



ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Jason M. Samonte Agenda Item No. I-12

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Public Works [Signature]

DATE: June 8, 2009

TO: City Council

FROM: Lou Balderrama, City Engineer [Signature]
Public Works Department

SUBJECT: Agreement with Ventura County Railroad Company to reimburse the cost of concrete panels for railroad crossings

RECOMMENDATION

That City Council approve and authorize the Mayor to execute an agreement with Ventura County Railroad Company in an amount not to exceed \$350,000 to reimburse the cost of concrete panels for railroad crossings (Agreement No. A-7164).

DISCUSSION

Ventura County Railroad Company leases and operates the Ventura County Railroad, which crosses 22 City streets at various locations listed in Exhibit A of Attachment No. 1. The weight and vibration of Ventura County Railroad Company's trains at each street crossing causes the City streets at such locations to deteriorate faster than the normal rate, requiring the City to repair the streets more often than elsewhere.

In 2004, the City entered into an agreement with Ventura County Railroad Company to install concrete panels at the street crossings to provide a foundation for the railroad tracks. The concrete panels absorb the impacts of the train operations, decreasing wear and tear at six street crossings. Per the terms of this agreement, Ventura County Railroad Company performed the concrete panel installation and, upon completion, the City reimbursed the material cost of the concrete panels. Labor for the installation was performed by Ventura County Railroad Company at no cost to the City. The agreement expired December 31, 2008; however, several street crossings remain in need of concrete panel installation. Therefore, Streets Division staff is requesting to enter into a new agreement with Ventura County Railroad Company to complete the installation.

Under the terms of Agreement No. A-7164, the City would meet with Ventura County Railroad Company on an annual basis to determine the schedule and locations for installation during each calendar year through December 31, 2013. The following table details the locations of the street crossings scheduled for concrete panel installation through the Agreement term:

Agreement with Ventura County Railroad Company to reimburse the cost of concrete panels for railroad crossings

June 8, 2009

Page 2

Location of Street Crossing	Sub Division	Scheduled Year of Installation
Hueneme Road -- Diamond Branch	Port Hueneme	2009
Pleasant Valley Road	Port Hueneme	2009
Escalon Drive	Patterson	2010
Hueneme Road	Port Hueneme	2010
Wooley Road	Patterson	2010
Novato Drive	Patterson	2011
J Street	Patterson	2012
Surfside Drive	Port Hueneme	2012
Bard Road	Port Hueneme	2013
E Street	Patterson	2013

FINANCIAL IMPACT

The cost for concrete panels installed during the 2009 calendar year is not to exceed \$70,000 and is funded by Project No. 983109 Account No. 354-9832-826-8604. Thereafter, the annual not-to-exceed cost of the concrete panels installed for every calendar year through the term of the Agreement will be adjusted to account for changes in the Consumer Price Index (CPI) and will be funded by various capital improvement projects based on the location of the street crossings receiving concrete panel installation. If the annual cost of the panels exceeds the annual limit, Ventura County Railroad Company will bear the excess cost. The total cost of the Agreement through the term ending December 31, 2013, is not to exceed \$350,000 plus any annual CPI adjustments.

MSN:JMS:mdt

Attachment #1 – Agreement No. A-7164

**AGREEMENT TO REIMBURSE COST OF CONCRETE PANELS FOR
RAILROAD CROSSINGS**

This Agreement to Reimburse Cost of Concrete Panels for Railroad Crossings (“Agreement”) is made and entered into in the County of Ventura, State of California, this 16th day of June, 2009, by and between the City of Oxnard, a municipal corporation (“City”), and Ventura County Railroad Company (“Railroad”).

WHEREAS, Railroad leases and operates a railroad within City, which crosses twenty-two City streets, at locations listed in Exhibit A, attached hereto and incorporated herein by reference (“the street crossings”); and

WHEREAS, the weight and vibration of Railroad’s trains at each street crossing causes City’s streets at such locations to deteriorate at a faster than normal rate and require City to repair the streets more often than elsewhere; and

WHEREAS, if concrete panels were placed as a foundation for the railroad tracks at street crossings, the concrete panels would better absorb the impacts of Railroad’s operations and decrease the wear and tear on City’s streets; and

WHEREAS, Railroad is willing to install concrete panels at the street crossings if City reimburses Railroad for the cost of the concrete panels.

NOW, THEREFORE, City and Railroad hereby agree as follows:

1. The term of this Agreement is from June 16, 2009 through December 31, 2013. During the term of this Agreement, Railroad shall install concrete panels at some of Railroad’s street crossings within City, in accordance with the specifications attached hereto as Exhibit B and incorporated herein by reference. Railroad shall complete such installation at as many street crossings as Railroad may determine, but at no less than one street crossing in each of calendar years 2009, 2010, 2011, 2012 and 2013.

2. City and Railroad shall meet each February during the term of this Agreement to determine the schedule by which Railroad will install concrete panels at street crossings during that calendar year.

3. On completion of the installation of concrete panels at each street crossing, Railroad shall present an invoice to City that shows the cost to Railroad of the concrete panels installed. Such cost shall be solely the material cost for the concrete panels, and shall not include the cost of labor, construction, installation or the like. City shall reimburse Railroad up to \$70,000 for panels installed during 2009. During 2010, 2011, 2012 and 2013, City shall reimburse Railroad for the cost of concrete panels installed, up to \$70,000 as adjusted by the difference between the Consumer Price Index for all urban consumers for the Los Angeles-Riverside-Orange County area between the previous year and the current year. If the cost of the panels exceeds such amount, Railroad shall bear the excess cost.

4. Railroad shall cause the concrete panels to be installed in accordance with Exhibit B and applicable law. Such installation is a public work, as defined in Chapter 1 of Part 7 of Division 2 of the Labor Code, to which Labor Code Section 1771 applies. Railroad shall perform such installation as a public work.

5. City or Railroad may terminate this Agreement at any time, with or without cause, by giving written notice to the other party, specifying the effective date of termination. Unless City asserts that Railroad has breached the Agreement, City shall pay Railroad the cost of concrete panels installed or purchased for installation prior to the date of termination. If the panels have not been installed, Railroad shall deliver the concrete panels to City and City shall take title to and possession thereof.

6. Railroad agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Railroad or Railroad's agents, employees, consultants, contractors, or other persons acting on Railroad's behalf, including any acts or omissions that violate local, State or federal law. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which Railroad or Railroad's agents, employees, consultants, contractors, or other persons acting on Railroad's behalf would be held strictly liable.

7. Insurance

a. Railroad shall obtain and maintain during the term of this Agreement the insurance coverages specified in Exhibit INS-D, attached hereto and incorporated herein by reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Railroad obtain and maintain such insurance coverages.

b. Railroad shall, prior to purchase or installation of the concrete panels, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-D.

c. Maintenance of insurance coverages by Railroad is a material element of this Agreement. Railroad's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered a material breach of this Agreement.

8. In performing this Agreement, City and Railroad are independent contractors. The agents, employees, contractors and other persons acting on behalf of City or Railroad are not agents, employees or contractors of the other party or other persons acting on behalf of the other party.

9. This Agreement may be amended only by a written document signed by both City and Railroad.

10. Any notices to Railroad may be delivered personally or by mail addressed to: Ventura County Railroad Company, 333 Ponomo Street, Port Hueneme, CA 93041, Attention: Donald Seil; and with copy to RailAmerica, 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256, Attention: Legal Department. Any notices to City may be delivered personally or by mail addressed to: 1060 Pacific Avenue, Bldg. #2, Oxnard, CA 93030, Attention: Jason M. Samonte.

11. This Agreement constitutes the entire agreement of City and Railroad regarding the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written.

CITY OF OXNARD

RAILROAD

Dr. Thomas E. Holden, Mayor

J. Monck
Vice President

ATTEST:

APPROVED AS TO INSURANCE:

Daniel Martinez, City Clerk

James Cameron
James Cameron, Risk Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Alan Holmberg
Alan Holmberg, City Attorney

Lou Balderrama
Lou Balderrama, City Engineer

Jason M. Samonte
Jason M. Samonte, Project Manager

EXHIBIT A

Ventura County Railroad Crossing Rehab Priority List

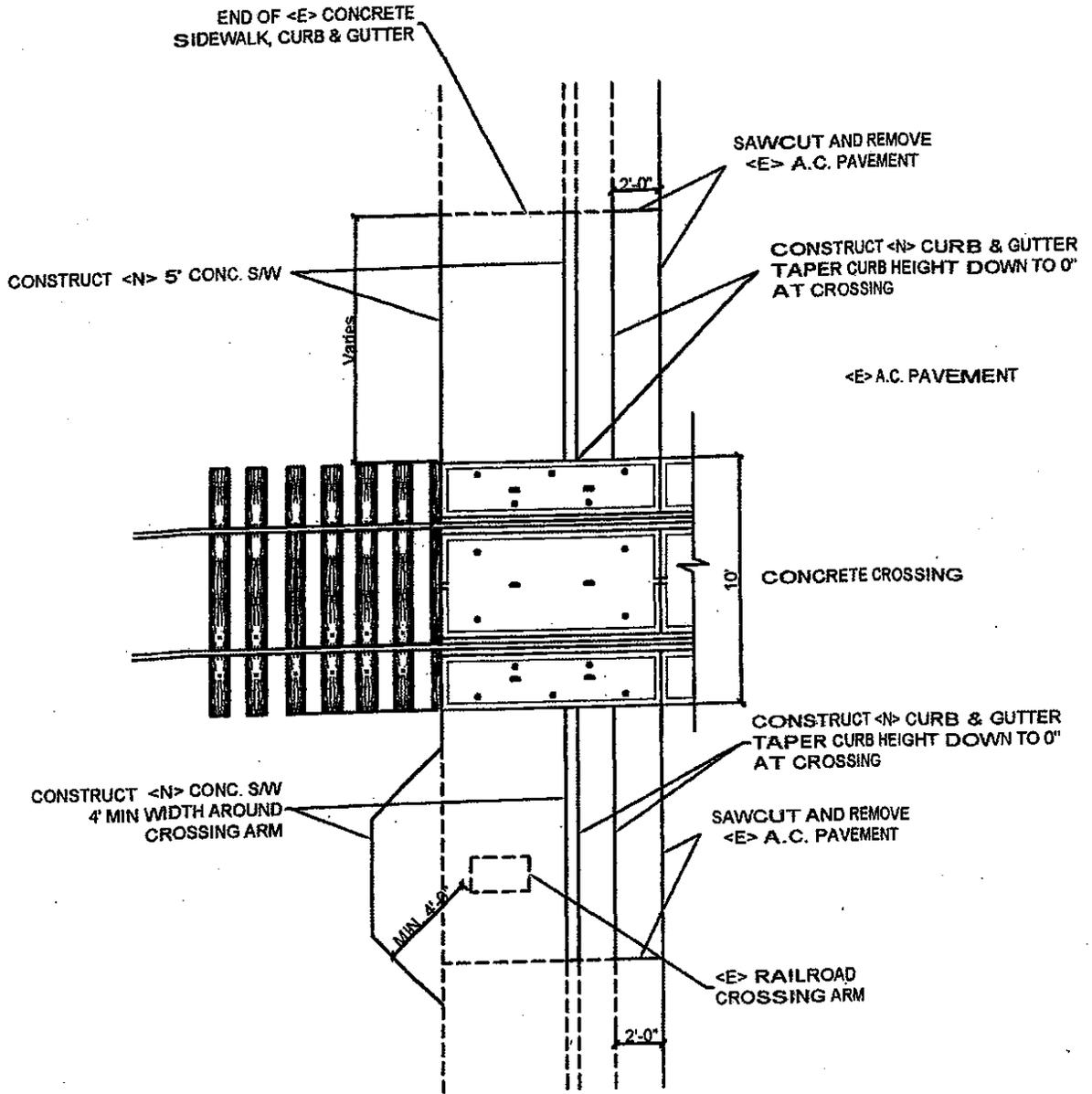
Road Crossing	Sub Div.	M.P.	DOTARR NO.	PUC NO.	PROTECTION	# Lanes & Traffic	Potential Rehab Year	Est Length	COMMENT
7th Street	Engine Lead	0.22	854-089E	45-0.22C	1 Flasher/1 Cant.	2 lanes-MT-(4)-Rubber	2019	32	
Warehouse Ave.	Engine Lead	0.4	854-070Y	45-0.40C	Crossbucks	2 lanes-MT-(5)-Rubber	2016	32	
Commercial Ave	Patterson	0.14	853-866S	45C-0.14	Flashers	4 lanes-HT-(4)-Asphalt	2018	56	Asphalt in 2002
Skyview Alley	Patterson	0.46	853-869M	45C-0.46	X-buck/Stop Sign	2 lanes-LT-(4) Rubber		32	
Car Wash Driveway	Patterson	0.52	853-870G	MP . 0.52	Gates & Flashers	2 lanes-LT-(3)-Asphalt	2024	32	
E Street	Patterson	0.82	853-838N	45C-0.82	Crossbucks	2 lanes-LT-(5)-Rubber	2013	32	
Mercantile Street - East Leg of Wye	Patterson	0.89	853-863W	45-0.89C	Crossbucks	2 lanes-MT-(5)-Rubber	2014	32	
H Street	Patterson	1.13	853-839V	45C-1.13D	Ped Xing - None	Asphalt			To Be removed
J Street	Patterson	1.27	853-840P	45C-1.27	Gates	3 lanes-MT-(6)-Rubber	2012	48	
Escalon Drive	Patterson	1.72	853-842D	45C-1.72	Gates/Cantis	2 lanes-LT-(3)-Asphalt	2010	32	
Novato Drive	Patterson	2.04	869-031C	45C-2.04	Gates/Cantis	2 lanes-LT-(3)-Rubber	2011	32	
Wooley Rd.	Patterson	2.09	853-816N	45C-2.09	Gates/Cantis	2 lanes-MT-(6)-Rubber	2010	32	
Hemlock Street	Patterson	2.71	853-817V	45C-2.71	Gates	3 lanes-LT-(5)-Rubber	2015	48	
Cary Drive	Pt. Hueneme	2.14	853-880M	45-2.14D	Flashers	Pedestrian Walkway			
Bard Rd.	PL Hueneme	2.52	853-881U	45-2.52	Gates/Cantis	4 lanes-MT-(6)-Rubber	2013	56	
Pleasant Valley Road	PL Hueneme	3.01	853-882B	45-3.01	Gates/Cantis	4 lanes-MT-(4)-Rubber	2009	56	
Access Rd. 1	Pt. Hueneme	3.03	853-883H	MP3.03	Pvt. Stop Sign				
Access Rd. 2	Pt. Hueneme	3.25	853-884P	MP3.25	Flashers				
Cypress Rd.	PL Hueneme	3.58	869-040B	45-3.58	Crossbucks	2 lanes-MT-(5)-Rubber	2017	32	
Hueneme Rd. - Diamond Branch	Pt. Hueneme	3.59	869-021W	45-3.59C	Gates/Cantis	4 lanes-HT-(7)-Rubber	2009	56	Part of Hueneme Rd. widening project slated for 2010
Hueneme Rd.	Pt. Hueneme	3.7	869-037T	45-3.70	Gates/Flashers	2 lanes-HT-(8)-Asphalt	2010		
Access Rd. 3	Pt. Hueneme	3.79	869-038A	MP3.79	Pvt. Stop Sign				

EXHIBIT A

McWane Blve - Edison Branch	Pt. Hueneme	3.9	869-040B	45-3.90C	Crossbucks	Blocked off			Not used
Perkins Rd. (2 tracks)	Pt. Hueneme	4.25	869-022D	45-4.25	Crossbucks	2 lanes-LT-(4) Asphalt	2022	64	
Access Rd. 4	Pt. Hueneme	4.37	869-023K	MP4.37	Pvt. Stop Sign				In City of Port Hueneme
Surfside Drive	Pt. Hueneme	4.5	869-0245	45-4.50	Crossbucks	4 lanes-MT-(4)-Rubber	2020	56	In City of Port Hueneme
Ventura Rd.	Pt. Hueneme	4.89	869-025Y	45-4.89	Gates/Cantis	4 lanes-MT-(4)-Rubber	2021	56	In City of Port Hueneme
Surfside Drive	Pt. Hueneme	5.17	869-030V	45-5.17	Crossbucks	2 lanes-LT-(8)-Asphalt	2012	32	In City of Port Hueneme
Maritime Way	Pt. Hueneme	5.4	869-026F	45-5.40	None				Inside Port of Hueneme

EXHIBIT B

TYP. SIDE W/O CROSSING ARM



TYP. SIDE W/CROSSING ARM

PLAN VIEW - SIDEWALK ACCESS
NO SCALE

REV.	APPR. BY	DATE

REV.	APPR. BY	DATE

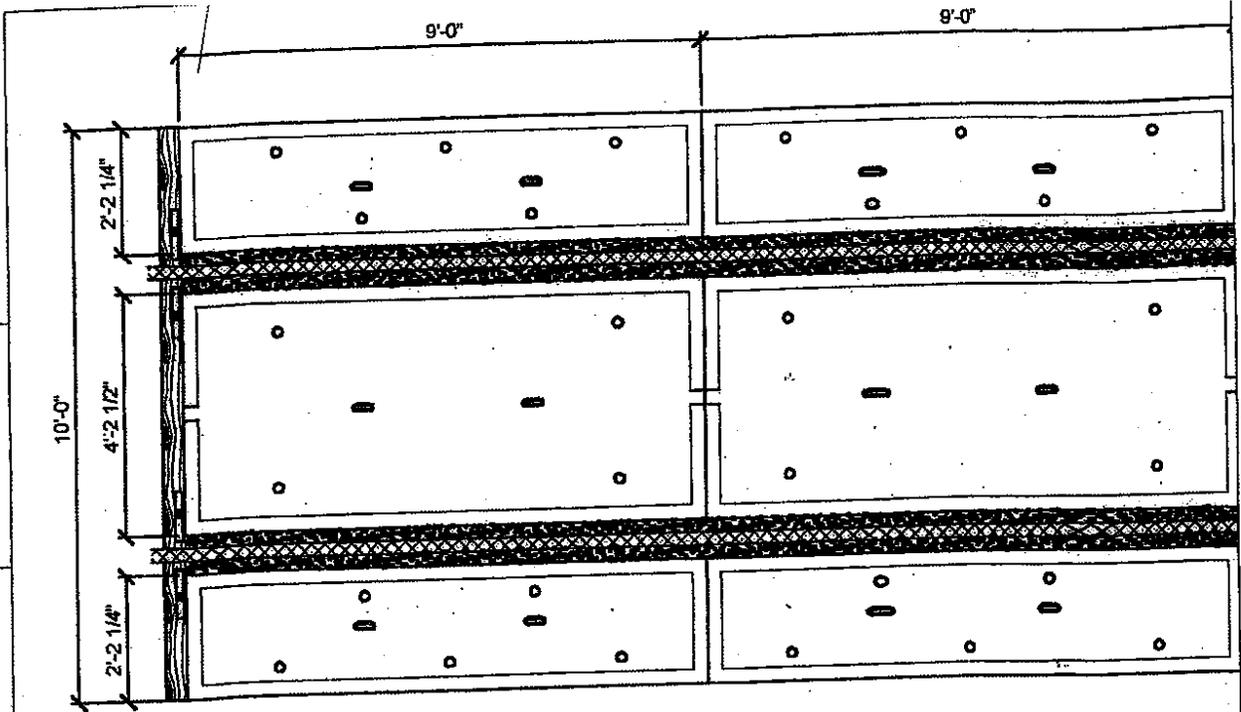
 <p>CITY OF Oxnard Streets & Waterways Division</p>	<p>CONSTRUCT CONCRETE SIDEWALK</p>		<p>SHEET 3 OF 6</p>
	<p>DRAWN: NAME _____</p>	<p>CKD.: ENG'R _____</p>	

Attachment No. 1
Exhibit B,
Page 6 of 12

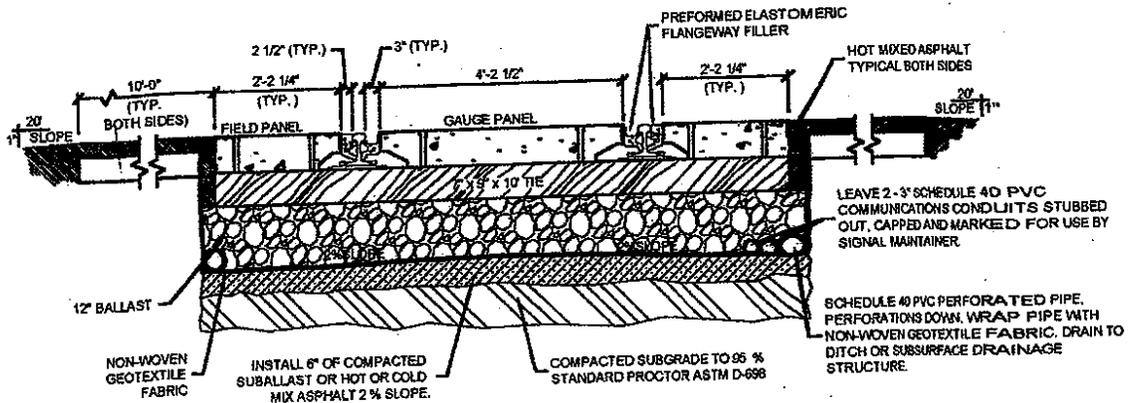
EXHIBIT B

REV.	APPR. BY	DATE

REV.	APPR. BY	DATE



PLAN VIEW - PORTION NEW CONCRETE CROSSING
NO SCALE



SECTION VIEW - NEW CONCRETE CROSSING
NO SCALE

	CITY OF			CONSTRUCT NEW CONCRETE CROSSING		
	DRAWN: NAME _____		CKD.: ENG'R _____		APPR. _____	
Streets & Waterways Division				Daniel Rydberg, P.E.		SHEET 4 OF 6

**INSURANCE REQUIREMENTS FOR SMALL/MEDIUM CONSTRUCTION AND SERVICES CONTRACTS
(WITHOUT BUILDER'S RISK REQUIREMENT)**

1. Contractor shall obtain and maintain during the performance of any services under this Contract the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Contractor, its agents, representatives, employees or subcontractors.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project location or shall be twice the occurrence amount;

b. Business Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office Automobile Liability Coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. If architectural, engineering, or electrical work will be performed under the Contract, Professional Liability/Errors and Omissions Insurance appropriate to the work being done in an amount not less than \$1,000,000, with neither Contractor nor listed subcontractors having less than \$500,000 individually. The Professional Liability/Errors and Omissions Insurance must be project specific with at least a one-year extended reporting period, or longer upon request.

d. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant.

2. Contractor shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-D. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before work commences. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the Risk Manager, addressed as follows:

City of Oxnard
Risk Manager
Reference No. _____
300 West Third Street, Suite 302
Oxnard, California 93030

3. Contractor agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Contractor agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-D or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance or self-insurance coverages (**this must be endorsed**). Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The 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.

6. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to Contractor shall also be applicable to Contractor's subcontractors. Contractor agrees to maintain appropriate agreements with subcontractors and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for general liability and automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

INS-D.doc

ACCORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODE SUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY LETTER A SPECIFY COMPANY NAMES IN THIS SPACE

COMPANY LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$1,000,000 PRODUCTS COMP/OP AGG. \$1,000,000 PERSONAL & ADV. INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER Errors and omissions insurance or malpractice insurance available for the insured's profession; if architectural, engineering or electrical work will be performed under the Agreement				Minimum coverage \$1,000,000 Each consultant/ & listed sub-consultant \$500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER
City of Oxnard
Attn: Risk Manager
Reference No. _____
300 W. Third Street, Suite 302
Oxnard CA 93030

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE

