

Sample License Agreement

VENDING CART LICENSE AGREEMENT

This LICENSE AGREEMENT (“Agreement”) entered into this _____ day of _____, (“Execution Date”), by and between the CITY OF SANTA MONICA, a municipal corporation (“City” or “Licensor”), and _____ (“Licensee”), is made with reference to the following:

RECITALS

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and Charter of the City.

B. Licensee is a Limited Liability Corporation (LLC) in good standing in the State of California.

C. In 201_, the City issued a Request for Proposals for Vending Cart Services for the Santa Monica Pier (“RFP”). The Licensee submitted its proposal to the City (“Proposal”) in response thereto. The RFP and Proposal are hereby incorporated by reference.

D. The City and Licensee desire to enter into this Agreement to allow the Licensee to operate a vending cart on the Santa Monica Pier upon the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM.

A. The term of this License shall commence on _____ (“Commencement Date”), and shall terminate on _____ (“Termination Date”) unless terminated earlier as set forth below.

B. Holdover Extension. If Licensee is in full compliance with the terms of this Agreement after the expiration of the Term, then the parties can mutually agree to extend this license on a month-to-month basis after the expiration of the Term.

2. GRANT OF LICENSE.

A. Purpose. The City hereby grants to Licensee a nonexclusive revocable license to sell certain permitted items consisting of _____ (“Permitted Items”) from one vending cart approved by the City on the Santa Monica Pier pursuant to the terms of this Agreement. No other activity or use is permitted other than sale of Permitted Items in the designated License Area, except as approved by the City in advance in writing. This

license does not constitute an estate or interest in real property and is merely a conditional, limited right to enter upon the License Area to sell Permitted Items.

B. Hours of Operation. Except as otherwise provided herein, Licensee shall operate the vending cart for the following minimum dates and minimum hours of operation.

(i) Minimum Dates of Operation. During the months of June, July and August, Licensee shall operate every day, seven (7) days per week; and from September through May, Licensee shall operate five (5) days per week, including weekends.

(ii) Minimum Hours of Operation. For each of the Minimum Dates of Operation, Licensee shall open its vending cart before 11:00 a.m. during the months of June through August, and shall open before 12:00 p.m. during the months of September through May. Carts must remain open a minimum of eight (8) hours each day ("Minimum Hours of Operation"). In the event of adverse weather conditions or other circumstances which reasonably prevent Licensee from open during the Minimum Dates of Operation or Minimum Hours of Operation, Licensee shall notify the City in writing within three (3) business days of closure.

3. LICENSE AREA AND USE.

A. License Area. Licensee may operate a vending cart approved by the City at a specific location on the Santa Monica Pier ("License Area") as designated by the City. The vending cart to be placed in the License Area shall be no more than 43 inches wide, 90 inches long and 84 inches high. The location of the License Area may be changed from time to time at the City's sole and complete discretion. This License includes the Licensee's reasonable right of access to the Santa Monica Pier and License Area, but the operation of the vending cart shall only take place in the designated License Area. Licensee shall not use any other City premises or property not specifically permitted pursuant to this Agreement.

B. Use. The License Area is to be used only for the operation of an approved vending cart to sell Permitted Items on the Santa Monica Pier. Prior to the implementation of any vending cart, the City has the right to review and approve vending cart. No vending cart shall be permitted onto the Santa Monica Pier without the prior written approval of the City. Any other use of the License Area is prohibited.

C. Standards. Licensee shall comply with all standards imposed by the City for the operation of the vending carts in order to maintain a certain aesthetic standard and balance of activities throughout the Santa Monica Pier in accordance with the continually changing commercial environment at the Santa Monica Pier, including, but not limited to, the Santa Monica Pier Vending Cart Guidelines, which may be modified from time to time by the City. The City shall have the right to periodically review all aspects of the business to be conducted by Licensee from the License Area, and to approve, disapprove, or require changes to any of the following:

- (i) Vending cart design, style, structure and quality of construction of any equipment and furnishings used by Licensee;
- (ii) Any signage or advertising on the vending cart;
- (iii) Permitted Items sold from the vending cart;
- (iv) Pricing for each Permitted Item;
- (v) The manner of dress and appearance of Licensee, its agents, representatives and employees;
- (vi) The location of the License Area; and
- (vii) Any other standards set forth by the City in its reasonable discretion.

D. Additional Standard for Food Carts. Licensee acknowledges that the health and safety of the Pier guests are paramount, and shall operate in a high quality and reputable manner. All public health inspection reports shall be forwarded to the Landlord. A designation from the Los Angeles County Department of Health of less than an "A" more than three times during the term of the lease, except to the extent that any such rating is restored to an "A" within 30 days of lowering, shall constitute an Event of Default and breach of license.

4. ADMINISTRATOR.

The City reserves the right to designate any other organization, agency, or specific City Department to act on the City's behalf as Administrator of this Agreement. Such Administrator shall have all rights and responsibilities as specified under this Agreement.

5. LICENSE FEE.

A. Monthly License Fee.

The Monthly License Fee shall be adjusted annually to include a Consumer Price Index increase as defined herein of no less than three percent (3%) and no greater than five percent (5%) as of each successive anniversary of the Commencement Date for the remainder of the Term. The terms "Consumer Price Index" or "CPI" shall mean the percentage increase in the cost of living index as measured by the Consumer Price Index for All Urban Consumers, All Items - Los Angeles - Anaheim - Riverside, Orange County, California, published by the Bureau of Labor Statistics of the United States Department of Labor (1982-1984 = 100). In the event the CPI shall hereafter be converted to a different standard reference base or otherwise revised, such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics shall be used, or if the Bureau of Labor Statistics shall not publish the same, then such conversion factor, formula or table selected by the City that may be published by any other nationally recognized publisher of similar statistical information shall be used.

The City shall, as promptly as practicable after the beginning of each such License Year, give notice to Licensee of the annual adjustment, if any, in the Monthly License Fee payable for such License Year as determined by the City. The City's computation thereof shall be conclusive and binding (except for mathematical error), but shall not preclude any further adjustment which may be required. Until receipt of City's notice, Licensee shall pay monthly installments of Monthly License Fee at the rate applicable to the immediately preceding License Year. If at the time of the City's notice the total of the monthly installments of Monthly License Fee actually paid by Licensee with respect to the elapsed portion of the current License Year is less than the amount of Monthly License Fee required to be paid for such period as indicated in the City's notice, Licensee shall immediately pay to the City the amount of the deficiency.

B. Rates and Form of Payments. The Monthly License Fee shall be paid, without set off or deduction, on or before the first day of each calendar month during the term of this License. Payment shall be made by check or money order payable to the City of Santa Monica, and shall be mailed or delivered to the following address:

City of Santa Monica Economic Development Division
1901 Main Street, Suite C
Santa Monica, CA 90405
Attention: Accounts Receivable

C. Proration. In the event this License is in effect for less than a full calendar month, the Licensee shall pay a pro rata portion of the License Fee for the fraction of the month that the License is in effect. In the event of construction performed by City maintenance staff or contractors causes the Licensee to close operation for more than one (1) full day, the Licensee may request a pro rata credit of the License Fee for the days Licensee was not permitted to open.

D. Invoices. In the event that the City or its Administrator provides an invoice to Licensee, this invoice shall be deemed a courtesy to the Licensee and the Licensee shall be obligated to pay a Monthly License Fee whether or not an invoice is provided.

E. Application of Payments. All payments received by the City from Licensee shall be applied to the oldest payment obligation owed by Licensee to the City. No designation by Licensee, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect.

F. Late Fees. Licensee acknowledges that late payments of its monetary obligations to the City will cause the City to incur costs not contemplated by this License. The exact amount of these costs will be extremely difficult to ascertain. Therefore, if Licensee fails to pay any of its monetary obligations to the City within ten (10) calendar days from the date the payment is due, late charges in the amount of ten percent (10%) of the unpaid amount shall be paid by the Licensee as Additional License Fees. Licensee shall pay this amount for each calendar month in which all or any part of any payment to the City remains delinquent for more than ten (10) calendar days after the due date. The parties agree that late charges represent a fair and reasonable estimate of the costs the City will incur for late payment of any monetary obligations. Acceptance of the late charges by the City shall not constitute a waiver of the Licensee's defaults

with respect to the overdue amount or prevents the City from exercising any of its rights and remedies pursuant to this License. Licensee shall pay the late charge as Additional License Fees at the time the next installment of License Fees is paid.

G. Licensee's Records. Licensee agrees that all business conducted by Licensee pursuant to this Agreement shall be operated so that a computerized point of sale record, duplicate sales slip, invoice or nonresettable cash register receipt, serially numbered, or such other device for recording sales shall be issued with each sale or transaction, whether for cash, credit or exchange. Licensee will keep and preserve for at least three (3) years after each License Year during the term of this Agreement a general ledger, required receipts and disbursement journals and such sales records and other supporting documentation together with original or duplicate books and records which shall disclose in detail all information required to permit the City to verify Licensee's gross sales and which shall conform to and be in accordance with generally accepted accounting principles.

H. Monthly Statements of Gross Sales. Licensee shall provide to the City, along with the Monthly License Fee, a written report signed by the Licensee, showing the gross sales made in the preceding calendar month. As used in this Agreement, the phrase "gross sales" means the actual sales price of all goods, foods, and merchandise sold and the actual charges for all such goods, foods and merchandise sold by the Licensee pursuant to this Agreement. Licensee shall give the City or its designated Administrator access, during reasonable business hours, to such records and accounts.

6. PERFORMANCE GUARANTEE DEPOSIT.

Concurrently with the Licensee's execution of this License, Licensee shall deposit with the City the sum of \$1,000 as a deposit for the performance of its obligations pursuant to this License ("Performance Guarantee Deposit"). If Licensee defaults on any of its obligations under this License, the City may, without prejudice to any other remedy it has, apply all or part of the Performance Guarantee Deposit to: (a) any amount that the City may spend to repair damage caused by Licensee or any of its employees or agents; or (b) any expense, loss, or damage that the City may suffer because of Licensee's default. If the City applies all or part of the Performance Guarantee Deposit, and if the City does not elect to terminate this License, the Licensee shall provide the City with sufficient funds to restore the full amount of the Performance Guarantee Deposit within ten (10) days after demand by the City. The City shall not be required to keep the Performance Guarantee Deposit separate from its general accounts, nor shall the City be required to pay Licensee interest on it. If Licensee performs all of Licensee's obligations under this License, the Performance Guarantee Deposit, or as much of it as has not been applied previously by the City, shall be returned to Licensee at the expiration of the term of this License, after Licensee has vacated the License Area.

7. EQUIPMENT.

All vending carts, including equipment and furnishings and the cost of their installation shall be provided at the sole expense of Licensee. All such equipment and furnishings provided by Licensee shall be deemed Licensee's personal property and may be removed by Licensee at

the termination of this Agreement. No furnishings or fixtures shall be installed in such a manner as to become permanently affixed to or a part of the License Area. The City shall provide and maintain electricity to the Licensed Area, if necessary. Licensee shall, at its sole cost and expense, ensure that use of the License Area will not cause a safety hazard.

8. MERCHANDISE.

All merchandise sold or kept for sale by Licensee shall conform to federal, state, county, and municipal laws, ordinances and regulations in all respects. No adulterated, misbranded merchandise shall be sold or kept for sale by Licensee. All merchandise shall be stored and handled with due regard for sanitation. Licensee shall not sell or give away any commodity that in the opinion of the City or its designated Administrator will cause undue litter on or around the License Area. The City reserves the right to approve the products offered for sale by the Licensee. The Licensee agrees to withdraw from sale any items disapproved by the City. The City in writing must first approve changes to the approved list of items to be sold. The Licensee shall, at all times, display to the public on the Premises a list of the prices for the sale of all items.

Licensee shall operate the vending cart in such a manner as to prevent the filing of any mechanics' liens, and other liens, and liens for labor, services, supplies, equipment, or material incurred by it, and Licensee will at all times fully pay and discharge and wholly protect, defend and hold harmless the City on account of said liens, claims assertions, or filing thereof.

9. MAINTENANCE.

Licensee, at its own expense, shall keep the vending cart and cart License Area in a clean and sanitary condition. Upon expiration of this Agreement, or any extension thereof, Licensee shall return the License Area to the City in as good a condition as of the Commencement Date of this Agreement, less reasonable wear and tear. No boxes, barrels, or rubbish in any form shall be kept, piled, or stored in the License Area or surrounding areas unless approved by the City or its designated Administrator. If Licensee does not maintain such areas and fails to correct any unsanitary condition within 48 hours after being notified in writing to do so by the City or other governmental agency with jurisdiction, then the City, or its designated Administrator, may enter such areas and remedy the condition or conditions at the expense of the Licensee.

10. STORAGE OF RETAIL VENDING CARTS.

The City may, in its discretion, provide a storage area for the retail vending carts during the term of this Agreement, but shall be under no obligation to do so. The use of the storage area shall be at the Licensee's sole risk. By providing access to a storage area, the City does not assume any obligation for the vending carts or contents thereof or liability therefrom. No storage area shall be provided for food vending carts.

11. ALTERATIONS AND REPAIRS.

Licensee accepts the License Area and the storage area, if any, in "AS IS" condition and the City shall not be required to make any alterations, improvements or repairs therein or thereon. Licensee hereby waives any and all rights, any expressed or implied warranties concerning the condition of such areas. Licensee shall not make any changes to or remove any portion of such areas without first securing the City's written consent, which may be withheld in the City's sole discretion. All such approved changes or removals shall be at the sole expense of Licensee.

12. COMPLIANCE WITH ALL LAWS.

Licensee shall comply with all local, state and federal laws, statutes, ordinances, rules, regulations, orders or judicial laws, now or hereafter in effect ("Law"). This definition of Law shall include the rules, regulations, programs and guidelines of the City ("City Rules"), and shall include the Santa Monica Pier Vending Cart Guidelines, as may be modified from time to time. Licensee shall discontinue immediately any use which is declared by the City or any governmental agency to be in violation of Law.

13. INGRESS AND EGRESS.

The City or its designated Administrator reserves the right to enter upon the License Area covered by this Agreement at any and all times during the term of this Agreement.

14. TAXES.

The Licensee shall exonerate, indemnify, and hold harmless the City from and against, and shall defend the City from and against, and shall assume full responsibility for, payment of all wages or salaries and all federal, state, and local taxes or contributions imposed or required under the unemployment insurance, social security, income tax laws, worker's compensation laws, or other laws with respect to the Licensee's employees engaged in the performance of Licensee's obligations thereunder. Licensee shall pay any and all taxes upon personal property and improvements belonging to said Licensee and upon its possessory interests, if any, and Licensee shall pay all sales and other taxes levied against the operation of said business.

15. INSURANCE.

Insurance Requirements. Licensee must obtain insurance that, at a minimum, meets the requirements for insurance set forth in Exhibit A, Insurance Requirements and Verifications.

16. PERMITS AND LICENSES.

The Licensee shall be required to obtain any and all governmental permits or licenses that may be required from time to time in connection with the services to be performed under this

Agreement and the operation of the vending cart, including, but not limited to, a Santa Monica business license.

17. PROHIBITION AGAINST TRANSFER.

The parties hereby specifically agree that this License is personal to Licensee and that Licensee is prohibited from assigning all or any of its interests under or pursuant to this License to any other party or parties. The sale, assignment, transfer or other disposition of any of the issued capital stock of the corporation, if any, or the transfer of any general partner or corporation, which shall result in changing the control of the corporation, if any, shall be construed as an assignment of this Agreement. Any attempt to do so shall be null and void, and any purported assignee, sublessee, or transferee shall acquire no right or interest in this License. All required permits, licenses and any agreements related to the Licensee's operation must be in Licensee's name or it will be deemed a purported transfer of this License.

18. WAIVERS.

A waiver by the City of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

19. SECURITY INTEREST.

The City shall have a security interest upon and against all personal property belonging to the Licensee and used in connection with this Agreement to secure the payment of any and all sums due to the City pursuant to the terms of this Agreement. The City shall have the right to file such Uniform Commercial Code documents or other legal documents as may be necessary to perfect such security interest.

20. HOLD HARMLESS, DEFEND AND INDEMNIFICATION.

Licensee shall indemnify, defend and hold harmless the City, its City Council, boards and commissions, officers, agents and employees and the City's Administrator, its directors, officers, agents and employees (collectively "City") from and against any and all actions, causes of action, obligations, costs, damages, losses, claims, liabilities and demands of any nature whatsoever, including, but not limited to, reasonable attorneys' fees, regardless of the merit or outcome of any such claim or suit, arising from or in any manner connected to: (i) Licensee's use or possession of this License, the License Area or storage area, if any; (ii) the condition of the vending cart, equipment, furnishings, food, goods and merchandise; (iii) the exercise of the License by Licensee; (iv) the activities and operations of Licensee, its officers, agents, employees, Licensees, guests and invitees; and/or (v) furnishing or supplying work, services, materials, equipment or supplies in connection with the vending carts.

Notwithstanding any right or authority of the City to approve and disapprove of the use of the License Area by the Licensee, nothing herein shall be construed to imply that the City has or assumes or shall in any way be responsible for the operation of the vending cart or sale of

items by the Licensee from the License Area, or that the City is required to or shall inspect the vending cart and equipment of Licensee and operation of the vending cart and equipment by Licensee.

21. This Section Left Bank

22. INDEPENDENT CONTRACTOR.

It is understood and agreed that Licensee, in the performance of this Agreement, will be acting in the wholly independent capacity and not as agents, employees, partners, or joint ventures of the City.

23. DEFAULT AND TERMINATION.

A. Events Constituting Material Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this License: (i) Licensee's failure to pay License Fees or Additional License Fees as and when due; (ii) Licensee's vacating or abandoning of the License Area by failing to remain open for business for a period of at least three (3) consecutive days; (iii) Licensee's making of any arrangement or assignment of this License for the benefit of creditors; (iv) Licensee's becoming a "debtor" as defined in 11 U.S.C. Section 101; (v) the attachment, execution or other judicial seizure of any of Licensee's interest in this License; (vi) the discovery by the City that any financial or other information given by Licensee to the City was false or misleading in any respect; (vii) Licensee's failure to comply with the applicable Laws; (viii) Licensee's failure to comply with any vending standards promulgated by the City; (ix) Licensee's failure to obtain and keep all permits and licenses required by law; (x) Licensee's sale of any items other than Permitted Items pursuant to the terms of this Agreement; (xi) Licensee's sale of any items outside of the License Area; and (xii) Licensee's failure to otherwise abide by any of the terms and conditions of this License.

B. Notice and Opportunity to Cure. The City or its Administrator shall provide written notice to Licensee upon occurrence of an event of material default under the terms of this License, and Licensee shall cure the default within three- (3) calendar after receipt of notice. In the event of default other than a material default, Licensee shall have fifteen (15) days to cure. However, in the event that Licensee defaults in the performance of any covenant or obligation under this License two (2) or more times during the License term, notwithstanding that the defaults have been cured by Licensee, any further default shall be deemed an event of default without ability to cure and this License shall be deemed terminated upon notice from the City as set forth in this Section 23.

C. City's Remedies. In the event the Licensee fails or refuses to cure default, or upon repeated default as specified above, the City may:

- (i) Terminate this License upon three (3) days written notice;
- (ii) Maintain this License subject to enforcement of all of the City's rights and remedies under this License; and

(iii) Pursue any other remedy now or hereafter available to the City under the laws and judicial decisions of the State of California. Unpaid Monthly License Fees, Additional License Fees or any other monetary obligations of Licensee under the terms of this License shall bear interest from the date due at the maximum rate then allowable by law.

D. Termination for Cause. If Licensee fails to cure any default within the time specified in Section 23(B) or defaults two (2) or more times during the License term, then the City may terminate this License upon three (3) days written notice to Licensee.

E. Termination Without Cause. Either party has the right to terminate this License without cause upon ten (10) days written notice to the other party.

F. Obligations Upon Termination. Upon termination of the License, Licensee shall remove Licensee's vending cart and any other personal property from the License Area and storage area, if any. In the event Licensee fails to remove its vending cart or other personal property by the date of termination set forth in the written notice, the City may take exclusive possession of the License Area by removing the vending cart or personal property and storing the same at the expense of Licensee, without commencing any legal action or obtaining any court order therefore. Licensee shall be obligated to pay for any unpaid License Fees, Additional License Fees or any other monetary obligations Licensee has under the terms of this License with interest at the legal rate.

24. NOTICES.

All notices, demands, requests or approvals to be given under this Agreement, shall be given in writing and shall be deemed served when delivered personally, or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests or approvals from the Licensee to the City shall be addressed to:

City of Santa Monica

1901 Main Street Suite E.
Santa Monica, CA 90405
Attn.: Economic Development Manager

with a copy to:

Office of Pier Management
City of Santa Monica
200 Santa Monica Pier
Santa Monica, CA 90401

All notices, demands, requests or approvals from the City to Licensee shall be addressed to:

< LICENSEE >
< ADDRESS >
< ADDRESS >

25. RIGHTS LIMITED TO REVOCABLE LICENSE.

Notwithstanding anything contained in this License or the actions of the parties in the future, under no circumstances shall the License granted herein ripen into either a lease or easement (whether under claim of prescriptive right or otherwise).

26. INTERRUPTION OF LICENSE RIGHTS DUE TO EMERGENCY.

In the event of an emergency that jeopardizes the health, safety or welfare of the public or any individual, the City may remove Licensee from the License Area and regain possession of it without notice to Licensee. The exercise of the City's rights under this Section shall be at the City's sole and absolute discretion.

27. RELATIONSHIP OF PARTIES.

The relationship between the City and Licensee is solely that of the City and licensee. Both parties acknowledge the relationship is not of landlord and tenant, easement grantor and easement grantee, or any other relationship.

28. MERGER OF NEGOTIATIONS.

This License represents the full and complete understanding of every kind and nature whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof, and this License shall not be modified except upon the written agreement of both the City and Licensee.

29. NONDISCRIMINATION.

Licensee agrees not to discriminate against any individual because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, or condition of having AIDS, in connection with the License granted herein.

30. COST OF LITIGATION.

Should either party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses and such amount as is adjudged to be reasonable attorneys fees for the costs incurred by the prevailing party in such action or proceeding.

31. CAPTIONS OF CONVENIENCE.

The captions herein are for convenience only and are not a part of this Agreement and do not in any way limit, define or amplify the terms and provisions hereof.

32. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which original and all of which together constitute but one and the same document.

33. MERGER OF NEGOTIATIONS.

This Agreement represents the full and complete understanding of every kind or net whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof.

34. GOVERNING LAWS.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties hereunder, shall be interpreted and construed pursuant to the law of the State of California.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF SANTA MONICA,
a California municipal corporation

By: _____

City Manager

APPROVED AS TO FORM

Marsha Jones Moutrie,
City Attorney

ATTEST

Sarah P. Gorman
City Clerk

Licensee

By: _____

Its : _____
(Title)

Exhibit A.
Insurance Requirements and Verifications

Vendor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, employees or subcontractors.

Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering GCL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers’ Compensation:** Workers’ Compensation insurance as required by the State of California, with Statutory Limits and Employers’ Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease (see footnote #1).

If the Vendor maintains higher limits than the minimums shown above, the City of Santa Monica requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Santa Monica.

Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The City of Santa Monica, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Vendor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Vendor’s insurance at least as broad as Insurance Services Office Form CG 20 10 11 85.
 - b. **Primary Coverage:** For any claims related to this Agreement, the Vendor’s insurance shall be primary as respects the City of Santa Monica, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials, employees or volunteers shall be in excess of the Vendor’s insurance and shall not contribute with it.

- c. **Notice of Cancellation:** Each insurance policy required herein shall state that coverage shall not be cancelled except after notice has been given to the City of Santa Monica.
- d. **Waiver of Subrogation:** Vendor hereby grants to the City of Santa Monica a waiver of any right of subrogation which any insurer of said Vendor may acquire against the City of Santa Monica by virtue of payment of any loss. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Santa Monica has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Santa Monica for all work performed by the Vendor, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Santa Monica. The City of Santa Monica may require the Vendor to purchase coverage with a lower deductible or retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Santa Monica.

Verification of Coverage

Vendor shall furnish the City of Santa Monica with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Vendor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City of Santa Monica, at its sole option, may terminate this Agreement and obtain damages from the Vendor resulting from said breach. Alternatively, the City of Santa Monica may purchase such coverage (but has no special obligation to do so), and without further notice to the Vendor, the City may deduct from

sums due to the Vendor any premium costs advanced by the City for such insurance.

Subcontractors

Vendor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. All exceptions must be approved in writing by the Risk Manager.

Footnotes

1: Workers' Compensation insurance coverage is not required if the Vendor does not have employees. The Vendor must, however, execute the City's Workers' Compensation Coverage Exemption Declaration Form.