

BREA CIVIC & CULTURAL CENTER | 1 Civic Center Circle | Brea, California 92821 | www.cityofbrea.net

Finance Committee Agenda

Tuesday, August 8, 2023

8:30 a.m.

Executive Conference Room

MEMBERS: Mayor Marty Simonoff and Council Member Steven Vargas
ALTERNATE: Council Member Cecilia Hupp

This agenda contains a brief general description of each item the Committee will consider. The Administrative Services Department has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. Contact the Administrative Services Department Office at (714) 990-7676 or view the Agenda and related materials on the City's website at <https://www.ci.brea.ca.us/509/Meeting-Agendas-Minutes>. Materials related to an item on this agenda submitted to the Committee after distribution of the agenda packet are available for public inspection in the Administrative Services Department's Office at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

Procedures for Addressing the Committee

Members of the public may offer comment or observe the Finance Committee meeting in person. All requests to offer comment must be submitted via phone by calling 714-990-7676 or by email to arlenem@cityofbrea.net by 12:00 p.m. on Monday, August 7, 2023

PLEASE SILENCE ALL PAGERS, CELL PHONES AND OTHER ELECTRONIC EQUIPMENT WHILE THE COMMITTEE IS IN SESSION.

CALL TO ORDER / ROLL CALL

1. **Matters from the Audience**

CONSENT

2. **July 11, 2023 Finance Committee Regular Meeting Minutes - Approve.**

Attachments

Draft 07-11-2023 Minutes

DISCUSSION

3. **Maintenance Agreement with Sancon Technologies Inc. for Placement of Cured-in-Place Pipe (CIPP) and Manhole Rehabilitation** - Award as-needed contract to Sancon Technologies, Inc. (Sancon) for the placement of Cured-in-Place Pipe (CIPP) and Manhole Rehabilitation at identified locations within the City of Brea for one-year, with the ability to renew the contract for four additional one-year periods and authorize the City Manager to approve contract renewals for a not-to-exceed amount of \$300,000.

Attachments

Sancon Bond
Sancon agreement
COI

4. **Agreement for Production of Original Art Work with Carlos Terres for the Reproduction of the *Centennial Door Sculpture*** - Approve the Agreement; and Appropriate \$85,000 from the Fixed Asset Replacement Fund (182) for the purchase of the sculpture.

Attachments

Contract

5. **Schedule Next Meeting:** Tuesday, August 29, 2023

Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administrative Services administrative office at (714) 990-7676. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members
FROM: Bill Gallardo
DATE: 08/08/2023
SUBJECT: July 11, 2023 Finance Committee Regular Meeting Minutes

RECOMMENDATION

Approve.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager
Prepared by: Faith Madrazo, Financial Services Manager-Revenue
Concurrence: Kristin Griffith, Director of Administrative Services

Attachments

Draft 07-11-2023 Minutes



DRAFT FINANCE COMMITTEE MINUTES

**Tuesday, July 11, 2023
8:30 AM**

Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California

CALL TO ORDER / ROLL CALL

ATTENDEES: Mayor Marty Simonoff, Council Member Steven Vargas (via teleconference), Chris Emeterio, Chief Avery, Kristin Griffith, Jason Killebrew, Alicia Brenner, Rudy Correa, Melissa Davis, Chris Harvey, Carrie Hernandez, Monica Lo, Faith Madrazo, Sean Matlock, Will Wenz, Ryan Chapman, Jenn Colacion, Marie Dao, Cliff Flaughner, Anthony Godoy, and Joel Valencia.

1. **Matters from the Audience - None**

DISCUSSION

2. **Brea-Olinda Unified School District Building Utilities and Services Agreement - Recommended for City Council approval.**
3. **Authorize the Purchase of Playground Equipment and Shade Structures in the amount of \$636,519.00 for the Arovista Park Modernization Project, CIP 7978 – Recommended for City Council approval.**
4. **Accept a \$96,093.80 California Highway Patrol Cannabis Tax Fund Grant Program Award for DUI Enforcement Training - Recommended for City Council approval.**
5. **Annual Vehicle and Equipment Purchase Plan for Fiscal Year 2023-24 - Recommended for City Council approval.**
6. **Award Contract to Sol Construction, Inc. in the amount of \$779,353.00 for the Berry Street Reservoir Ring Road Rehabilitation, CIP No. 7965 - Recommended for City Council approval.**
7. **Award Contract to International Line Builders, Inc. dba ILB Electric, for the Traffic Signal Modification Project, CIP No. 7717 - Recommended for City Council approval.**
8. **Award Contract to R.J. Noble Company for the Brea Boulevard Street Improvements W. Juniper St. to Imperial Highway (SR90), CIP Project No. 7299 - Recommended for City Council approval.**
9. **Approval of Fiscal Year 2023-24 Property Tax Rate to Fund the City's Paramedic Program - Recommended for City Council approval.**

10. **Purchase Replacement Network Hardware, Network (Host) Servers and Storage Area Network (SAN) for the City's Virtual Network** - *Recommended for City Council approval.*
11. **CIP Project Update by Ryan Chapman** – *The Committee listened to the CIP update provided by Ryan Chapman – Recommended to receive and file.*
12. **Schedule Next Meeting: Tuesday, July 25, 2023**

Meeting adjourned: 8:37 AM

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2023

SUBJECT: Maintenance Agreement with Sancon Technologies Inc. for Placement of Cured-in-Place Pipe (CIPP) and Manhole Rehabilitation

RECOMMENDATION

Award as-needed contract to Sancon Technologies, Inc. (Sancon) for the placement of Cured-in-Place Pipe (CIPP) and Manhole Rehabilitation at identified locations within the City of Brea for one-year, with the ability to renew the contract for four additional one-year periods and authorize the City Manager to approve contract renewals for a not-to-exceed amount of \$300,000.

BACKGROUND/DISCUSSION

On March 30, 2023, the City received three responsive bids to the RFP. Staff reviewed the proposals to determine the bidder's ability to provide sufficient staffing and equipment to perform the work at a competitive price and meet the City of Brea's production goals and high-quality work standards.

After reviewing the qualifications and pricing of the proposals, staff ranked the bidders as follows:

1. Sancon Technologies, Inc.
2. Southwest Pipeline & Trenchless Corp.
3. Insituform Technologies, LLC.

Staff found Sancon's proposal the most cost-effective and responsive to meet the needs of the City for placement of CIPP and Manhole Rehabilitation. Based upon this determination, staff recommends awarding the contract for the Placement of CIPP and Manhole Rehabilitation to Sancon for the annual relining of sewer mainlines at identified locations in the City.

Utilizing an outside contractor to perform these services is the most economical approach. The Public Works Department has considered performing this work but needs the in-house expertise, necessary equipment, and staffing to conduct this type of work without hiring additional personnel and purchasing additional equipment.

SUMMARY/FISCAL IMPACT

Staff posted an RFP for a CIPP and Manhole Rehabilitation contractor to the www.CIPlist.com website. The City received three responsive bids. Based on proposal reviews and price comparisons, staff recommends awarding the contract to Sancon. This is a one-year contract with renewal for up to four additional one-year periods at the City's discretion. This recommendation is based on the ability of Sancon to meet all of the City's requirements, including pricing, responsiveness, high-level customer service, as well as the overall stability of the company. Annually, as part of the renewal consideration, staff will review the contract based on current prevailing wage rates and any Consumer Price Index (CPI) increases.

The Public Works Department has budgeted an annual allocation of \$300,000 in Fund 510 to perform this work. There is no cost to the General Fund, and no additional appropriation is needed.

RESPECTFULLY SUBMITTED

Respectfully submitted: William Gallardo, City Manager

Prepared by: Jerry Mestas, Public Works Supervisor

Concurrence: Michael Ho, Director of Public Works/City Engineer

Attachments

Sancon Bond

Sancon agreement

COI

June 12, 2023

Jerry Mestas
City of Brea – Public Works Department
545 N Berry St
Brea, CA 92821

RE: Bonds for CIPP Maintenance Agreement

Hi Jerry,

Attached herewith are the original copies of the Performance and Payment Bonds for the CIPP Maintenance Agreement.

Should you have any questions regarding this matter, please feel free to contact our office.

Respectfully,
Sancon Technologies, Inc.



Monique Sexton, Office Manager



Bond # 7450562

PERFORMANCE BOND

The American Institute of Architects,
AIA Document No. A312 (December, 1984 Edition)
Any singular reference to Contractor, Surety, Owner or other
party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Sancon Technologies, Inc.

5841 Engineer Drive

Huntington Beach, CA 92649

CONSTRUCTION CONTRACT

Date: JUNE 1, 2023

Amount: \$300,000.00

Description (Name and Location):

Placement of Cured-in-Place Pipe (CIPP) to Reline Identified Damaged and Cracked Portions of Sewer Mainline and manhole Rehabilitation

BOND

Date (Not earlier than Construction Contract Date): 06/05/2023

Amount: \$300,000.00

Modifications to this Bond:

OWNER (Name and Address):

City of Brea

545 N. Berry Street

Brea, CA 92621

SURETY (Name and Principal Place of Business):

Old Republic Surety Company

14728 Pipeline Avenue, Suite E

Chino Hills, CA 91709

☒ None

☐ See Page 2

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Sancon Technologies, Inc.

Signature:

Name and Title: CHARLES B. PARSONS, PRESIDENT

(Any additional signatures appear on page 2.)

(FOR INFORMATION Only- Name, Address and Telephone)

AGENT or BROKER:

SURETY

Company:

(Corporate Seal)

Old Republic Surety Company

Signature:

Name and Title: Scott Salandi, Attorney-in-Fact

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default/ the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, Or obtain a new contractor and with reasonable promptness under the circumstances:

- .1** After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
- .2** Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its Obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL Company:	(Corporate Seal)	SURETY Company:	(Corporate Seal)
<div></div>		<div></div>	
Address:		Address:	
<div></div>		<div></div>	
Name and Title:		Name and Title:	
<div></div>		<div></div>	
Signature:		Signature:	
<div></div>		<div></div>	

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of OrangeOn 06/07/2023

Date

before me,

Mo Sexton - Notary Public

Here Insert Name and Title of the Officer

personally appeared Charles B. Parsons

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of San Bernardino }

On June 5, 2023 before me, Tina Downey, Notary Public
(Here insert name and title of the officer)

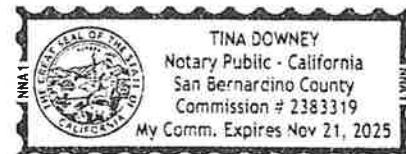
personally appeared Scott Salandi
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Tina Downey
Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☒ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.



Bond # 7450562

PAYMENT BOND

The American Institute of Architects, AIA Document No. A312
(December, 1984 Edition). Any singular reference to Contractor, Surety,
Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Sancon Technologies, Inc.
5841 Engineer Drive
Huntington Beach, CA 92649

SURETY (Name and Principal Place of Business):

Old Republic Surety Company

14728 Pipeline Avenue
Suite E
Chino Hills, CA 91709

OWNER (Name and Address):

City of Brea
545 N. Berry Street
Brea, CA 92621

CONSTRUCTION CONTRACT

Date: JUNE 1, 2023

Amount: \$300,000.00

Description (Name and Location):

Placement of Cured-in-Place Pipe (CIPP) to Reline Identified Damaged and Cracked Portions of Sewer Mainline and manhole Rehabilitation

BOND

Date (Not earlier than Construction Contract Date): 06/05/2023

Amount: \$300,000.00

Modifications to this Bond: ☒ None ☐ See Page 2

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Sancon Technologies, Inc.

SURETY

Company: (Corporate Seal)
Old Republic Surety Company

Signature: 

Name and Title: CHARLES B. PARSONS, PRESIDENT

Signature: 

Name and Title: Scott Salandi, Attorney-in-Fact

(Any additional signatures appear on page 2.)

(FOR INFORMATION ONLY—Name, Address and Telephone)
AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this

Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

(Corporate Seal)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

SURETY

Company: _____

Signature: _____

Name and Title: _____

Address: _____

Signature: _____

Name and Title: _____

Address: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of OrangeOn 06/07/2023

Date

before me,

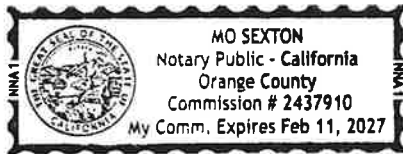
Mo Sexton - Notary Public

Here Insert Name and Title of the Officer

personally appeared Charles B. Parsons

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of San Bernardino }

On June 5, 2023 before me, Tina Downey, Notary Public
(Here insert name and title of the officer)

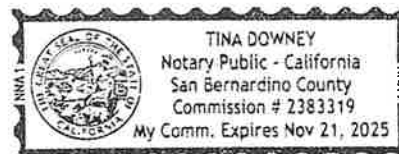
personally appeared Scott Salandi
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Tina Downey
Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual(s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☒ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.



OLD REPUBLIC SURETY COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

Scott Salandi, David Jacobson of Irvine, CA

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage guaranty bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, or black lung bonds)**, as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 16th day of March, 2022

Karen J. Haffner
Assistant Secretary



OLD REPUBLIC SURETY COMPANY

Alan Pavlic
President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 16th day of March, 2022, personally came before me, Alan Pavlic and Karen J. Haffner, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



Kathryn R. Pearson
Notary Public

My Commission Expires: September 28, 2022

(Expiration of notary's commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

74 0043



Signed and sealed at the City of Brookfield, WI this 5th day of June, 2023

Karen J. Haffner
Assistant Secretary

ORSC 22262 (3-06)

MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered this day of **June 1, 2023** ("Effective Date"), by and between **Sancon Technologies, Inc.** (hereinafter referred to as "CONTRACTOR") and the City of Brea, California, a municipal corporation (hereinafter referred to as "CITY").

WHEREAS, pursuant to Notice inviting Sealed Proposals, proposals were received, Reviewed by Committee, and declared on the date specified in said notice; and

WHEREAS, CITY did accept the bid of CONTRACTOR **Sancon Technologies, Inc.** and;

WHEREAS, CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the **Placement of Cured-in-Place Pipe (CIPP) to Reline Identified Damaged and Cracked Portions of Sewer Mainline and manhole Rehabilitation** throughout the City of Brea

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. **GENERAL SCOPE OF WORK:** CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the **Placement of Cured-in-Place Pipe (CIPP) to Reline Identified Damaged and Cracked Portions of Sewer Mainline and manhole Rehabilitation** throughout the City of Brea.

Said work to be performed in accordance with specifications and standards of the "Greenbook", Part 5, Pipeline Rehabilitation, and in accordance with bid prices hereinafter mentioned and in accordance with the instruction of the Director of Public Works for a period commencing **6/1/23 through 5/31/24**. The prices quoted with the bid shall be in effect until expiration of the agreement on the date stated herein. The City and CONTRACTOR shall have the option of extending the term of the agreement, by mutual consent of the parties, four (4) times for periods of one year each. Should the agreement be extended, the contract prices shall be on the Extension of Term subsection hereof.

2. **INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY:**
The aforesaid specifications together with the RFP and all incorporated documents therein, are incorporated herein by reference hereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Request for Proposal Inviting Bids attached hereto, together with this written agreement, shall constitute the contract between the parties. This contract is intended to require complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written agreement, the provisions of this written agreement shall control.

3. **TERMS OF CONTRACT:**

A. The CONTRACTOR, while fulfilling the terms of this Contract, is performing as a representative of CITY and shall provide exceptional Customer Care.

Any negative contact with staff, residents/citizens, businesses, visitors or other contractors shall be reported by CONTRACTOR immediately to CITY. CONTRACTOR'S management and supervisory personnel shall intercede to resolve or mitigate the negative contact in conjunction with CITY staff. CITY and CONTRACTOR may agree in advance to a single person contact, a representative of the CITY or CONTRACTOR, for the investigation and response to complaints.

4. INSURANCE: The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. Any tort claims filed against the CITY related to the performance of this Contract and subsequently tendered to the CONTRACTOR shall be promptly investigated, and the resolution of such claims shall be promptly reported to the CITY.

The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Director of Public Works a certificate of insurance as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

Further, such policy of insurance shall provide that the insurer waives all rights of subrogation against CITY and its elected officials, officers, employees and agents.

In accordance with the provisions of Section 3700 of the California Labor Code, every CONTRACTOR shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with the CITY a certification as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this contract."

b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

(1) Commercial General Liability (occurrence) – for bodily injury, death and property damage for products/completed operations and any and all other activities undertaken by the CONTRACTOR in the performance of this Agreement.

(2) (Alternative to Commercial General Liability) – No Longer Available.

(3) Comprehensive Automobile Liability (occurrence) – for bodily injury, death and property damage insuring against all liability arising out of the use of any vehicle.

(4) Owner's and CONTRACTOR'S Protective (occurrence) – for bodily injury, death and property damage arising out of any activities undertaken by CONTRACTOR in the performance of this Agreement.

(5) Other required insurance, endorsements or exclusions as required by the plans and specifications.

(6) The policies of insurance required in this Section b shall have no less than the following limits of coverage:

(i) \$2,000,000 (Two Million Dollars) for bodily injury or death;

(ii) \$2,000,000 (Two Million Dollars) for property damage;

(iii) The total of the limits specified in subsections (i) and (ii), above, where a combined single limit is provided.

c. Each such policy of insurance required in paragraph b shall:

(1) Be subject to no deductible amount unless otherwise provided, or approved in writing by CITY;

(2) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated A VII or better according to the most recent A.M. Best Co. Rating Guide;

(3) Name as additional insured the CITY, its elected officials, officers, employees, attorneys and agents, and any other parties, including subcontractors, specified by CITY to be included;

(4) Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insured shall be called upon to cover a loss under said policy;

(5) Specify that it applies 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) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by CITY of written notice of such cancellation

or reduction of coverage as evidenced by receipt of a registered letter."

- (7) Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided;
 - (8) Specify that the insurer waives all rights of subrogation against any of the named additional insured; and
 - (9) Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.
- (10) Otherwise be in form satisfactory to CITY.

d. Prior to commencing performance under this Agreement, the CONTRACTOR shall furnish the CITY with original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the CITY before CONTRACTOR commences performance. If performance of this Agreement shall extend beyond one (1) year, CONTRACTOR shall provide CITY with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

5. PREVAILING WAGE: Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, the CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required to and has determined such general prevailing rates of per diem wages. Copies of such prevailing rates of per diem wages are available on the DIR website at: <https://www.dir.ca.gov/OPRL/dprevwagedetermination.htm>

Pursuant to Labor Code § 1775, the CONTRACTOR shall forfeit, as penalty to CITY, not more than two hundred dollars (\$200.00) for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under the attached contract, by him or by any subcontractor under him, in violation of the provisions of said Labor Code.

6. APPRENTICESHIP EMPLOYMENT: In accordance with the provisions of Section 1777.5 of the Labor Code as amended by Chapter 971, Statutes of 1939, and in accordance with the regulations of the California Apprenticeship council, properly indentured apprentices may be employed in the prosecution of the work.

Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the CONTRACTOR or any subcontractor under him.

Section 1777.5, as amended, requires the CONTRACTOR or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices' journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- a. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days prior to the request for certificate, or
- b. When the number of apprentices in training in the area exceeds a ratio of one to five, or
- c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- d. When the CONTRACTOR provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The CONTRACTOR is required to make contribution to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The CONTRACTOR and subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

7. LEGAL HOURS OF WORK: Eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract, and the CONTRACTOR and any subcontractor under him shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

The CONTRACTOR shall forfeit, as a penalty to CITY, twenty-five dollars (\$25.00) for each laborer, workman, or mechanic employed in the execution of the contract, by him or any subcontractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight (8) hours in violation of said Labor Code.

8. PAYROLL RECORDS The Contractor shall comply with and be bound by the provision of Labor Code Section 1776, which requires the Contractor and each Subcontractor to (1) keep accurate record and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. The Contractor has ten (10) days in which to comply subsequent to receipt of a written notice requesting these records, or as a penalty to the City, the Contractor shall forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Statistics Enforcement, these penalties shall be withheld from progress payments then due.

9. CONTRACTOR'S LIABILITY: The City of Brea and/or its elected officials, officers, agents and employees ("Indemnitees") shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the work. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the work or at any time before its completion and final acceptance.

To the maximum extent permitted by law, the CONTRACTOR will defend, indemnify and hold the Indemnitees harmless from any and all actions, CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, and/or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of any of the Indemnitees, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment rendered against the CONTRACTOR or any of the Indemnitees covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder, and the CONTRACTOR agrees to save and hold the Indemnitees harmless therefrom.

- C. In the event any Indemnatee is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the work, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to Indemnatee any and all costs and expenses incurred by Indemnatee in such action or proceeding together with reasonable attorneys' fees.

So much of the money due to the CONTRACTOR under and by virtue of the contract as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

10. NON-DISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of Section 1735 of said Code.

11. CONTRACT RENEWAL NOTIFICATION: For each of the one-year extension terms, City and Contractor must agree mutually to extend the term prior to the expiration date of the current term. There are not automatic extensions. City Manager, on behalf of the City, may authorize any mutually-agreed upon extensions. Pricing for each of the one-year extension terms shall be based on the Extension of Term subsection hereof.

12. NOTICES: All notices required or permitted here-under shall be deemed delivered to the party to whom notice is sent upon personal delivery thereof at the addresses set forth upon which said notice is placed, postage pre-paid, in the United States mail and addressed as follows:

CONTRACTOR: SanconTechnologies, Inc
5841 Engineer Drive
Huntington Beach, CA 92649

CITY: Michael Ho, Director of Public Works
Public Works Department
545 N Berry St
Brea, CA 92621

13. EXTENSION OF TERM: During the second twelve (12) month period of the Agreement, the Base Sum per month is subject to a cost-of-living adjustment (Stepped Up Base). The cost-of-living adjustment shall be set at the beginning of the second period adjustment date) in the following manner: The Consumer Price Index for all Urban Consumers (base year 1982-84 = 100) for the Los Angeles-Long Beach-Anaheim area published by the United States Department of Labor, Bureau of Statistics (Index) which

is published for the month immediately preceding the adjustment date (Adjustment Index) shall be compared to the Index which was published for the date immediately preceding the beginning of the first twelve (12) month period (Beginning Index). If the Adjustment Index has increased over the Beginning Index, the monthly payment shall be increased by the amount obtained by multiplying the base sum by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

14. TERMINATION OR ABANDONMENT: This agreement may be terminated by CITY without cause, upon the giving of a written "Notice of Termination" to CONTRACTOR at least fifteen (15) days prior to the termination date specified in said notice. CONTRACTOR may terminate this agreement only for cause. Termination of the Contract does not release CONTRACTOR from any and all claims, damages or other liability incurred during the contract until CITY acknowledges such release.


15. ATTORNEYS' FEES: In The event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

16. GOVERNING LAW AND VENUE. The laws of the State of California shall govern the interpretation of this agreement. Venue for any legal action arising out of this agreement shall be the Superior Court of the State of California.

17. IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

State of California Contractor's License No. 774055

CONTRACTOR: Sancon Technologies, Inc. Date: 05/31/2023

By:  Charles B. Parsons, President
Name, Title

Contractor's Business Phone: 714-891-2323

Emergency Phone at which CONTRACTOR can be reached at any time:
Mark Weber - 714-981-1641

CITY OF BREA, CALIFORNIA

By: _____
Mayor

Attest: _____
City Clerk

Date: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Patriot Risk & Insurance Services 2415 Campus Drive, Suite #200 Irvine, CA 92612 www.patrisk.com 0K07568	CONTACT NAME: PHONE (A/C, No. Ext): (949) 486-7900 FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Fire Insurance Company INSURER B: Hartford Casualty Insurance Company INSURER C: Navigators Specialty Insurance Company INSURER D: Scottsdale Insurance Company INSURER E: INSURER F:	NAIC # 19682 29424 36056 41297
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COVERAGES**CERTIFICATE NUMBER:** 70502131**REVISION NUMBER:**

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$5,000 Deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			72UEACI4418	10/1/2022	10/1/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			72UEACI4419	10/1/2022	10/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			72HHACI3468	10/1/2022	10/1/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	72WEAAU0TGJ	10/1/2022	10/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Pollution Liability			SF22ECPZ0CBLVQN	10/1/2022	10/1/2023	\$1,000,000 Each Incident/\$2,000,000 Agg
D	Installation Floater			RBS0179062	10/1/2022	10/1/2023	\$250,000 Any one Job Site
D	Rented/Leased Equipment			RBS0179062	10/1/2022	10/1/2023	\$100,000 Any one item

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Placement of Cured-in-Place Pipe (CIPP) to Reline Identified Damaged and Cracked Portions of Sewer Mainline, Job #18017. The City of Brea is Included as Additional Insured with respects to General Liability and Auto Liability as interests may appear. Waiver of Subrogation for the General Liability, Auto, and Workers Comp applies in favor of City of Brea. Endorsements per attached.

CERTIFICATE HOLDER**CANCELLATION**

City of Brea
545 N. Berry Street
Brea CA 92621

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Dave Jacobson

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ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - OPTION I

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Designated Project(s) Or Location(s) Of Covered Operations:
All, except Additional Insureds that are insured under a separate additional insured endorsement on this policy	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A.** With respect to those person(s) or organization(s) shown in the Schedule above when you have agreed in a written contract or written agreement to provide insurance such as is afforded under this policy to them, Subparagraph f., **Any Other Party**, under the **Additional Insureds When Required By Written Contract, Written Agreement Or Permit** Paragraph of **Section II – Who Is An Insured** is replaced with the following:

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1)** In the performance of your ongoing operations for such additional insured at the project(s) or location(s) designated in the Schedule;
- (2)** In connection with your premises owned by or rented to you and shown in the Schedule; or

- (3)** In connection with "your work" for the additional insured at the project(s) or location(s) designated in the Schedule and included within the "products-completed operations hazard", but only if:

- (a)** The written contract or written agreement requires you to provide such coverage to such additional insured at the project(s) or location(s) designated in the Schedule; and
- (b)** This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

The insurance afforded to the additional insured shown in the Schedule applies:

- (1)** Only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:
- (a)** During the policy period; and
 - (b)** Subsequent to the execution of such written contract or written agreement; and

- (c) Prior to the expiration of the period of time that the written contract or written agreement requires such insurance be provided to the additional insured.

- (2) Only to the extent permitted by law; and
- (3) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

With respect to the insurance afforded to the person(s) or organization(s) that are additional insureds under this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to the additional insured shown in the Schedule are described in the Limits Of Insurance section.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in **Section IV – Commercial General Liability Conditions**, except as otherwise amended below.

- B. With respect to insurance provided to the person(s) or organization(s) that are additional insureds under this endorsement, the **When You Add Others As An Additional Insured To This Insurance** subparagraph, under the **Other Insurance** Condition of **Section IV – Commercial General Liability Conditions** is replaced with the following:

When You Add Others As An Additional Insured To This Insurance

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Paragraph (c) below. This insurance does not apply to other insurance to which the additional insured in the Schedule has been added as an additional insured.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (i) The additional insured in the Schedule is a Named Insured under such other insurance; and
- (ii) You have agreed in a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured in the Schedule.

(c) Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

All other terms and conditions in the policy remain unchanged.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited

liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (1)(b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services:

- (a) Subparagraphs (1)(a), (1)(b) and (1)(c) above do not apply to any "employee" or "volunteer worker" providing first aid services; and
- (b) Subparagraph (1)(d) above does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only

with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which such insured is also a named insured under another policy or would be a named insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

*** 5. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally

undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person(s) or organization(s) from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

(2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors Of Land Or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an additional insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others

by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

The limits of insurance that apply to additional insureds is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal And Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or the additional insured is a partnership;
- (3) Any manager, if you or the additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or the additional insured is a corporation;
- (5) Any trustee, if you or the additional insured is a trust; or
- (6) Any elected or appointed official, if you or the additional insured is a political subdivision or public entity.

3. Legal Action Against Us

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

4. Other Insurance

a. Primary Insurance

b. Excess Insurance

(1) Your Work

(2) Premises Rented To You

(3) Tenant Liability

(4) Aircraft, Auto Or Watercraft

(5) **Property Damage To Borrowed Equipment Or Use Of Elevators**

(6) When You Are Added As An Additional Insured To Other Insurance

(7) When You Add Others As An Additional Insured To This Insurance

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) **Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

SECTION V – DEFINITIONS

- However, "auto" does not include "mobile equipment".

5. **"Bodily injury"** means physical:
 - a. Injury;
 - b. Sickness; or
 - c. Diseasesustained by a person and, if arising out of the above, mental anguish or death at any time.
6. **"Coverage territory"** means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communicationprovided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.
7. **"Employee"** includes a "leased worker". "Employee" does not include a "temporary worker".
8. **"Employment-Related Practices"** means:
 - a. Refusal to employ that person;
 - b. Termination of that person's employment; or
 - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person.
9. **"Executive officer"** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. **"Hostile fire"** means one which becomes uncontrollable or breaks out from where it was intended to be.

When performing operations as a "general contractor", the term that particular part shall not mean the entire construction, improvement or renovation project. For purposes of this provision, the term "general contractor" means the contractor signing the prime construction contract for a construction, erection, improvement or renovation project and that has main responsibility for such project including hiring all of the subcontractors and suppliers.

4. CONTRACTORS LIMITED PROFESSIONAL LIABILITY

The following exclusion is added to Paragraph 2., **Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability**, and to Paragraph 2., **Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

Professional services include:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
- (2) Supervisory or inspection activities performed as a part of any related architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

This exclusion does not apply to your operations in connection with construction work performed by you or on your behalf.

However, this exception to the exclusion will not apply if you are in the business or profession of providing the professional services described above independent from the construction work performed by you or on your behalf.

In the event this insurance applies to any injury, damage, loss, cost or expense covered by Professional Liability insurance issued by a company unaffiliated with us, then the insurance

afforded under this Coverage Part is excess over such other valid and collectible Professional Liability insurance (including any deductible or self-insured retention portion thereof), and any other valid and collectible insurance available to the insured whether primary, excess, contingent or on any other basis.

5. PER PROJECT AND PER LOCATION GENERAL AGGREGATE LIMITS OF INSURANCE

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I - Coverage A**, and for all medical expenses caused by accidents under **Section I - Coverage C**, which can be attributed only to ongoing operations at a single "project" or a single "location";

1. A separate Per Project General Aggregate Limit or a separate Per Location General Aggregate Limit applies to each "project" or "location", whichever is applicable. The Per Project General Aggregate Limit and Per Location Aggregate Limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Per Project General Aggregate Limit or the Per Location General Aggregate Limit, whichever applies, is the most we will pay for the sum of all damages under **Coverage A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **Coverage C** regardless of the number of;
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
3. Any payments made under **Coverage A** for damages or under **Coverage C** for medical expenses shall reduce the Per Project General Aggregate Limit for that "project" or the Per Location General Aggregate for that "location", whichever applies. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, the Per Project General Aggregate Limit for any other "project", or the Per Location General Aggregate Limit for any other "location".
4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of

being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Per Project General Aggregate Limit if attributable only to ongoing operations at a single "project" or the Per Location General Aggregate if attributable only to ongoing operations at a single "location".

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I - Coverage A** and for all medical expenses caused by accidents under **Section I - Coverage C**, which cannot be attributed only to ongoing operations at a single "project" or a single "location";

1. Any payments made under **Coverage A** for damages or under **Coverage C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
2. Such payments shall not reduce any Per Project General Aggregate Limit or any Per Location General Aggregate Limit.

- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit, or any Per Project General Aggregate Limit or any Per Location General Aggregate Limit.

- D. The provisions of **Section III - Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply as stipulated.

- E. For the purposes of Paragraph 5., the following definitions apply:

"Project" means a premises an insured does not own or rent and where such insured performs construction-related operations. Each "project" involving the same or connecting lots, or premises whose connection is separated by a street, roadway, waterway, railroad or right-of-way shall be considered a single "project".

1. If a "project" has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the "project" shall be considered a single "project". "Project" does not include a premises that is a "location".

2. "Location" means a premises an insured owns or rents and where such insured performs business operations other than construction-related operations. Each "location" involving the same or connecting lots, or premises whose connection is separated by a street, roadway, waterway or right-of-way railroad shall be considered a single "location." "Location" does not include a premises that is a "project".

This provision does not apply if the Per Project and the Per Location General Aggregate Limit has been otherwise modified by endorsement.

6. MEDICAL PAYMENTS COVERAGE - INCLUDING PRODUCTS-COMPLETED OPERATIONS

Paragraph 1.a. of the **Insuring Agreement - Coverage C** is replaced by the following:

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent;
- (3) Because of your operations; or
- (4) Included within the definition of the "products-completed operations hazard;"

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

7. INJURY TO EMPLOYEE'S REPUTATION WITH RESPECT TO INCIDENTAL MEDICAL MALPRACTICE

- A. The following is added to Paragraph 1.e. of the **Insuring Agreement - Coverage A**:

- (3) With respect to incidental medical malpractice, "bodily injury" includes damages claimed for injury to emotions or reputation of an "employee" arising out of the rendering or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic services.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
 - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

Policy Number: 72WEAAU0TGJ

Endorsement Number:

Effective Date: 10/1/2022

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: Sancon Technologies Inc.
5841 Engineer Dr.
Huntington Beach CA 92649

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

WHERE REQUIRED BY WRITTEN CONTRACT

Countersigned by

Authorized Representative

Form WC 04 03 06 (1) Printed in U.S.A.

Process Date:

Policy Expiration Date: 10/1/2023

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 08/08/2023

SUBJECT: Agreement for Production of Original Art Work with Carlos Terres for the
Reproduction of the *Centennial Door* Sculpture

RECOMMENDATION

1. Approve the Agreement for Production of Original Artwork with Carlos Terres for the Reproduction of the *Centennial Door* sculpture; and
2. Appropriate \$85,000 from the Fixed Asset Replacement Fund (182) for the purchase of the sculpture.

BACKGROUND/DISCUSSION

In 2017, the Brea City Council entered into an agreement with artist Carlos Terres from Brea's Sister City, Lagos de Moreno, Mexico, for the creation of an original sculpture celebrating Brea's Centennial anniversary. The concept for the sculpture was created by the artist and supported by the Centennial Steering Committee in place at the time. The final design consisted of a sculpture created in the artist's proprietary stone material Terroca, approximately 6 ft. H x 6 ft. W x 1.5 ft. D, depicting scenes celebrating family life, recreation and the historic orange industry of Brea. The sculpture was installed in early 2018 at Lagos de Moreno Park/Laurel Elementary Playground at the corner of Birch Street and Flower Avenue.

Throughout 2019, staff was made aware of damage to the sculpture including severe cracks and areas where the sculpture appeared to be expanding and separating at its seams. The artist was scheduled to personally perform an inspection of the damage and prepare recommendations for repair in early 2020, however this trip was postponed due to COVID-19 travel restrictions. In November 2020, the sculpture was destroyed beyond repair in a vehicle collision.

In November 2021, the City Council supported efforts for the piece to be reproduced in bronze, with the assumption that staff would work to ensure that plans for the new piece would reduce the risk of destruction, vandalism, etc. Staff has been in negotiations with the artist over the past several months on the contract to include stronger language regarding acceptance of the work, warranties, etc. given the history of damage to the previous work.

Staff also discovered in the aftermath of the collision that City-owned art work was not covered under the City's general insurance policy. Given this information, the City Council had an interest in exploring the cost for a separate fine art policy to cover similar incidents in the future. Staff is still researching independent policies to cover City-owned sculptures.

SUMMARY/FISCAL IMPACT

The cost of this purchase is \$85,000. There is funding available in the Fixed Asset Replacement Fund (182) and staff is recommending to appropriate funding and authorize this contract.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Jenn Colacion, Senior Management Analyst and

Carrie Hernandez, Deputy Director of Community Services

Concurrence: Chris Emeterio, Assistant City Manager

Attachments

Contract

AGREEMENT FOR PRODUCTION OF ORIGINAL ART WORK

This Agreement is entered into this _____ day of _____, 2023 ("Effective Date") by and between the City of Brea, a municipal corporation ("City") and Carlos Terres, an independent artist ("Artist").

RECITALS

- A. Artist represents that he is a qualified and highly skilled, professional artist.
- B. The City previously commissioned and purchased a stone or "Terroca" sculpture from Artist entitled "Centennial Door"; however that sculpture was accidentally and irreparably damaged. The City desires to replace that sculpture with a bronze version of the same "Centennial Door" sculpture.
- C. The City desires to hire Artist to develop, and construct a new, original sculpture substantially similar in size and design, to the original stone "Centennial Door" sculpture, which shall be site-specific and installed by City as public art in the City of Brea.
- D. City and Artist desire to enter into this Agreement in order to set forth terms and conditions under which Artist shall develop, construct, and deliver the original art work referenced in Recital C, above, as specified by City, and perform additional, related services, all as more fully described herein.

AGREEMENT

NOW THEREFORE, in consideration of recitals, mutual covenants and conditions herein contained, City and Artist agree as follows:

1. DEFINITIONS

- A. "Artist's Work" shall mean that certain work of art and sculpture referred to, and known by the parties as, "Centennial Door in Bronze", including the entirety of the concept therefor, as more fully described herein.
- B. "Artist's Supporting Works" means the design layout for Centennial Door in Bronze, and any and all drawings, paintings, sketches, models, fabrications, renderings and/or any and all other images of Centennial Door in Bronze, in whatever media, and tangible objects, created by Artist, in connection with, necessary to, or in any way arising out of Artist's performance of this Agreement.
- C. "Scope of Services" shall mean Artist's services including creation and production of Artist's Work and Artist's Supporting Works, and delivery of Artist's Work to the City, as required pursuant to City's requirements and specifications, and as otherwise required herein.

D. "Site" shall mean that certain portion of real property located in the area of _____, in the City where the City intends to install Artist's Work. A concrete slab upon which the original stone Centennial Door was placed, exists at the intended Site and Artist's Work will be installed on this slab, pending approval by the City's structural engineer. If required by the engineer, the City will replace the existing slab with a new concrete slab. City reserves the right to change the location of the Site to any other location in the City for any reason.

2. ARTIST'S SERVICES

A. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Artist shall personally create, manufacture, produce, and deliver to the Brea Service Center ("City Yard"), 545 Berry St., Brea, California, free of liens or any encumbrances, Artist's Work, and perform all related services, as specified and required in the Scope of Services, and this Agreement, all to City's reasonable satisfaction (collectively, "the Services"). Artist agrees that under no circumstances will Artist's Work exceed six (6) feet (72 inches) in net height.

Artist may exhibit the model of the Artist's Work and a maquette in "The Museum House of Carlos Terrés" which is a non-profit organization in Artist's home town of Lagos de Moreno, Jalisco, Mexico. Except as expressly authorized herein or as required as part of the Services, Artist shall not duplicate Artist's Work, in any scale, or display any facsimile of Artist's Work at any other location. and Artist shall not publicly display Artist's Work, or any image in any media thereof, prior to final acceptance by the City.

Prior to commencing the manufacture, fabrication, and/or casting of Artist's Work, Artist shall produce and provide to City for approval, a detailed model of the Artist's Work in a media and in such size as required by the City, together with shop drawings and renderings of the Artist's Work, verifying that the components, i.e., design, colors, dimensions, materials and other details of Artist's Work, are consistent with Exhibit A and the City's requirements and specifications. City shall approve or disapprove the detailed shop drawings and renderings within forty-five (45) days of receipt. City shall not require redesign of or other changes to any component of Artist's Work once that component has been approved, except as otherwise provided herein.

Artist may request, and the City will provide Artist with any remaining remnants and pieces of the original stone Centennial Door sculpture possessed by the City, to assist Artist in creating Artist's Work. Any such remnants or pieces of the original sculpture accepted by Artist shall be used and disposed of by Artist in Artist's discretion.

On or before final payment by the City, Artist shall provide City with (i) "as-built" drawings depicting in detail the actual dimensions and specifications of Artist's Work; and (ii) a written list of maintenance requirements for Artist's Work. Once inspected and accepted by the City, and excepting only Artist's warranty obligations herein, Artist shall have no further obligations or rights with respect to maintenance and repairs, except as may be separately agreed upon by the parties.

Artist shall be available at one or more times as agreed upon to attend presentation ceremonies relating of the transfer of Artist's Work to the City. Artist shall not make any public information release related to the Services without City's prior written consent.

City shall have the right to request, in writing, changes in the Scope of Services. Any changes agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

B. Time for Performance. Artist shall commence performing the Services when given written notice to proceed and shall perform the Services and produce and deliver Artist's Work to the City no later than eighteen (18) months after the Effective Date.

C. Standard of Performance. Artist, and any person or entity acting on Artist's behalf, shall perform all of the Services to the highest professional standards, at a quality level consistent with the production of a significant work of public art, and in a manner reasonably satisfactory to City. Artist shall ensure that the final design, materials and fabrication of Artist's Work complies with the City's budgetary and scheduling requirements set forth herein. Artist shall comply with all applicable federal, state and local laws, ordinances, codes and regulations while performing the Services.

3. REPRESENTATIVES

A. City Representative. For the purposes of this Agreement, the contract administrator and City's representative shall be the City's Community Services Director, or designee (hereinafter the "City Representative"). It shall be Artist's responsibility to assure that the City Representative is kept informed of the progress of the performance of the Services, and production of Artist's Work, and Artist shall refer any decisions which must be made by City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

B. Artist Representative. For the purposes of this Agreement, Artist is solely authorized to act on his own behalf with respect to the services specified herein and make all decisions in connection therewith.

4. PERSONNEL

A. Artist agrees that he shall be responsible for completing all services in the Scope of Services. Unless otherwise agreed to in writing by the City, all of the Services, except transportation, and delivery of Artist's Work, shall be performed by Artist personally.

B. Artist shall be solely responsible for the satisfactory performance of all work by all authorized persons, if any, engaged in performing the Services, and their compliance with all performance standards established by City.

C. Artist shall obtain and maintain during the Agreement term all necessary certificates and permits required by law for the provision of services under this Agreement.

5. LABOR, FACILITIES AND EQUIPMENT

Except as otherwise authorized by City in writing, Artist shall, at his sole cost and expense, furnish all labor, facilities and equipment which may be required in order to satisfactorily complete the Services pursuant to this Agreement.

6. TERM OF AGREEMENT

This Agreement is effective as of the Effective Date and shall terminate upon Artist's completion of the Services to City's satisfaction, which date shall be on or before the completion date specified in Section 2.B, unless sooner terminated as provided herein.

7. COMPENSATION

A. As full and complete compensation for the Services, including Artist's Work, Artist's Supporting Works and the grants and waivers of rights herein, the City shall pay, and Artist agrees to accept in full satisfaction thereof, the **TOTAL, NOT-TO-EXCEED** amount of Eighty-Five Thousand U.S. dollars (\$85,000.00). Payments shall be made in accordance with Section 8 herein and pursuant to the Project Timeline milestones. City shall not withhold, and Artist shall be solely responsible for payment of, applicable federal or state payroll or any other required taxes.

B. The amount set forth in subsection A represents complete payment for all actual and necessary expenditures reasonably incurred in the performance of this Agreement including all transportation, costs of insurance for full replacement cost of Artist's Work, all customs charges, and delivery to City's City Yard, FOB destination. Transportation shall be made using a transportation service qualified and equipped to transport fine art work. The Artist's Work shall be insured against damage or destruction, for full replacement value, at all times until final payment is made, as specified in Section 8(c).

C. No claims for additional services provided or performed by Artist which are not expressly set forth in the Scope of Services will be allowed unless such additional work is authorized by City in writing prior to the performance of such services.

8. METHOD OF PAYMENT

City shall not compensate Artist until City in its sole discretion is satisfied with each Artist's completion of the milestones set forth in this Section. Artist agrees that if City in its sole judgment is not satisfied with any portion of the Services, Artist shall modify, alter, or re-perform such Services at Artist's sole expense until City is fully satisfied. Except for the initial payment, below, under no circumstances shall City be required to pay Artist for any of the Services that have not been satisfactorily completed.

Following receipt of Artist's written invoice corresponding to each payment milestone set forth below, City shall compensate Artist as follows:

- (a) The sum of \$2,500 shall be paid upon execution of the Agreement by both parties.

(b) The sum of \$25,000 shall be paid upon City's written approval of the model and detailed shop drawings for Artist's Work.

(c) The sum of \$57,500 shall be paid upon City's final inspection and written approval of the completed and delivered Artist's Work, which payment shall occur within sixty (60) days of written approval.

9. OWNERSHIP OF WORKS

Artist agrees that Artist's Work and Artist's Supporting Works constitute "work made for hire" by Artist for the City, subject to the terms of this Agreement. Artist understands and agrees that upon its acceptance and final payment by the City, Artist's Work shall become the sole property of the City. The parties agree that Artist's Work and all rights, including any and intellectual property and proprietary rights, copyrights, title and interest in and/or to Artist's Work, shall forever belong to and are being sold and assigned in their entirety to the City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all world-wide rights, including intellectual property rights, copyrights, title and interest in and to all of Artist's Work, to the fullest extent permitted by law. In consideration of the compensation to be paid to Artist pursuant to this Agreement, Artist waives any and all claims of ownership and agrees that, upon final payment, City shall own Artist's Work and any and all copyrights, moral rights, and all other intellectual property rights and interests, and any derivative works based thereon, arising from the creation of Artist's Work and Artist's Supporting Works.

City shall be entitled to reproduce, use in any way, display, license, distribute, sell, or give away likenesses or copies of any of Artist's Work and Artist's Supporting Works, in any form and on any media, for any municipal purpose. In exercising any of the foregoing rights conveyed herein to the City, the City will utilize its best efforts to attribute creation of such images and likenesses of Artist's Work, to Artist. The City will provide appropriate credit to the Artist as creator of Artist's Work, at its permanent installation location, as provided herein. Artist may not duplicate, copy or reproduce Artist's Work or Artist's Supporting Works, without City's prior, written consent.

10. TRANSFER OF RIGHTS OF REPRODUCTION

To the fullest extent permitted by law, Artist hereby transfers and assigns to City full and complete interest in all rights of reproduction, as that term is defined in California Civil Code Section 982, in Artist's Work and Artist's Supporting Works, including, but not limited to, the right to claim statutory copyright in Artist's Work and/or Artist's Supporting Works and the right to reproduce Artist's Work and/or Artist's Supporting Works in any manner whatsoever for commercial and non-commercial purposes.

11. WAIVER OF MORAL RIGHTS

To the fullest extent permitted by law, Artist hereby releases from liability, and waives and disclaims any and all rights, demands and/or claims as may arise at any time and under any circumstances against City, its elected officials, officers, agents, employees, attorneys, servants,

volunteers, successors and assigns pursuant to and/or under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987, *et seq.*), and any and all other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, California Civil Code § 987, *et seq.*, or any other type of moral right protecting the integrity of works of art and/or original visual content, with respect to Artist's Work. Artist acknowledges and agrees that City, in its sole and exclusive discretion, may, among other acts, without prior notice to Artist temporarily or permanently modify, alter, change or dispose of Artist's Work provided that in any such event, any Artist attributes shall first be removed.

12. ASSIGNMENT OF INTEREST IN INTELLECTUAL PROPERTY RIGHTS

Artist hereby assigns to City full and complete ownership of Artist's Work and Artist's Supporting Works, and any and all copyrights, moral rights, duplication rights, and all other intellectual property rights and interests and any derivative works based thereon, arising from the creation of Artist's Work and/or Artist's Supporting Works insofar as any of the same may not be considered work made for hire, or are not otherwise conveyed to the City by this Agreement. Notwithstanding the foregoing, Artist may exhibit the model of Artist's Work and a maquette in "The Museum House of Carlos Terrés" which is a non-profit organization in his home town Lagos de Moreno, Jalisco, Mexico.

13. RISK OF LOSS

Artist bears the sole risk of damage to or loss of Artist's Work until Artist's Work is delivered to City's City Yard, and accepted and paid for by the City.

14. ORIGINALITY OF WORKS

Artist represents and warrants that (i) Artist's Work is and will be original; (ii) at the time of transfer hereunder, Artist is the sole, world-wide owner of Artist's Work and of all rights therein including copyright, trademark and other intellectual property and proprietary rights therein; (iii) Artist is and will be the sole creator of Artist's Work; (iv) Artist has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (v) Artist is not under any obligation to transfer or sell any or all of Artist's Work to any third party; (vi) Artist's Work and/or Artist's Supporting Works have not been and will not be published under circumstances, except as provided herein, and have not been the subject of any commercial transaction, which have or will cause a loss of any copyright, trademark or other intellectual property and proprietary rights; and (vii) Artist's Work and/or Artist's Supporting Works do not and will not infringe any patent, copyright, trademark or other intellectual property or proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights related to Artist's Work or Artist's Supporting Works).

To the fullest extent permitted by law, Artist shall indemnify, defend (including payment of City's actual attorneys' fees) and hold City and City's elected officials, officers employees,

agents and volunteers free and harmless with respect to any and all liabilities and any and all claims and actions alleging that Artist's Work or any of Artist's Supporting Works, or any design or concept embodied therein, infringe any copyright, trademark or other intellectual property or proprietary right.

15. WARRANTY OF ARTIST'S WORK

A. Artist hereby warrants that Artist's Work will be free of defects in workmanship (due to faulty design, casting, fabrication, or other applicable production technique), materials and/or finish, and that Artist will, at Artist's sole expense, promptly and satisfactorily remedy or repair any such defects in workmanship, materials and finish, and if necessary replace any part or all of Artist's Work, with respect to any defects, errors, or mistakes ("Defects") appearing within a period of five (5) years of City's final payment to Artist for the Artist's Work ("Warranty Period"), excluding repairs required due to vandalism. Should there be any deterioration in Artist's Work due to the quality of any incorporated material or materials, occurring within the Warranty Period, Artist shall promptly repair and/or replace all affected portions at Artist's sole expense. Within thirty (30) days of the City discovering and providing written notice to Artist of any such Defects, Artist shall cause any and all defective work to be corrected to City's reasonable satisfaction, at Artist's sole expense.

B. Neither City's review, approval or acceptance of, or non-payment for, any of the Services shall 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 Artist shall be and remain liable to City in accordance with applicable law for all damages to City caused by Artist's negligent or inadequate performance of any of the Services or production of Artist's Work furnished under this Agreement.

C. The rights and remedies of City provided for under this Agreement are in addition to any other rights and remedies provided by law.

16. MAINTENANCE

Following final payment to Artist hereunder, maintenance of Artist's Work shall be performed by an art preservationist selected by the City, who is fully qualified to perform such maintenance. The City may, but is not required to, consult with Artist concerning issues related to maintenance. The City shall not be required to utilize Artist's services in connection with such maintenance.

17. PUBLIC SAFETY

Artist understands that Artist's Work will be physically accessible by the public including persons of all ages. Therefore, Artist agrees to design and construct Artist's Work so as to avoid creating unreasonable risks to the public when used in the manner for which it is designed.

18. ARTIST'S CREDIT

The City will purchase and have installed at the base of the Artist's Work an identification plaque that will include the Artist's name, year of installation, and title. If desired by City, City's name as the commissioning agency may also be included in the Artist's plaque.

19. INDEPENDENT CONTRACTOR

Artist will act hereunder as an independent contractor. This Agreement shall not and is not intended to constitute Artist as an agent, servant, or employee of City and shall not and is not intended to create the relationship of partnership, joint venture or association between City and Artist.

20. CONFIDENTIALITY

Prior to final acceptance of Artist's Work, Artist's Supporting Works and all documents, discussion, renderings or fabrication or other information developed or received by Artist or provided by the City for performance of this Agreement, are deemed confidential and shall not be disclosed by Artist without prior written consent by City. City shall grant such consent if disclosure is legally required or necessary to provide the Services.

21. CONFLICTS OF INTEREST

Artist hereby warrants for himself, his employees, and subcontractors that those persons presently have no interest and shall not obtain any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such conflicting interest shall be employed by or associated with Artist in connection with this project. Artist hereby warrants for himself and anyone acting on his behalf that no such person shall engage in any conduct which would constitute a conflict of interest under any City ordinance, state law or federal statute. The inclusion of the provisions in this Section shall not operate to give Artist the right to subcontract or assign his duties or rights hereunder either in whole or in part, without City's prior written consent and any attempt to do so shall be void and of no effect.

22. INDEMNIFICATION AND RELEASE

A. To the fullest extent permitted by law, Artist shall indemnify, hold harmless and defend City, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns from and against any and all claims, demands, causes of action, liability, losses, costs or expenses for any damage due to death or injury to any person and injury to any property, stop notices, liens, breach of this Agreement, and/or any other financial loss, resulting from any alleged intentional, reckless, negligent or other acts, errors or omissions of Artist, Artist's agents, contractors, and/or any other person or entity acting on behalf of Artist in the performance of this Agreement. Such costs and expenses shall include payment of reasonable attorneys' fees of counsel of City's choice.

The parties understand and agree that the duty of Artist to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

B. To the fullest extent permitted by law, Artist, on behalf of himself and his heirs, executors, administrators and assigns, hereby releases, discharges and agrees not to sue the City of Brea, its agents, officers, servants, employees, and/or volunteers for any injury, death or damage to or loss of personal property arising out of, or in connection with Artist's performance of services pursuant to this Agreement, from whatever cause, including the active or passive negligence of the City of Brea.

C. Artist's obligations under this or any other provision of this Agreement will not be limited by the provisions of any workers compensation act or similar act. Artist expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. City does not, and shall not, waive any rights that it may possess against Artist because of the acceptance by City, or the deposit with City, of any insurance policy or certificate. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

E. Artist agrees to pay all required taxes on amounts paid to Artist under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Artist shall fully comply with the workers' compensation laws applicable to Artist and/or persons acting on Artist's behalf. Artist further agrees to indemnify and hold City harmless from any failure of Artist to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Artist under this Agreement, any amount due to City from Artist as a result of Artist's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

23. MUTUAL COOPERATION

A. City shall provide Artist with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Artist's Services.

B. In the event any claim or action is brought against City relating to Artist's performance in connection with this Agreement, Artist shall render any reasonable assistance that City may require.

24. REVIEW OF WORK

Artist shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three (3) years following completion of the Services. City shall have access, without charge, upon reasonable notice, during normal business hours to review any of Artist's Work, or any other work provided pursuant to this Agreement and any documentation related thereto and/or to review or monitor Artist's progress in performing pursuant to this Agreement. Artist shall provide evidence satisfactory to City, of timely Artist's progress in the production of Artist's Work.

25. TERMINATION OF AGREEMENT

A. Either party shall have the right to terminate this Agreement upon the other party's failure to perform as required herein, by providing the other with no less than fourteen (14) calendar days' prior written notice ("Termination Notice".) The Termination Notice must specify the breach and provide the breaching party with an opportunity to cure the breach within the fourteen (14) day notice period, or such longer period as the notifying party shall provide. If City provides the Notice of Termination, then Artist agrees to cease all work under this Agreement upon receipt of such Notice, except as may be necessary to cure the breach. Upon termination based on Artist's uncured breach, all work product of Artist, including Artist's Work and Artist's Supporting Works, completed or partially completed, up to the date of receipt of the Notice of Termination, including any and all related intellectual property and proprietary rights, and copyrights, shall become the property of City as if full payment had been made by City. City shall have the right to demand further assurances of Artist's ability to timely complete the Services, at any time upon demand.

B. City may terminate this Agreement for any reason at any time by providing Artist not less than ten (10) days' prior, written notice whereupon Artist agrees to cease all work under this Agreement. In the event of termination of this Agreement by City, due to no fault or failure of performance by Artist, Artist shall be paid based on the percentage of services satisfactorily performed and/or Artist's Work satisfactorily produced as of the time of termination. In no event shall Artist be entitled to receive more than the amount that would be paid to Artist for the full performance of the Services required by this Agreement.

26. SURVIVAL OF CERTAIN PROVISIONS

The provisions of Sections 9 - 12, 14 - 18, 22, 23, 26, 30, and 32 shall survive the expiration or earlier termination of this Agreement.

27. FORCE MAJEURE

Artist shall not be liable for failure to perform any of the Services and/or produce Artist's Work as required under this Agreement if Artist presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control, and without the fault or negligence of Artist. In such event, Artist shall be provided additional time to complete the Services, not to exceed thirty (30) days or such other period agreed upon in writing.

28. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during Artist's and City's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing.

If to City:

Chris Emeterio, Assistant City Manager
City of Brea
1 Civic Center Circle
Brea, CA 92821

If to Artist:

Carlos Terrés
Antonio Moreno Oviedo 648
Col. Chirlitos, Lago de Moreno
Jalisco, Mexico 47474

29. PROHIBITION AGAINST ASSIGNMENT

Artist's performance of the Services is personal to Artist. Artist shall not delegate, transfer, subcontract (except for transportation services) or assign his duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Artist.

30. ATTORNEY'S FEES

In the event that City or Artist commences any legal action or proceeding for breach, or to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs of experts.

31. ENTIRE AGREEMENT

This instrument contains the entire agreement between City and Artist with respect to the subject matter herein. No other prior representations or oral or written agreements are binding on the parties. Any modification of this Agreement will be effective only if it is in writing and executed by City and Artist.

32. GOVERNING LAW; JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties, venue in State trial courts shall lie exclusively in Orange County Superior Court, State of California. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California. No conflicts of laws principles shall apply.

33. TIME OF ESSENCE.

Time is of the essence in every term herein in which time to perform is a factor.

34. SEVERABILITY

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

35. CAPTIONS

The captions used in this Agreement are solely for reference and the convenience of the parties. The captions are not a part of the Agreement, in no way bind, limit, or describe the scope or intent of any provision, and shall have no effect upon the construction or interpretation of any provision herein.

36. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

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

City of Brea

By: _____
Marty Simonoff, Mayor

Date: _____

Artist

By: _____
Carlos Terrés

Date: _____

Attest: _____
Lillian Harris-Neal, City Clerk