risk Insurance. The policy should be maintained for the duration of this Agreement, or in the case of Subcontractors, their subcontracts, and shall continue until the Project is delivered to the City.

2. **Required Waivers.** Contractor and subcontractors performing work in connection with the Project shall have no recourse, and waive all rights of recovery, against the Indemnified Parties (and any Persons claiming through them) for any physical damage to any property, supplies or equipment of Contractor or

Subcontractors. Each policy shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the parties entitled to indemnification under Section VIII of the Agreement (and all persons or entities claiming through them), and against any other contractor or subcontractor for any monies paid under the said insurance policies. Contractor and each subcontractor performing work in connection with the Project shall cause its insurance carriers to consent to such waiver of subrogation.

3. **Additional Insureds.** The policy shall name the City and its lender(s) as an additional insureds and loss payees on the property insurance policies in connection with any material stored off-site by Contractor and/or any subcontractor.

4. In the event that materials or any other type of personal property of Contractor is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include theft, fire, vandalism, and use, including use by unauthorized persons.

SECTION 2 GENERAL INSURANCE REQUIREMENTS FOR CONTRACTOR AND SUBCONTRACTORS

SECTION 2.1 All insurance required under this Exhibit D shall be obtained at the sole cost and expense of Contractor, and/or subcontractors, and shall be maintained with insurance carriers properly licensed to do business in the California having a general rating of not less than an "A(-)" and financial rating of not less than at least an "VII" as rated in the most recent edition of A.M. Best's Insurance Reports or, if not rated by A.M. Best's Insurance Reports, then a comparable rating from a nationally recognized rating agency approved by the City. Contractor agrees to provide to City a full certified copy of any policy maintained by Contractor at City's request, and require the same of its subcontractors.

SECTION 2.2 If any subcontractor fails to secure and maintain the required insurance, City or Contractor shall have the right (without any obligation to do so) to secure same in the name and for the account of Contractor in which event Contractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. City shall notify Contractor if City exercises its right, whereupon Contractor's responsibility to carry such insurance shall cease and all the premiums and other charges associated with such insurance shall be refunded to City. City further reserves the right at any time, with thirty (30) days' written notice to Contractor, to require that Contractor resume the procurement and maintenance of any insurance for which City has elected to procure pursuant to this subsection; in such event, the sums paid to Contractor by City shall increase to the extent of any previously agreed and implemented reduction (as noted above) attributable to City's prior assumption of the particular insurance coverages. Such refund shall be equitably pro-rated based upon Contractor's completed Services at the time of such adjustment.

SECTION 2.3 All insurance policies must provide per the terms and conditions of the insurance policies a thirty (30) days' written notice to City of any cancellation, non-renewal or modification of any such policies and a ten (10) days' notice of cancellation for non-payment of premium to City. Contractor shall and shall require all Subcontractors to shall provide City with a copy of any notice of reduction or cancellation that they receive within five (5) business days of receipt of such notice. Contractor and each of its subcontractors shall supply City with updated replacement certificates of insurance and/or copies of insurance policies that evidence the continuation of all of the terms and conditions of the coverage, limits of protection, and scope of coverage as required by this Exhibit D.

SECTION 2.4 No act or omission of any insurance agent, broker or insurance company representative shall relieve Contractor of any of its obligations under the Agreement.

SECTION 2.5 Contractor or its subcontractors (or any combination thereof) shall not take any actions that would suspend or invalidate any of the required coverages during the time period such coverages are required to be in effect.

SECTION 2.6 Each insurance policy shall provide that any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided to City and all additional insureds.

SECTION 2.7 No Limitations on Coverage. The insurance limits herein are minimum levels of insurance only and nothing herein should be construed to limit the actual limits of insurance obtained by Contractor or its subcontractors. Should Contractor or its subcontractors obtain limits and coverages in excess of the minimum insurance requirements contained herein, then the limits in the policy shall apply to this Project.

SECTION 2.8 The Certificates of Insurance shall state "All Operations" of Contractor performed on behalf of City shall be covered by such insurance.

SECTION 2.9 City reserves the right, in its sole discretion, to require higher limits of liability coverage if, in City's opinion, operations by or on behalf of Contractor create higher than normal hazards, and, to require Contractor to name additional parties in interest to be an additional insureds, and included in any required Waiver of Subrogation, Notice of Cancellation, or other endorsement. If City exercises the right to require higher limits, City and Contractor shall negotiate an equitable adjustment through a change order.

SECTION 2.10 Nothing in this Exhibit D shall reduce Contractor's, and any subcontractor's obligations under the Agreement. Contractor's (or any subcontractors') procurement and/or maintenance of insurance shall not be construed as a limitation of liability or as full performance of the indemnification and hold harmless provisions of the Agreement.

SECTION 2.11 Certificates of Insurance. Neither Contractor nor any subcontractor shall commence any Services or other work on or about the site of the Project including, without limitation, bringing any equipment or personnel onto the Project site, until such time as City has received, reviewed and approved evidence satisfactory to City that all mandatory insurance as specified in this Exhibit D has been obtained by such parties and that such insurance is in form and substance satisfactory to City. Prior to the commencement of the Services, Contractor and each subcontractor are required to provide certificates of insurance to City as evidence that policies specified in this Exhibit D are in full force and effect. Acceptance and/or approval by City of the insurance herein shall not be construed to waive or relieve Contractor or subcontractors from any obligations, responsibilities or liabilities under the Agreement. Certificates of insurance will be labeled and addressed as follows:

CITY OF HUGHSON
POST OFFICE BOX 9
HUGHSON, CA 95326
ATTN: CITY MANAGER

SECTION 2.12 Waiver of Right to Recovery. Contractor, and any subcontractor performing work in connection with the Project retained by or for Contractor, hereby waive all rights of recovery by subrogation, because of deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, and for any other reasons, against each other, City, and its elected officials, managers, officers, directors, agents, and employees, and any other

contractor, subcontractor or other person or entity performing work or rendering services on behalf of City in connection with the Project.

SECTION 2.13 Umbrella/Excess Liability Insurance. If excess/umbrella policies are used to meet the limits of liability requirement said policies shall be "following" form of the underlying primary policy. Evidence of such coverage shall be provided in the form of a certificate of insurance and endorsements in compliance with Section 2.11 before Contractor or any subcontractor commences work on the Project.

SECTION 2.14 Property Insurance. Where Property/Builder's Risk insurance is not purchased by City for the benefit of Contractor and any subcontractor performing work in connection with the Project, then Contractor and each subcontractor shall be fully responsible for all loss or damage to Contractor and/or each subcontractor's work, and Contractor and/or each subcontractor shall obtain Property/Builder's Risk insurance covering Contractor, and/or each subcontractor's work. Such insurance shall also apply to any of City's property in the care, custody, or control of Contractor and/or each subcontractor.

SECTION 2.15 All capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Agreement.