

MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT ("Agreement") entered into this ____ day of _____ between Tachus, LLC and their affiliated Companies (hereinafter referred to as "Contractor") with offices at 14850 Woodham Dr, Suite B-105, Houston, TX 77073 and the City of Shenandoah (hereinafter referred to as "City") located at 29955 IH-45 North, Shenandoah, Texas 77381. Contractor and City may be referred to in this Agreement individually as "Party" or jointly as "Parties."

WHEREAS, Shenandoah is a Class A municipality existing by virtue of the laws of the State of Texas; and

WHEREAS, the City desires to provide fiber optic cable access to its residents; and

WHEREAS, the City has existing infrastructure to accommodate fiber optic cable; and

WHEREAS, Tachus has the technical expertise to both construct and operate a high-quality fiber optic system in the City;

NOW, THEREFORE, in consideration of the mutual promises, conditions and agreements herein contained, the sufficiency of which is hereby acknowledged, Contractor and City hereby agree as follows:

1) AGREEMENTS. Contractor and City have entered into various agreements as follows:

1. EXHIBIT A - SERVICE LEVEL AGREEMENT
2. EXHIBIT B - MAINTENANCE AND OPERATION SPECIFICATIONS
3. EXHIBIT C - DUCT SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT
4. EXHIBIT D - DUCT SYSTEM LEASE AGREEMENT
5. EXHIBIT E - INTERNET SERVICE AREAS AND DUCT SYSTEM MAP
6. EXHIBIT F - SCHEDULE OF VALUES

2) Contractor and City anticipate in the future that they may enter into additional agreements. Contractor and City agree that the terms and conditions set forth in this Agreement shall control and govern all Work performed by Contractor for City or its Residents and control the performance of the parties with regard to all future agreements between the parties related to fiber to the home, with the exception of the contract to construct the fiber optic facilities in the City, the Duct, Construction Agreement. In the event that Contractor issues any delivery ticket, work order or other instrument whose terms supplement or are inconsistent with any of the terms or provisions of this Agreement other than the Duct Construction Agreement, such terms shall be unenforceable against City or its Residents and the terms of this Agreement shall control unless both Parties expressly identify this Agreement by date and expressly agree in writing to amend this Agreement.

3) INDEPENDENT CONTRACTOR. Contractor shall retain and exercise the authority and right to direct and control the manner in which all Work done under the agreements are performed; provided, however, that City retains the general right, but is in no way obligated, to observe Contractor in the performance of all Work contemplated hereunder. It is the express understanding and intention of the Parties that Contractor shall act as an independent contractor at all times, that no relationship of master and servant or principal and agent shall exist between City and any employees, agents, or representatives of Contractor. City shall have no right or authority to supervise, instruct, or give orders to any of Contractor's employees, agents, or invitees nor to the employees of any subcontractor of Contractor; all such persons shall remain under Contractor's direct and sole supervision and control at all times. Any communications by City or its employees shall be given only to Contractor's designated

superintendent or other person in charge for Contractor. In addition, Contractor agrees that upon completion of the Work, Contractor will restore the work site to its previous condition and remove all material, equipment, and waste.

4) OBLIGATIONS OF CITY. City shall be responsible as follows:

- a) **Payment.** City or residents, as applicable, shall pay Contractor for the Work, on the payment terms, and at the rates and prices stipulated in the relevant agreement, thirty (30) days from the date of receipt of the invoice. City’s payment of Contractor’s invoices shall not be construed as acceptance of the Work or prevent it from later filing claims against Contractor or waive City’s right to question, audit or contest the amount or correctness of any invoice or to recover money previously paid to Contractor. If there is a dispute, City shall have the right to withhold payment of the disputed amount or the right to pay the disputed amount without prejudice to its right to seek reimbursement at a later time.
- b) **Licenses and Consents.** City shall be responsible, at its own expense, for all licenses or consents of any local government or other local authority that shall be required for the purposes of this Agreement.

5) OBLIGATIONS OF THE CONTRACTOR

- a) **Performance.** To perform all of its obligations free of defects and in a good and workmanlike manner.
- b) **Internet Services.** Tachus is committed to “Net Neutrality”. Tachus agrees not block, throttle, or accept payments to prioritize internet traffic, and otherwise comply with the Service Level Agreement described herein.
- c) **City Service.** Tachus will provide 1Gb Internet Service to the following locations at no monthly recurring cost to the City. City agrees to provide access to any easements or right of ways as noted on Exhibit E as City Facilities Build path.

Location
i) City Hall – 29955 Interstate 45 North
ii) City Pool – 1619 Wellman Road
iii) City Park – 801 Maplewood Drive
iv) Thornwood Lift Station – 809 Thornwood Dr.
v) Research Forest Lift Station – 1340 Research Forest Dr.
vi) Toddler Park – 315 Shenandoah Dr.
vii) Parkgate Lift Station – 4 N Park Gate Reserve
viii) Water Plant #3/ Water Tower – 109 Honey Berry St.
ix) Water Plant #4 – 18971 David Memorial
x) Waste Water Treatment Plant- 302 Ed English
xi) Water Plant #2- 19249 David Memorial Dr
xii) David Memorial Lift Station – 19130 David Memorial Dr

The Water Plant #3/ Water Tower – 109 Honey Berry St. location will be connected to the existing Tachus owned Fiber Optic system and will not be owned by the City as part of the Shenandoah FTTH duct system.

Service at these locations will be delivered as a Cat6 cable handoff from a demarcation point located on the exterior of the building or location. The City is responsible for all electrical requirements at each location necessary for Tachus Internet service.

- d) **Future City Service.** Pursuant to the terms and conditions of this Master Services Agreement and its Exhibits, Tachus will make available 1Gb Internet Service to all single-family residents, existing and in the future, including single family residences located on the east side of I-45. City shall require any new builder or developer to provide a completed fiber optic duct system necessary to deliver Tachus’s Internet service

6) MAXIMUM CHARGES

- a) The maximum that Tachus will charge for residential service is \$85.00 per month, excluding taxes and government required charges. At the City's option, Tachus will charge and collect up to \$15.00 per month to be paid to the City.
- b) The maximum construction costs charged to the City will be \$1,500,000.00.

7) SAFETY. The parties to this Agreement shall conduct their respective operations with all due diligence and safety and in accordance with all applicable laws and good practices. Contractor agrees to inspect any materials received from City for use in the Work and to advise City of any defects determinable from a visual inspection. Contractor shall inspect the conduit provided by the City prior to beginning any construction and shall notify the City of any needed repairs. Unless Contractor provides the City with written notification of needed repairs, Contractor agrees to accept the conduit "as is".

8) WARRANTIES.

- a) Contractor represents and warrants that all Services shall be performed in a good and workmanlike manner in accordance with good practices; that all personnel shall be fully trained and shall perform the Work competently and safely; that Contractor has the expertise to perform the Services properly and shall exercise due diligence in performing the Services; and that Contractor will comply with all applicable laws, statutes, codes, rules and regulations, which are now or may become applicable to the Work covered by this Agreement or arising out of the performance of such Work.
- b) Contractor warrants that all Products furnished by Contractor, shall be new (unless otherwise agreed in writing), shall be free from defects, shall conform to the quality and specifications represented, and shall comply with all written specifications. Contractor warrants all its Products to be free of defects in material and workmanship for a period of twelve (12) months from the date of installation.
- c) Contractor warrants that it will comply with all applicable laws, rules, or regulations concerning drug and alcohol testing. Contractor will report to the City any violations of its drug and alcohol policies.
- d) In the event of a breach by Contractor under Article 5 or 7, Contractor shall promptly cure such breach. If Contractor fails to cure such breach within a reasonable time (not to exceed three (3) business days) after being notified of the breach in writing by City, City may cure such breach directly or through another contractor or city employees. Contractor shall reimburse City the reasonable and necessary costs incurred to cure such breach within thirty days after receipt of a written invoice from City.

9) LIENS. Contractor will furnish, on request, releases with respect to the Work and material furnished therefor, showing that all of the Work have been paid and that no claims, liens, or rights of liens exist by reason thereof against City or any property of City. Contractor shall defend, indemnify and hold City harmless from any such liens or other such claims arising out of or connected with the Work. On the construction phase of the project Contractor will provide, payment and performance bonds.

10) NO PLEDGING OF FOC: Under no circumstances will Tachus pledge the fiber to the home infrastructure located within the City owned duct system excluding all active electronics ("Fiber Assets") as repayment for any loan or in any other way pledge the Fiber Assets to any other lender or entity for any reason.

11) RELEASE, DEFENSE, INDEMNITY AND HOLD HARMLESS. In order to eliminate controversies between Contractor, City, and their respective insurers, Contractor and City agree to allocate between themselves responsibility for certain losses, involving personal injury, death and/or property damage, which may arise out of the performance of this Agreement. For the purposes of this Article 10 on indemnity, and this entire Agreement, the following definitions shall apply: "Affiliate or Affiliates" shall mean any Person controlling, controlled by, or under common control with a Party. The term "control" as used in the preceding definition means, with respect to a corporation, the right to exercise, directly or indirectly, fifty percent or more of

the voting rights attributable to the shares of the controlled corporation, and with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of such Persons' management or policies; "Contractor Group" shall mean Contractor, its Affiliates and subcontractors and all of such entities' officers, directors, employees, representatives, consultants, and agents; City shall mean City, its contractors and subcontractors of every tier (other than Contractor Group) and all of officers, directors, employees, representatives, consultants, and agents; "Claims" shall mean all claims, losses and expenses, including, without limitation, all costs, demands, damages, suits, judgments, fines, penalties, liabilities, debts, attorneys' fees, and causes of action of whatsoever nature or character, including Claims arising out of loading, unloading, ingress, and egress of cargo and personnel; "Person" shall mean an individual, partnership, joint venture, corporation, limited liability company, unincorporated organization, governmental body, or other entity; and "**REGARDLESS OF FAULT**" shall have the meaning set forth in Article 8)e). For the purpose of allocating risk, City and Contractor agree as follows:

a) **PERSONNEL**

- i) **CONTRACTOR SHALL BE RESPONSIBLE FOR AND RELEASE, DEFEND, INDEMNIFY AND HOLD CITY HARMLESS AGAINST ALL CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH BODILY INJURY, ILLNESS OR DEATH OF ANY MEMBER OF CONTRACTOR GROUP REGARDLESS OF FAULT.**
- ii) **CITY SHALL BE RESPONSIBLE FOR AND RELEASE, DEFEND, INDEMNIFY AND HOLD CONTRACTOR GROUP HARMLESS AGAINST ALL CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH BODILY INJURY, ILLNESS OR DEATH OF ANY MEMBER OF CITY REGARDLESS OF FAULT.**

b) **PROPERTY**

- i) **CONTRACTOR SHALL BE RESPONSIBLE FOR AND RELEASE, DEFEND, INDEMNIFY AND HOLD CITY HARMLESS AGAINST ALL CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE WORK FOR DAMAGE TO OR LOSS OR DESTRUCTION OF EQUIPMENT, VESSELS, OR OTHER PROPERTY OF ANY MEMBER OF THE CONTRACTOR GROUP REGARDLESS OF FAULT.**
- ii) **CITY SHALL BE RESPONSIBLE FOR AND RELEASE, DEFEND, INDEMNIFY AND HOLD CONTRACTOR GROUP HARMLESS AGAINST ALL CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE WORK FOR DAMAGE TO OR LOSS OR DESTRUCTION OF ANY PROPERTY OF ANY MEMBER OF THE CITY REGARDLESS OF FAULT.**

c) **TEXAS ANTI-INDEMNITY ACT**

IN SUPPORT OF THE MUTUAL INDEMNITY OBLIGATIONS CONTRACTOR ASSUMES IN THIS ARTICLE 8, **CONTRACTOR**, AS INDEMNITOR, AGREES, AT ITS OWN COST, TO OBTAIN AND MAINTAIN, FOR THE BENEFIT OF THE **CITY** AS INDEMNITEES, WHILE THIS AGREEMENT IS IN FORCE AND EFFECT, LIABILITY INSURANCE WITH MINIMUM LIMITS NOT LESS THAN **\$ 2,000,000.00**. IN SUPPORT OF THE MUTUAL INDEMNITY OBLIGATIONS CITY ASSUMES IN THIS ARTICLE 8, **CITY**, AS INDEMNITOR, AGREES, AT ITS OWN COST, TO OBTAIN AND MAINTAIN, FOR THE BENEFIT OF THE **CONTRACTOR (AND CONTRACTOR GROUP)** AS INDEMNITEES, WHILE THIS AGREEMENT IS IN FORCE AND EFFECT, LIABILITY INSURANCE WITH MINIMUM LIMITS NOT LESS THAN **\$2,000,000.00**. THE INSURANCE POLICIES REQUIRED BY THIS PROVISION SHALL SUPPORT BUT SHALL NOT LIMIT THE INDEMNITY OBLIGATIONS ASSUMED UNDER THIS ARTICLE 8 (EXCEPT TO THE EXTENT OTHERWISE MANDATED BY LAW).

- d) **NOTICES.** Contractor agrees to immediately notify the City of any claim, demand, or suit presented to or served upon it by any person or entity in connection with the performance of this Agreement. Notices to City to be provided to:

City of Shenandoah

Attn:
29955 IH-45 North
Shenandoah, TX 77381

Notices to Contractor to be provided to:

Tachus, LLC

Attn: Hal Brumfield
14850 Woodham Dr., Suite B-105
Houston, TX 77073

e) **APPLICATION OF INDEMNITIES.** THE PHRASE “REGARDLESS OF FAULT” SHALL, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED AND EXCLUDING GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF THE INDEMNITEE OR RELEASEE, MEAN THAT SUCH EXCLUSIONS OF LIABILITY AND RELEASES, DEFENSE OBLIGATIONS, AND INDEMNITIES HEREIN SHALL APPLY TO SUCH CLAIMS AND ANY LOSS, DAMAGE, EXPENSE, INJURY, ILLNESS OR DEATH WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY, ULTRAHAZARDOUS ACTIVITY, DEFECT OR “RUIN” OR OTHER CONDITION OF PREMISES, INCLUDING ANY CONDITIONS THAT PRE-EXIST THE EXECUTION OF THIS AGREEMENT, OR THE SOLE OR CONCURRENT NEGLIGENCE (ACTIVE OR PASSIVE) OR OTHER FAULT OF THE INDEMNITEES AND RELEASEES, AND SHALL EXTEND TO LIABILITY ASSUMED BY THE INDEMNITEE UNDER INDEMNITY PROVISIONS OF CONTRACTS WITH THIRD PARTIES. HOWEVER, IN THE EVENT CONTRACTOR BREACHES ANY OF ITS REPRESENTATIONS OR WARRANTIES, CONTRACTOR SHALL NOT BE ENTITLED TO OBTAIN DEFENSE OR INDEMNITY FROM CITY.

- 12) **INSURANCE.** Contractor shall at all times during the progress of any Work performed hereunder carry and maintain insurance for the benefit of the City of such insurance types and with such minimum limits as set out in Exhibit A-1 attached hereto. Before performance of any Work hereunder, or payment of any monies owed, Contractor shall furnish to City certificates (on the form attached as Exhibit A-2) evidencing coverage as specified and containing the unequivocal agreement on the part of their insurers to notify the Certificate Holder of the cancellation or any material changes of such coverage at least thirty (30) days before the effective date of such cancellation or change. Notwithstanding the foregoing, however, neither City’s acceptance of an incomplete or improper certificate, nor commencement of Work or payment for any Work hereunder, shall constitute a waiver of any rights of City. The minimum insurance requirements set forth in Exhibit A-1 attached hereto are separate from and are not intended in any way to limit the extent of Contractor’s indemnity obligations. Contractor further agrees that all of its insurance policies providing any coverage in any way relating to the Work, whether or not required by this Agreement, shall, with respect to the risks assumed by Contractor, waive subrogation against City, name City as additional insured (except for Workmen’s Compensation and Professional Liability coverages) on a broad form basis (with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) “ongoing operations,” (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent), and be primary as respects any other policy providing any coverage to City.
- 13) **FORCE MAJEURE.** Contractor shall not be liable for any delay or non-performance due to governmental regulation, labor disputes, hostile action, weather, fire, acts of God, third party act, third party failure or any other causes beyond Contractor’s reasonable control and ability to prevent or ameliorate the effects by the exercise of due diligence (any and all of which causes are referred to herein as “force majeure”). If performance is so delayed or prevented for more than thirty (30) days in any calendar year, City can immediately terminate the Work by written notice. Force majeure shall not, however, excuse payment by City for Work performed and personnel and equipment charges accrued prior to such termination.

14) **TERM**

Initial term is twenty (20) years from the Effective Date, and will automatically renew for successive five (5) year terms unless either Party provides notice to the other of its intent not to renew (180) days prior to the end of the then current Term (each a “Lease Term”).

15) DEFAULT BY TACHUS

- a) If Tachus defaults in any of the provisions of this agreement or ceases to provide services in accordance with its contractual obligations, the fiber optic cable will become the property of the City.

16) MISCELLANEOUS PROVISIONS.

- a) **Patent Indemnity.** Contractor shall be responsible for and release, defend, indemnify, and hold City harmless against any alleged or actual Claims for infringement of any license, patent, trademark, copyright or other intellectual property right brought against City wherein the alleged or actual infringement is based upon any equipment, Products or Services furnished by Contractor Group (including without limitation any process, equipment, machine, composition of matter, design, or Products manufactured or provided by or sold under the name of, or Services provided by, Contractor, or selected and approved by Contractor to be provided) under this Agreement. City shall provide Contractor with prompt notice of the commencement or threat of any such Claim, and City shall give Contractor the sole control of the defense of such Claim and all negotiations for the settlement or compromise thereof; and shall cooperate fully with Contractor in providing information, documentation, and fact witnesses relevant to such Claim. Contractor may not settle or compromise such an infringement Claim without the written consent of City if any settlement or compromise requires City to part with any right or make any payment or subjects City to any injunction or other obligation or would deprive City of the use of any allegedly infringing equipment, Product or Service. Subject to the foregoing, City shall have the right, but not the obligation, at its option and expense, to retain advisory counsel to represent its interests in defending any such Claim. In the event that any equipment, Products or Services furnished by Contractor are held to be infringing or their use is enjoined, Contractor shall, at its own expense, either procure for City the right to continue using such equipment, Products or Services, replace the same with non-infringing equipment, Products or Services, or modify such equipment, Products or Services so that they are no longer infringing.
- b) **Governing Law.** This agreement shall be governed by Texas law and venue of any dispute shall be in Montgomery County, Texas.
- c) **Entire Agreement; No Waiver.** This Agreement constitutes the entire understanding between the parties with respect to its subject matter and supersedes all prior agreements, negotiations and discussions of the parties in relation to its contents. Failure to enforce any or all of the terms and conditions of this Agreement in a particular instance or instances shall not constitute a waiver thereof or preclude subsequent enforcement thereof.
- d) **Assignment.** Tachus may not assign, license or subcontract all or any part of its rights and obligations under this Agreement without prior written consent from the City. If the City refuses to permit an assignment, license or subcontract of this agreement, Tachus and the City agree that the City will have the option to purchase the Fiber Assets for \$592,822 less 5% per year from the date of the execution of this agreement.
- e) **Insolvency** –In the event that Tachus becomes insolvent, files bankruptcy, files an assignment for the benefit of creditors or has a receiver appointed over its assets, then all of the FOC shall immediately become the property of the City without any further action on the part of Tachus or the City.
- f) **Contractor's Certification.** Contractor certifies to City that Contractor's employment practices comply with all applicable federal, state and local laws, regulations and executive orders.

g) Survival. Neither termination of the Contract nor City's acceptance of the Work or any part thereof will release the Parties from obligations which expressly or by their nature survive or extend beyond the Agreement, termination thereof, or any acceptance of the Work, including without limitation, all indemnity, warranty, confidentiality, insurance, and risk allocation provisions. This Article applies irrespective of how this Agreement is terminated, whether with or without cause.

h) Severability; Savings Clause. Any provision or term of this Agreement which is or may be void or unenforceable shall, to the extent of such invalidity or unenforceability, be deemed severable and shall not affect any other provision of this Agreement. Both parties agree that the exculpatory, indemnification and hold harmless provisions herein shall be modified or altered only insofar as required by a jurisdiction purporting to limit such provisions, it being the intention of both parties to enforce to the fullest extent all terms and conditions herein agreed to.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first written above.

City:

City of Shenandoah

By: _____

Name:

Contractor:

By: _____

Name: _____

Title: _____

EXHIBIT A-1
CONTRACTOR'S MINIMUM INSURANCE REQUIREMENTS

The following are Contractor's minimum insurance requirements under the Master Service Agreement between Contractor and City (the "Agreement"). All capitalized terms shall have the same meaning as set forth in the Agreement.

Insurance. Contractor shall comply with Article 9, if applicable, of the Agreement. Contractor shall, at Contractor's sole cost and expense, procure and maintain in full force and effect, and shall require its subcontractors to procure and maintain, at all times during the term of this Agreement, the minimum coverages and minimum limits as set forth in this Exhibit. In the event that Contractor voluntarily obtains additional insurance, City shall be entitled to the full benefits thereof (except to the extent otherwise mandated by applicable law). Upon request Contractor shall immediately provide certified copies of policies.

In addition to any other insurance obligations or requirements set forth in this Exhibit, and without limiting the indemnity obligations of Contractor or its insurers, at any and all times during the term of this Agreement, Contractor shall, at Contractor's sole cost and expense, procure and maintain in full force and effect, and shall require its subcontractors to procure and maintain, at all times during the term of this Agreement, sufficient insurance or City approved self-insurance (i) as may be required by law, and (ii) to protect Contractor and City from third-party claims arising out of or connected with the performance of Work hereunder.

- 1) **Insurers and Underwriters.** Insurers and underwriters shall be satisfactory to City, authorized to do business in the jurisdiction where the Work is to be performed, and have A.M. Best rating of at least A- and financial rating of at least VII.
- 2) **Primary and Noncontributory.** Whether required or not required by this Agreement, all insurance policies and coverages of Contractor shall extend to and protect City to the fullest extent. The amount of such coverage, including excess and umbrella insurance, shall be primary to, and receive no contribution from, any other insurance or self-insurance programs maintained by or on behalf of or benefiting City. **THE LIMITS AND COVERAGE OF THE INSURANCE OBTAINED BY CONTRACTOR SHALL IN NO WAY LIMIT THE LIABILITIES OR OBLIGATIONS ASSUMED BY CONTRACTOR.**
- 3) **Additional Insured.** All of Contractor's insurance policies, whether or not coverage is required by this Agreement, and excluding Worker's Compensation and Professional Liability, shall be endorsed to name City as additional insureds in accordance with Article 9, if applicable, of the Agreement.
- 4) **Waiver of Subrogation.** All of Contractor's insurance policies, whether or not coverage is required by this Agreement, shall be endorsed to contain a waiver on the part of the insurer, by subrogation or otherwise, of all rights against City. Endorsement shall be on a broad form basis substantially equivalent to ISO Form 'CG 24 04 11 85' with no limitations.
- 5) **Cancellation or Alteration.** All of Contractor's insurance policies, whether or not coverage is required by this Agreement, shall be endorsed to provide that they may not be materially altered or cancelled without at least thirty (30) days prior written notice to City.
- 6) **Premiums, Deductibles and Self Insured Retentions.** The cost for any and all premiums, deductibles and self insured retentions shall be solely for the account of Contractor. Deductibles and self insured retention amounts shall be disclosed on the certificate of insurance and subject to City's approval.
- 7) **Certificates of Insurance.** Prior to the commencement of any Work, Contractor shall furnish City with current certificates of insurance, on the form set forth on Exhibit A-2, or such other forms as provided or requested by City, evidencing the coverage and conditions required herein.

- a) In the event that Contractor fails to provide City with such certificates, City has the right, but not the obligation, after five (5) days written notice to Contractor, to obtain insurance on behalf of Contractor, and to charge the cost to Contractor or deduct the cost from payments to Contractor.
 - b) Failure by Contractor to acquire and/or maintain the insurance coverage and limits set forth in this Agreement shall not act, nor shall it be construed, as relieving Contractor from its obligations and responsibilities under this Agreement, including without limitation, Contractor's indemnification obligations hereunder. In the event Contractor fails to obtain any of the required insurance, Contractor shall itself be liable to City as an insurer to the same extent as if such insurance had been obtained.
 - c) City shall not be obligated to make any payments to Contractor until properly and fully executed certificate(s) have been provided to City; however, commencement of Work by Contractor or payment by City prior to receipt of a properly completed certificate shall not constitute a waiver by City of any rights in this Agreement.
- 8) Commercial General Liability Insurance.** Occurrence form with minimum limits of liability for bodily injury, death, and property damage of \$1,000,000 combined single limit per occurrence, and an aggregate annual minimum limit of \$2,000,000. Coverage shall include:
- a) Sudden and Accidental Pollution Liability, including cleanup costs;
 - b) Broad Form Blanket Contractual Liability specifically covering all liabilities and indemnifications assumed under this Agreement;
 - c) Personal Injury with no contractual liability exclusion;
 - d) Independent Contractors Coverage for work let or sublet, with no exclusions, restrictions or limitations;
 - e) Premises/Operations;
 - f) "Action Over/Indemnity Buyback" and deletion of any provisions that limit or exclude coverage of claims made by Contractor's employees against City on the basis of their employment relationship;
 - g) Products/Completed Operations;
 - h) Removal of any exclusions, restrictions, or limitation relating to explosion, collapse, or underground hazards;
- 9) Commercial Automobile Liability Insurance.** Minimum limits of liability for injury, death or property damage of \$1,000,000 combined single limit per occurrence; **Coverage** shall include:
- a) Owned, hired and non-owned vehicles;
 - b) Contractor's employees as Insureds.
- 10) Workers' Compensation and Employer's Liability Insurance.** In accordance with statutory requirements of the states in which Work is being performed and complying with federal laws and requirements, with minimum Employer's Liability limits of \$1,000,000 per accident. No substitute policies shall be permitted. At minimum, Coverage shall include:
- a) Occupational Disease;
 - b) Voluntary Compensation;
 - c) Alternate Employer and Borrowed Servant Endorsements in favor of City;
- 11) Umbrella / Excess Liability Insurance.** Umbrella/Excess Liability Insurance with minimum combined single limits of \$2,000,000. Coverage shall include:
- a) Coverage at least as broad and on a following form basis in excess of the underlying minimum coverages required in Section 8, 9, 10 of this Agreement;
 - b) Specifically include Contractor's contractual liability;
 - c) Aggregate limits, if any, shall apply separately to each annual policy period

12) Professional Liability Insurance. If the Work shall ever involve design, engineering, consulting or other professional services, Professional Liability Insurance with minimum limits of \$1,000,000 combined single limit.