

VENDOR AGREEMENT FOR  
ANNUAL HEATING, VENTILATION AND AIR CONDITIONING (HVAC) SYSTEM  
PROGRAMMED MAINTENANCE AND SYSTEM REPAIR

This Agreement is made and entered into as of the 4<sup>th</sup> day of November, 2024 by and between the City of Foster City hereinafter called "CITY" and Thermal Mechanical, Inc. hereinafter called "VENDOR".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That CITY desires to engage VENDOR to provide a product and/or services to the CITY;
- B. That VENDOR is qualified to provide the product and/or services to the CITY and;
- C. That the CITY has elected to engage VENDOR upon the terms and conditions as hereinafter set forth.

- 1. A. Services. The services to be performed by VENDOR under this Agreement are set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of VENDOR under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

- B. Product. The product to be supplied by VENDOR under this Agreement is set forth in Exhibit A which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Timely delivery of the product specified in said Exhibit A is hereby made an obligation of VENDOR under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

- 2. Term; Termination.
  - (a) The term of this Agreement shall commence upon January 1, 2025 and shall expire upon December 31, 2027, unless extended at the CITY's

sole discretion for up to two (2) one-year (12 months) increments. CITY shall give VENDOR notice of its wish to renew at least 90 days prior to end of the existing term.

(b) Notwithstanding the provisions of (a) above, the City may terminate this Agreement without cause by giving written notice not less than thirty (30) days prior to the effective date of termination, which date shall be included in said notice. CITY shall compensate VENDOR for any product delivered and/or for services rendered, and reimburse VENDOR for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of CITY to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to CITY hereunder.

3. Compensation; Expenses; Payment. CITY shall compensate VENDOR for all products supplied or services performed by VENDOR hereunder as shown in Exhibit B attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sums indicated in Exhibit B, unless additional amounts have been approved in advance of supplying the product, performing the services or incurring the costs and expenses by CITY's City Council evidenced by motion duly made and carried.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon VENDOR meeting contract milestones as defined in Exhibit B. Billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. Additional Services. In the event CITY desires the delivery of additional products or performance of additional services not otherwise included within Exhibit A, such products or services shall be authorized in advance by CITY's City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the product to be delivered or services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.

5. Records. VENDOR shall keep and maintain accurate records of products delivered or of all time expended in performing services and costs and expenses incurred relating thereto. Said records shall be available to CITY for review and copying during regular business hours at VENDOR's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by VENDOR pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
8. Relationship of Parties. It is understood that the relationship of VENDOR to the CITY is that of an independent contractor and all persons working for or under the direction of VENDOR are its agents or employees and not agents or employees of the CITY.
9. Schedule. VENDOR shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the delivery of products or performance of services occasioned by governmental reviews of VENDOR's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, VENDOR's officers or employees.

VENDOR acknowledges the importance to CITY of timely delivery of products or services and agrees to put forth its best professional efforts to perform in a manner consistent with that schedule.

10. Indemnity. To the fullest extent allowed by law, VENDOR hereby agrees to defend, indemnify, and save harmless CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, CITY or Estero Municipal Improvement District, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of VENDOR, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of VENDOR to indemnify and save harmless, as set forth herein,

shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require VENDOR to indemnify CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

VENDOR's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

11. Insurance. VENDOR shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability insurance coverage relating to VENDOR's services to be performed hereunder covering CITY's risks in form subject to the approval of the City Attorney and/or CITY's Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to VENDOR's vehicle usage in performing services hereunder)

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the CITY as an Additional Insured. Furthermore, the requirements for

coverage and limits shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

VENDOR agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by VENDOR shall agree to be bound to VENDOR and CITY in the same manner and to the same extent as VENDOR is bound to CITY under this Agreement and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. VENDOR shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to the CITY prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, VENDOR shall, on the Insurance Coverage form provided in Exhibit D, or equivalent, furnish CITY with certificates and copies of all declaration and endorsement pages for the insurance policy or policies required hereunder. With respect to commercial general liability and automobile liability insurance coverage, VENDOR must obtain and provide the following original endorsements:

- (a) Precluding cancellation or reduction in per occurrence limits before the expiration of thirty (30) days (10 days for nonpayment) after CITY shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;
- (b) Naming the CITY and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and
- (c) Providing the additional insured coverage under VENDOR's insurance policy shall be primary and non-contributory insurance with respect to CITY and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by CITY for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of VENDOR's insurance and not contributory with it. VENDOR and its insurer may not seek contribution from CITY's insurance or self-insurance.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY, to the extent required by this Agreement, before the CITY's insurance or self-insurance may be called upon to protect CITY as a named Insured.

All self-insured retentions (SIR) must be disclosed to CITY for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named VENDOR/Named Insured or CITY.

CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall agree to be bound to VENDOR and CITY in the same manner and to the same extent as VENDOR is bound to CITY under this Agreement. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor's work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

VENDOR shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event VENDOR fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by VENDOR.

12. WORKERS' COMPENSATION. VENDOR certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and VENDOR certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
13. NON-DISCRIMINATION. The VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The VENDOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national

origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The VENDOR shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The VENDOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

14. Notice. All notices required by this Agreement shall be given to the CITY and VENDOR in writing, by first class mail, postage prepaid, addressed as follows:

CITY: City of Foster City  
610 Foster City Boulevard  
Foster City, CA 94404-2299  
Attention: Building and Vehicle Maintenance Manager Kurt Zander

VENDOR: Name Thermal Mechanical  
Address 425 Aldo Avenue  
City, State, Zip Santa Clara, Ca 95054  
Attention: Wayne Shipley  
Email Address:wshipley@thermalmech.com

15. Non-Assignment. This Agreement is not assignable either in whole or in part.
16. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
17. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
18. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
19. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making

a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.

20. Conflict of Interest. VENDOR may serve other clients, but none who are active within the City of Foster City or who conduct business that would place VENDOR in a "conflict of interest" as that term is defined in State law.
21. Reliance on Professional Skill of VENDOR. VENDOR represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the VENDOR to do and perform the work. In performing services hereunder VENDOR shall adhere to the standards generally prevailing for the performance services similar to those to be performed by VENDOR hereunder.
22. PREVAILING WAGES. The services to be performed, and specifically repair services, include public works within the meaning of Labor Code Sections 1720 through 1861, and VENDOR must comply with state laws pertaining to prevailing wage and labor requirements, as more fully described in Exhibit E attached hereto and incorporated in this Agreement by reference.
21. Entire Agreement. This Agreement, including Exhibits A, B C, D, and E, comprises the entire Agreement.

[Signatures on Next Page]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: \_\_\_\_\_

\_\_\_\_\_  
Patrick Sullivan, Mayor

ATTEST:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: \_\_\_\_\_

\_\_\_\_\_  
Benjamin Stock, City Attorney

VENDOR

Dated: \_\_\_\_\_

\_\_\_\_\_  
David Rood, President

## EXHIBIT A

### SCOPE OF WORK and SCHEDULE FOR

### ANNUAL HEATING, VENTILATION AND AIR CONDITIONING (HVAC) SYSTEM PROGRAMMED MAINTENANCE AND SYSTEM REPAIR

Locations to Be Serviced:

Location Name	Address	Annual Service Frequency	HVAC Units	Boiler Units	Exhaust Fan Units
Controls Annual Maintenance	All Buildings	1x	NA	NA	NA
Police Station	1030 E. Hillsdale Bl.	4x	17	0	4
Council Chambers	620 Foster City Bl.	3x	10	0	2
City Hall	610 Foster City Bl.	4x	6	2	6
Library/Community Center	1000 Shell Bl.	4x	2	1	3
Corporation Yard	100 Lincoln Centre Dr.	4x	2	1	5
Teen Center	670 Shell Bl.	3x	4	0	4

\* \*Service may not be required depending upon the building demolition and construction schedule

### **PART A: PROGRAMMED MAINTENANCE TASKS**

#### **PACKAGE AIR CONDITIONING UNITS & HEAT PUMPS**

1. Lubricate fan bearings per manufacturer's recommendation.
2. Check belts and sheaves, adjust as required.
3. Check coils for leaks.
4. Lubricate dampers and linkages.
5. Check drain pan and drains.
6. Inspect filters and change quarterly.
7. Check motor operating conditions.
8. Inspect electrical connections, contactors, relays, and operation/safety controls.
9. Check compressor oil level if accessible.
10. Check crankcase heater operation.
11. Start compressor. Check operation conditions.
12. Secure unit panels and inspect roof curb flashing.
13. Inspect temperature, safety and operational controls.
14. Check burner section for cleanliness and proper operation if applicable.
15. Check reversing valve operation if applicable.
16. Boiler Maintenance bi-annually

#### **CONDENSING UNITS — AIR COOLED**

1. Review manufacturer's recommendation for start-up.

2. Energize crank case heater per manufacturer's recommendation for warm-up.
3. Visually inspect for leaks.
4. Vent system of trapped air.
5. Inspect electrical connections, contactors, relays, and operating/safety controls.
6. Check compressor oil level.
7. Check and test all operation controls.
8. Check operation conditions.

### **FAN COIL UNITS**

1. Inspect motor.
2. Lubricate fan bearings
3. Inspect coil(s) for leak dependent on accessibility.
4. Inspect drain pan and trap.
5. Inspect belt and adjust tension.
6. Test operation unit internal on-off switch.
7. Clean or change filters per schedule.
8. Check condensate pump.

### **BOILERS**

1. Inspect fireside of boiler and record condition.
2. Brush soot and dirt from flues and combustion chamber.
3. Inspect firebrick and refractory.
4. Visually inspect boiler pressure vessel for possible leaks and record condition.
5. Inspect low-water cutoff, manifolds and tubes. Clean as necessary.
6. Check hand valves and automatic feed equipment.
7. Inspect burner, flame detector and combustion air equipment.
8. Check fuel piping for leaks and proper support.
9. Check burner sequence or operation and combustion air equipment.
10. Check fuel supply.
11. Check auxiliary equipment operation.
12. Inspect burner, boiler and controls prior to start-up.
13. Start burner, check operation controls.
14. Check compressor unit.
15. Inspect spark igniter and replaced as scheduled.
16. Inspect and clean manifolds and tubes as necessary.
17. Test safety controls.

### **EXHAUST FAN UNITS**

1. Inspect fan belts for wear and tension.
2. Check shaft bearing lubrication.
3. Remove exterior dust build-up on motor housing to ensure proper motor cooling.
4. Inspect electrical connections and operation/safety controls.
5. Check motor operation conditions.

### **BUILDING AUTOMATION SYSTEM**

Up to FOUR scheduled EIGHT-hour visits per year to accomplish the following:

1. Software maintenance, file maintenance and backups (on-site) and system optimization.
2. Investigation of reported problems from trouble log.
3. Control sequence evaluation, modification and enhancement.
4. Historical log review.
5. Field sensor verification and calibration spot checks.
6. Hardware communication tests and functional verification.
7. Control program and loop evaluation, modification and enhancement.
8. Hours of service: VENDOR shall be available for extra calls on a daily basis, five days per week, Monday through Friday. Standard hours are 7:00 am to 4:00 pm Monday through Friday.
9. Response time to an after-hours request must be within four hours.

Programmed Maintenance Project Schedule: As shown in chart above.

## **PART B: SYSTEM REPAIR**

As authorized by the City, perform repairs and preventative maintenance not covered in Part A of the Scope of work on existing whole system components, encompassing all system parts from package units to vents, as needed and authorized by City staff by written Task Order. Examples may include but are not limited to repair of leaks, replacement of failed parts, electrical issues, mechanical failures, valve replacement. Under no circumstances shall any single repair under this Agreement exceed a total cost, including time and materials, of \$60,000, or \$75,000, as may be approved by the Council after January 1, 2025.

System Repair Project Schedule: As needed and as requested by City Staff.

## EXHIBIT B

### VENDOR'S FEES and PAYMENT MILESTONES

#### Summary

Annual Programmed Maintenance Contract Services (Not to exceed amount):	\$28,277.00
System Repair Contract Services:	As authorized by City based on time and materials at hourly rates below not to exceed the sum \$150,000 (one hundred fifty thousand dollars) annually

#### Annual Increases

After the first calendar year of the Term of the Agreement, and after each subsequent year, including extensions pursuant to Section 2 of the Agreement, the not-to-exceed compensation paid to VENDOR for Programmed Maintenance shall increase 2.6%.

#### Itemized Fees

In addition to routine and preventative maintenance, VENDOR shall utilize the Hourly Labor and materials rate for unforeseen repairs to the system up to the City Manager's, or their designee's signing authority, which is currently \$60,000, but may be increased by the City to \$75,000 as of January 1, 2025.

#### Project Payment Schedule

##### Milestone

- For Programmed Maintenance: Upon billing for service at rates based upon proposal; separate bills for each building and each service
- For System Repair: Upon billing for service at time and materials cost at rates shown below. Invoices shall specify the building location of the work and specify work undertaken, number of hours, hourly rate for all personnel, materials used and cost for materials. The cost of materials shall be paid by the City upon documentation of such costs, plus Vendor's markup of 20%.

#### Hourly Labor Rates for System Repair/Preventative Maintenance of Existing Equipment

	Days of Week/Time of Day	Rate Per Hour Journeyman	Annual Increase to Rate
Standard Rate	Monday-Friday	\$198.00	%2.6
Overtime Rate	Monday-Sunday	\$277.20	%2.6
Holiday Rate		\$277.20	%2.6

**EXHIBIT C**  
**ADDITIONAL TERMS and CONDITIONS**

1. **VENDOR MUST BE A DELTA DIGITAL CONTROLS DISTRIBUTOR** or provide Delta parts pricing and controls service staff info with proposal.
2. Service representative must check in with City Staff when on-site for scheduled service.

## EXHIBIT D INSURANCE

VENDOR shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in herein on the attached form. No substitute form will be accepted.

This is an Exhibit to, and made a part of and incorporated by reference to the Agreement dated [Date of Agreement](#), by and between Thermal Mechanical, Inc., hereinafter referred to as "**Vendor**", and the City of Foster City, hereinafter referred to as "**City**", providing for professional services.

1. **Vendor's Duty to Show Proof of Insurance.** Vendor, in order to protect City and its Council members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Vendor's acts, errors, or omissions in connection with the performance of Vendor's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Vendor shall not perform any work under this Agreement until Vendor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the City's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Vendor shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, Vendor shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Vendor shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Vendor or City as an additional insured.

### 1.1 Insurance Requirements

#### ☒ Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City ), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Vendor's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Vendor shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence and four million dollars (\$4,000,000) aggregate.

\*Please note, the City will require a separate additional insured endorsement for the Commercial General Liability policy, listing the "City of Foster City, its Council members, officials, agents, officers, and employees".

#### ☒ Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence.

☒ Workers' Compensation Insurance

VENDOR shall submit written proof that VENDOR is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. VENDOR shall require any Subcontractors to provide workers' compensation for all of the Subcontractors' employees, unless the Subcontractors' employees are covered by the insurance afforded by VENDOR. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, VENDOR shall provide and/or require each Subcontractor to provide adequate insurance for the coverage of employees not otherwise covered. Vendor shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

☐ Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.

☐ Installation Floater

Installation Floater, covering the work performed under this Contract, against all risks of direct physical loss. The policy shall cover the Contractor's labor, materials and equipment, including materials and equipment in transit or away from the project site, to be installed in the existing structure(s). The coverage shall be written for an amount equal to the initial contract amount plus the value of any subsequent change orders, subject to a deductible of not more than [\$10,000] payable by Contractor.

☐ Cyber Liability Insurance

Cyber Liability Insurance, covering network risk and cyber liability (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in an amount of not less than \$1,000,000. Such insurance shall be maintained in force at all times during the term of the Contract and for a period of two years thereafter for services completed during the term of the Contract.

1.2 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to City and must be approved by the City Risk Manager.

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Vendor, at Vendor's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **City as Additional Insured**

On Vendor's Commercial General Liability and Automobile policies, the City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be



provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

### **3. Insurance terms and conditions:**

#### **3.1 Cancellation of Insurance**

The above stated insurance coverages required to be maintained by Vendor shall be maintained until the completion of all of Vendor's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Vendor shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Vendor in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Vendor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

3.2 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the City Risk Manager.

3.3 If Vendor is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Vendor shall provide coverage equivalent to the insurance coverages and endorsements required above. The City will not accept such coverage unless the City determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Vendor is equivalent to the above-required coverages.

3.4 For any claims related to the Agreement, the Vendor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

3.5 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Vendor for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

3.6 Failure by Vendor to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Vendor. City, at its sole option, may terminate this Agreement and obtain damages from Vendor resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Vendor, City shall deduct from sums due to Vendor any premiums and associated costs advanced or paid by City for such insurance. If the balance of monies obligated to Vendor pursuant to this Agreement are insufficient to reimburse City for the premiums and any associated costs, Vendor agrees to reimburse City for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by City to take this alternative action shall not relieve Vendor of its obligation to obtain and maintain the insurance coverages required by this Agreement.

3.7 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

3.8 City may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Vendor and its subcontractors shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Vendor's fees under this Agreement (and the fee of its subcontractors under subcontractor agreements) shall be reduced by the amount of insurance premiums that may be avoided by Vendor and its subcontractors by virtue of the City's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of Vendor's and subcontractors policies. Construction Manager and its subcontractors shall afford City access to their books and records and cooperate with City in verifying the amount of savings realized.

## **ATTACHED**

1. Insurance Coverage Form

## EXHIBIT D

This **INSURANCE COVERAGE FORM** modifies or documents insurance provided under the following:

Named Insured: \_\_\_\_\_ Effective Work Date(s): \_\_\_\_\_

Description of Work/Locations/Vehicles: \_\_\_\_\_

**ADDITIONAL INSURED:** **City of Foster City/Estero Municipal Improvement District (CITY)**

**610 Foster City Boulevard, Foster City, CA 94404**

**Attention:** \_\_\_\_\_, **Contract Administrator**

Endorsement and Certificates of Insurance Required		Insurer	Policy No.
<b>The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)</b>			
<input type="checkbox"/>	<b>General Liability:</b> (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}		
<input type="checkbox"/>	<b>Auto Liability:</b> the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.		
<input type="checkbox"/>	<b>Other:</b>		
<b>Certificates of Insurance Required (no endorsement needed) (Check all that apply)</b>		<b>Insurer</b>	<b>Policy No.</b>
<input type="checkbox"/>	<b>Workers Compensation:</b> work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.		
<input type="checkbox"/>	<b>Professional Liability:</b>		

**PRIMARY/NON-CONTRIBUTORY:** This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

**SEVERABILITY OF INTEREST:** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

**PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS:** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

**CANCELLATION NOTICE:** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

**WAIVER OF SUBROGATION:** The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

**Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.**

**SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER**

I, \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

**SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)**

**ORGANIZATION:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** (     ) \_\_\_\_\_ **DATE ISSUED:** \_\_\_\_\_

**Exhibit E**  
**LABOR CODE REQUIREMENTS FOR PUBLIC WORKS PROJECTS**

1. **Public Works Project/ Prevailing Wage.** The work to be performed under this Agreement is for “Public Works” within the meaning of Labor Code Sections 1720 to 1861. CONTRACTOR must therefore comply with state prevailing wage and labor law (California Labor Code Sections 1720 to 1780, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000) for work performed under this Agreement. CONTRACTOR’s obligations under prevailing wage and labor compliance laws include, among other things, to: pay at least the applicable prevailing wage and travel and subsistence payments for public works activities performed under this Agreement; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law. Copies of the applicable prevailing wage rates are on file with the CITY’s Project Manager, and shall be made available to any interested party upon request. CONTRACTOR shall ensure that the above requirements are included in all its contracts and any lower tier subcontracts for activities for the Project.
2. **Registration with Department of Industrial Relations.** This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR must be registered with the Department of Industrial Relations under Labor Code section 1725.5 when bidding and throughout performance of this agreement.
3. **Wage Rates.**
  - 3(A). It shall be mandatory upon CONTRACTOR and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that CONTRACTOR shall, as a penalty to CITY, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Agreement by CONTRACTOR or by any subcontractor; and CONTRACTOR agrees to comply with all provisions of Section 1775 of the Labor Code.
  - 3(B). The CITY will not recognize any claim for additional compensation because of the payment by the CONTRACTOR of any wage rate in excess of the prevailing wage rate set forth in the Agreement. The possibility of wage increases is one of the elements to be considered by the CONTRACTOR in determining its bid, and will not under any circumstances be considered as the basis of a claim against the CITY on the Agreement.
4. **Payroll Records.** The CONTRACTOR and each subcontractor must comply with Labor Code Section 1776 and all requirements of contractors stated therein for the maintenance, inspection and certification of payroll records. The CONTRACTOR

and each subcontractor who fails to timely furnish payroll records or make the records available for inspection will forfeit to the CITY the penalty for non-compliance set forth in Labor Code Section 1776 for their respective failure.

5. **Discrimination**. The CONTRACTOR and each subcontractor must comply with the anti-discrimination requirements of Labor Code Section 1777.6.