

**DRAFT SERVICES AGREEMENT BETWEEN CITY OF SUNNYVALE AND  
CLEAN HARBORS FOR ON-CALL ROUTINE DISPOSAL AND EMERGENCY  
CLEANUP OF HAZARDOUS MATERIALS**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CLEAN HARBORS ("CONTRACTOR").

WHEREAS, CONTRACTOR has submitted a bid in response to the Invitation for Bids for Routine Disposal and Emergency Cleanup of Hazardous Materials (F18-166); and

WHEREAS, CITY has determined that the bid submitted by the CONTRACTOR is advantageous for the CITY, and that the CONTRACTOR possesses the skill and expertise to perform the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONTRACTOR

CONTRACTOR shall provide services in accordance with Exhibit "A" entitled "Scope of Services." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONTRACTOR agrees to assign {Project Manager's Name} to this project, to act in the capacity of Project Manager and personally direct the services to be provided by CONTRACTOR.

Except as specified in this Agreement, CONTRACTOR shall furnish all technical services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Contract Term

The term of this Agreement shall be three (3) years, beginning the date of Agreement execution. CITY shall have the option, at its sole discretion, to renew the Agreement for two (2) additional years. Should CITY decide to exercise its option to renew the Agreement, CITY shall give CONTRACTOR not less than thirty (30) days written notice prior to the date of termination of the Agreement or any later extension of the Agreement. Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Payment of Fees and Expenses

CITY agrees to pay CONTRACTOR, as full compensation for the services rendered pursuant to this Agreement, an amount not-to-exceed Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00), at the rate set forth in Exhibit "B. Total compensation shall not exceed Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00), unless upon written modification to this Agreement signed by both parties. CONTRACTOR shall submit progress payment invoices to CITY no more frequently than monthly to be paid in accordance with the procedures set forth in Exhibit "B" attached and incorporated by reference.

All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

4. No Assignment of Agreement

CONTRACTOR shall bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONTRACTOR from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONTRACTOR's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONTRACTOR from any liability under the terms of this Agreement.

5. Independent Contractor

CONTRACTOR is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONTRACTOR in connection with this Agreement will be employees of CONTRACTOR and not employees of CITY in any respect. CONTRACTOR is responsible for obtaining statutory Workers' Compensation coverage for its employees.

6. Standard of Workmanship

CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONTRACTOR's representations regarding its skills and knowledge. CONTRACTOR shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

7. Responsibility of CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONTRACTOR shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONTRACTOR's negligent performance of any of the services furnished under this Agreement.

8. Right of CITY to Inspect Records of CONTRACTOR

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONTRACTOR for the purpose of verifying any and all charges made by CONTRACTOR in connection with this Agreement. CONTRACTOR shall maintain for a minimum period of three (3) years from the date of final payment to CONTRACTOR or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONTRACTOR. Any expenses not so recorded shall be disallowed by CITY.

9. No Pledging of CITY's Credit

Under no circumstances shall CONTRACTOR have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

10. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONTRACTOR may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONTRACTOR shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

11. Indemnity

CONTRACTOR shall indemnify and hold harmless CITY and its officers, officials, employees and volunteers against any and all suits, claims, damages, liabilities, costs and expenses, including attorney fees, arising out of the performance of the work described herein, caused by or related to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, or agents in the performance (or non-performance) of services under this Agreement.

12. Insurance Requirements

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

13. Wage Rates

Pursuant to the Labor Code of the State of California, or any applicable local law, Owner has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. Owner has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against Owner.

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 Owner, 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 Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

14. Conflict of Interest

CONTRACTOR shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONTRACTOR is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR'S obligations under this Agreement.

15. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law or choice of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

16. Records, Reports and Documentation

CONTRACTOR shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONTRACTOR shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONTRACTOR agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONTRACTOR's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

17. Termination of Agreement

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

18. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract CONTRACTORS are listed in the project work plan.

19. Compliance with Laws

- (a) CONTRACTOR shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONTRACTOR or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONTRACTOR's employment practices and to all of CONTRACTOR's activities as a provider of services to the City.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.
- (c) Throughout the term of this Agreement, including extensions, CONTRACTOR shall possess and show proof of the following, where applicable:
- 1) Hazardous waste hauler registration.
  - 2) CAL-OSHA carcinogen registration.
  - 3) Federal waste hauler permit.
  - 4) California State Contractors License, Class "A" with Hazardous Substances Removal Certification.
  - 5) California Highway Patrol Hazardous Materials Transportation License.
  - 6) Environmental Protection CONTRACTOR Identification Number.
  - 7) A current, valid Sunnyvale business license.
- (d) CONTRACTOR shall comply with all applicable local, state and federal regulations when segregating, classifying, packaging, labeling, transporting and disposing of CITY-generated hazardous materials, including, but not limited to:

- 1) Environmental Protection CONTRACTOR
  - a) 40 CFR 240 through 40 CFR 272.
  - b) 40 CFR 100 through 40 CFR 149.
- 2) Occupational Safety and Health Administration
  - a) 29 CFR 1910.
- 3) Department of Transportation
  - a) 49 CFR 106 through 49 CFR 177.
- 4) State of California
  - a) 8 CCR, Division 1 – Industrial Relations (CAL/OSHA).
  - b) 14 CCR, Division 7 – California Waste Management Board.
  - c) 22 CCR, Division 4.5 – Environmental Health.
  - d) 23 CCR, Division 3 – State Water Resources Control Board.
- 5) Rules and Regulations of the Bay Area Air Quality Management District.
- 6) Rules and Regulations of the City of Sunnyvale.
- 7) Rules and Regulations of Santa Clara County.

20. Changes

CITY or CONTRACTOR may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONTRACTOR, shall be incorporated in amendments to this Agreement.

21. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

22. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

23. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

24. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

25. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

26. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

CLEAN HARBORS ("CONTRACTOR")

By \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name/Title

## **Exhibit A**

### **Scope of Services**

- A. **Emergency Service** - In the event of a hazardous materials or waste incident (abandoned waste, spill, leak, etc.), a request for emergency services will be made by a representative of the City's Department of Public Safety. Upon receipt of such a request, Contractor shall:
1. Provide all labor, materials, equipment, tools, labels, transportation, and supervision to perform the required services. Typical services include, but are not limited to, waste containment, spill cleanup, site decontamination, hazmat identification of unknown materials, waste packaging, transportation and disposal. Contractor's personnel, responding to emergency service requests, shall be under the direct supervision of an employee of Contractor who is trained and certified in emergency response procedures.
  2. In the case of a spill or leak, secure the site containing the spillage or leakage and minimize further environmental contamination. Efforts shall be directed to first reduce/eliminate health and safety risks and then to minimize environmental contamination.
  3. Be available (on call) 24 hours per day 7 days per week 365 days per year. Prior to the contract start date, provide to the City 24-hour emergency contact telephone numbers and notification procedures for requesting emergency response services.
  4. Report to the site within two hours or less of receipt of a request for emergency services.
  5. Contain, cleanup, remove, transport and dispose of spilled substances, containment materials and absorbent materials in accordance with applicable local, state and federal laws and regulations.
  6. Determine the composition of "unknown" spilled materials and recommend safe handling and disposal methods, as required.
  7. Excavate, test, remove, profile, transport and dispose of contaminated soil from the spill site, as required or as directed by the City's on-scene representative.
  8. Provide guidance and recommendations for cleanup alternatives and procedures, disposal requirements and notification requirements.
  9. Prior to the contract start date, provide to Department of Public Safety Fire Division staff written material indicating information required by Contractor prior to responding to a City call for emergency services.
  10. Have the capability to bill company responsible for incident directly (if City guarantees payment in the event of default).
- B. **Routine Services** – Several City facilities generate hazardous waste during routine operations. Services requests will be made by a representative of the Departments of Public Safety, Public Works or Environmental Services. Upon receipt of such a request, Contractor shall:
1. Identify, categorize, profile, package, label, manifest, transport and dispose of regularly generated hazardous wastes. Examples of materials to be processed include, but are not limited to: waste flammable liquids (contains acetone and petroleum distillates), Non-Resource Conservation and Recovery Act (RCRA) hazardous waste solids, Non-RCRA hazardous waste liquids (latex paint and road oil), empty containers, filters, spent alkaline batteries from consumer products, soil with oil, waste and absorbent materials from vehicular accidents, mercury-containing articles, old CRT/computer monitors, flammable waste aerosol containers and RCRA waste such as Sodium Hydroxide.
  2. Send to the requesting City facility a work team consisting of a lead person and a hazardous waste technician under the supervision of a chemical packaging specialist or equivalent personnel. Response time shall be no more than one week from date of request. This work team shall:
    - a. Establish waste streams, as required.
    - b. Complete a waste profile sheet for each waste stream so established.
    - c. Complete a Uniform Hazardous Waste Manifest and any other required documentation



prior to materials transport.

- d. Provide to the requesting City facility a copy of all documentation listed above.
  3. Pack and label all wastes in accordance with DOT requirements prior to transport from City facilities. Remove hazardous materials from City facilities to a secure storage facility to await transport to a Treatment Storage and Disposal Facility (TSDF). Perform packaging or bulking at least once every three months.
  4. Send City-generated hazardous wastes only to City-approved TSDFs.
  5. Provide approximately twelve pump-outs per year of the truck wash oil/water separator sumps at the Sunnyvale Corporation Yard, 221 Commercial Street. All work shall be scheduled through the Public Works Superintendent of Field Services or his designee. Materials pumped from the oil/water separator system typically consist of Non-RCRA hazardous waste liquid (oil and water) and sludge (dirt and vegetation). The volume of material removed from the oil/water separator system varies from event to event, depending upon the number of sumps that are cleaned out. The volume typically ranges from 1000 to 1600 gallons of water and sludge per event.
  6. Provide approximately four pickups per year of hazardous wastes contained in 55-gallon drums at Sunnyvale Fire Station No. 2, 795 East Arques Avenue. The drums typically contain absorbed waste oil, mixed oils and battery acid from vehicular accident cleanups. Small quantities of other hazardous wastes may occasionally require profiling and disposal. All services shall be scheduled through a designated Public Safety Officer at the fire station.
  7. Provide approximately one pump-out per year of 2,000 gallons of sodium hydroxide, and associated profiling as necessary.
- C. **Disposal Methods** – Contractor shall dispose of all hazardous solids and liquids, requiring either thermal processing, land disposal, and/or treatment prior to disposal only at facilities permitted by DTSC or USEPA. Disposal methods shall conform with all applicable local, state and federal regulations. All Non-RCRA oily wastes shall be managed in accordance with 22 CCR, Division 4.5, Chapter 29 (Used Oil Recycling Program). All RCRA hazardous wastes that are recycled shall be recycled only at EPA permitted treatment facilities. Bidder shall complete and return "Attachment B" Summary of Bidder's Waste Management Process along with Bid. Failure to complete and return Attachment B may result in the bidder being found non-responsive and thus not considered for award.

**Exhibit B  
Fee Schedule**

<b>LABOR RATE - ROUTINE SERVICES</b>	<b>Estimated Minimum per Each</b>	<b>PER HOUR RATE</b>
Project Lead/Manager	2 HRS	<b>\$ 60.00</b>
Hazardous Waste Technician	2 HRS	<b>\$ 50.00</b>
Chemical Packaging Specialist	2 HRS	<b>\$ 60.00</b>
Class A Vacuum Truck Driver	2 HRS	<b>\$ 60.00</b>
Environmental Technician	2 HRS	<b>\$ 60.00</b>
<b>LABOR RATE - EMERGENCY RESPONSE</b>	<b>Estimated Minimum Hours per Project</b>	<b>PER HOUR RATE</b>
Project Lead/Manager	4	<b>\$ 75.00</b>
Chemist	4	<b>\$ 75.00</b>
Hazardous Waste Technician	4	<b>\$ 60.00</b>
<b>TRUCK WASH-OUT SUMP CLEANUP</b>	<b>1,500 Gallons</b>	<b>TOTAL</b>
Per each Clean-Up (Non-RCRA)	\$1710.00	<b>\$1710.00</b>
<b>MATERIAL REMOVAL</b>	<b>30-Gallon Drum</b>	<b>55-Gallon Drum</b>
RQ Waste Flammable Liquids	<b>\$ 48.75</b>	<b>\$65.00</b>
Non-RCRA Hazardous Waste Solids		
A. Oil/Absorbent	<b>\$ 48.75</b>	<b>\$65.00</b>
Non-RCRA Hazardous Waste Liquids		
A. Latex Paint	<b>\$ 75.00</b>	<b>\$100.00</b>
B. Oil and Water	<b>\$ 93.75</b>	<b>\$125.00</b>
Oil Contaminated Soil	<b>\$ 48.75</b>	<b>\$65.00</b>
Aerosols, Flammable, Empty Containers	<b>\$ 183.75</b>	<b>\$245.00</b>
<b>TRANSPORTATION FEES</b>	<b>Per Each</b>	<b>\$</b>
5 Gallon	1	<b>\$ 25.00</b>
15 Gallon	1	<b>\$ 25.00</b>
30 Gallon	1	<b>\$ 35.00</b>
55 Gallon	1	<b>\$ 45.00</b>
85 Gallon	1	<b>\$ 45.00</b>

## Exhibit C INSURANCE REQUIREMENTS

### INSURANCE REQUIREMENTS FOR CONTRACTORS

Consultant/Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- ☒ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$\_\_\_\_\_.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

#### Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (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, whichever is greater.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

#### Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

#### Subcontractors

CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit C. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.