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City of Oakland

Dockless Scooter Share Program

Terms and Conditions + Permit Application

DRAFT – Version 2.0

Last updated November 13th, 2018

Background

The City of Oakland has seen significant growth in new mobility services, from on-demand ride-hailing services like Lyft and Uber to app-enabled transportation options like carshare and scootershare. The accelerated development of these technologies have the potential to dramatically shape our cities in the next few decades. New mobility services can help the City achieve its goals in equity, livability, and sustainability; however, new technologies can also be disruptive and leave the marginalized further and further behind.

Goals

Dockless scooter sharing services, as the newest option, have the potential to help achieve Citywide transportation goals by providing an easy and affordable way to get around Oakland. E-scooters may reduce the need for vehicle ownership, increase the “first-and-last-mile” connection to transit, and reduce single occupancy vehicle trips, which would also reduce congestion and wear-and-tear on our streets. Additionally, e-scooters emit no air pollution or greenhouse gases during operation. However, these services may also create new problems, including obstructing the pedestrian right-of-way. Active management is therefore needed to ensure that scooters and other forms of dockless shared mobility help to achieve City goals while minimizing adverse impacts on other uses of the right of way.

Definitions

“Dockless Scooter share system” means providing scooters, inclusive of electric-assist or motorized scooters (E-scooters), for short-term rentals for point to point trips where, by design of the dockless scooter share operator, the scooters are intended to remain in the public right of way, even when not being rented/used by a customer. Dockless Scooter Share Systems do not include other types of vehicles, such as motorized skateboards.

“Dockless Scooter share operator” or “Operator” is any entity that owns and/or operates a City authorized dockless Scooter share system or program in the City’s right of way. The term includes any employee, agent or independent contractor hired by the Operator.

“Dockless Scooter Share User or Customer” or “User” is any person that uses, rents or rides a dockless Scooter or is a customer of the Dockless Scooter Operator.

“Vehicle” means any device that is used or intended to be used to move a person or good from one physical point or another.

Permit Terms and Conditions

1) Purpose

The purpose is to establish requirements that govern and permit the operation of scooter sharing in the City, and to provide a regulatory framework for all dockless mobility modes. These terms and conditions are intended to fulfill the obligation of the City Administrator, or her designee, to “develop dockless scooter operator program criteria, application process and program requirements to operate within the City’s right-of-way” (O.M.C. No. 10.18.20 C.M.S.).

2) Authority

According to the Oakland Municipal Code (O.M.C.) Section 10.18.020, the “City Administrator, or her designee, is authorized to review, approve and issue dockless scooter operator permits to operators who submit applications to operate such programs within the city” and according to O.M.C 12.08.012 “It shall be unlawful for a dockless scooter share Operator to provide a scooter share system within the City without first obtaining an encroachment permit from the Department of Transportation”.

3) Duration

Permits are valid for one-year from the time of permit issuance. Operators must renew permits on an annual basis. Permit requirements may be adjusted yearly to accommodate changing technology, needs, and priorities.

4) Modifications

The City reserves the right to amend, modify, or change the terms and conditions within the Program at its discretion.

5) Relationship to City

In rendering service, hereunder, the Operator shall be and remain an Independent Contractor. It is expressly understood and acknowledged by the parties that any amounts payable hereunder shall be paid in gross amount, without reduction for penalties, taxes, or charges. Operators are responsible for assuming any applicable federal or state withholding taxes, estimated tax payments, or any other fees or expenses whatsoever.

Permits issued under this Program are not to be assigned or delegated to a substitute provider, a successor in interest, or a purchaser of the permit without express written permission by the City.

The City reserves the right to terminate permits at any time and require the Operator to remove their entire fleet of Vehicles from City streets. An Operator will have 30 days to remove the entire fleet from City streets.

6) Non-transferability

A permit may not be transferred without prior written approval of the Director of Transportation. Operator shall promptly notify the City of Oakland of any changes to the Operator's corporate structure or ownership. Failure to do so shall be cause for revocation of the permit. "Transfer" shall include the sale or other exchange of 50% or more of the ownership or control of a permittee to a third party.

7) Indemnification

a) Operator shall defend, indemnify, and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Operator's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by Operator, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

b) Permittee expressly acknowledges and agrees that City would not be willing to give this Permit in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect to its services authorized pursuant to this Permit, which includes the use of its services by the parties it contracts with through the lease or rental of its electric scooters. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained within this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes against the City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to the Permit, regardless of cause, and whether or not due to the negligence of the City or its Agents, except for the willful misconduct of City or its Agents. This waiver includes, without limitation, any and all claims whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Public Rights-of-Way and any related improvements or any law or regulation applicable thereto or the suitability of the Public Rights-of-Way for Permittee's intended use.

8) Insurance Requirements

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in Schedule Q DOCKLESS SCOOTER SHARE PROGRAM INSURANCE REQUIREMENTS. Schedule Q is attached at the end of this agreement (or; "is attached hereto") and incorporated herein by reference.

9) Operator Responsibilities

- a) Operators seeking to participate in the Program will register with the Finance Department within the City for business tax compliance. Operators can either register online or in person at one of the public service centers.
- b) Operators must be in compliance and in good standing with tax payments or the permit may be revoked or not eligible for renewal the following year.
- c) Electric scooter systems shall have the following information readily available for customers:
 - a. Provide a single point-of-contact (phone number and email) customer service line, available 24 hours, for complaints regarding improperly parked scooters or other issues as they arise; and
 - b. List that contact clearly on each scooter along with a unique identifying number; and
 - c. Address those complaints within 3 hours during typical work hours (Monday-Friday, 9am-6pm) and 12 hours on weekends and after typical work hours; and
 - d. Issue a “ticket number” for each issue to both the City and the person who reported the issue; and
 - e. Provide a response, to the City and the person who issued the complaint, when a complaint is closed, similar to Oakland’s 311 system; and
 - f. Provide sufficient operations and maintenance staff in Oakland to address issues and remove improperly parked scooters.
- d) Operators shall provide a plan to prevent scooters from being mis-placed in bodies of water, including Lake Merritt. Operators shall provide for approval their standard operating procedures for retrieval of scooters from bodies of water, along with proof of agreements with any third parties contracted to provide services for scooter removal, such as from areas that require a boat or other specialized equipment.
- e) Operators deploying motorized scooters must verify that Users have valid credentials for use of a Motorized Scooter, as required by the California Vehicle Code. This verification may include in-app Driver’s License scanning and verification or similar technologies.
- f) Operators must ensure that each User is only able to rent one scooter at a time.
- g) Operators will maintain a multilingual website with languages determined by OakDOT, a call center, and app customer interface that is available twenty-four hours a day, seven days a week.

10) Vehicle Specifications and Fleet

- a) Electric scooters shall be incapable of reaching a top speed of greater than 15 mph when operated on a level surface. Speed limits will be re-evaluated on a quarterly basis. The City reserves the right to revise the speed limit based on collision and injury data as recommended by OakDOT.
- b) Electric scooter systems shall have always-on front and back lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night. Front and rear lights must stay illuminated for at least 90 seconds after the Vehicle has stopped.

- c) Electric scooter systems shall have clearly visible language that notifies the user that:
 - a. Helmets should be worn when operating an electric scooter if over 18 years of age, and helmets must be worn when operating a scooter if under 18 years of age; and
 - b. Riders shall yield to pedestrians; and
 - c. When riding on-street, follow the rules of the road, following all motor-vehicle laws and ordinances in the City of Oakland; and
 - d. “No Riding On Sidewalks” (minimum 48-point font) located on the platform of every scooter; and
 - e. Customer must have a valid with Driver’s License or Learner’s Permit to operate Vehicle.
- d) Customers using vehicles must be provided with a clearly visible mechanism, within the Operator’s mobile application and a phone number printed on the vehicle itself, to notify the operator if there is a safety or maintenance issue with the vehicle. Vehicles reported as damaged or inoperable must be taken out of service immediately and remain out of service until repaired.
- e) Operator’s vehicles shall not create excessive or annoying noises in violation of Chapter 8.18.010 of the Oakland Municipal Code, nor play threatening messages.
- f) Applicants shall provide to the City for inspection one example scooter of each model of vehicle it intends to deploy. Operators shall not introduce new models without prior inspection by the City. Vehicles must be made available for compliance audits and enforcement actions upon request.
- g) Applicants shall provide the City with a full list of unique identifying numbers for each permitted vehicle.
- h) Applicant shall provide proof that each of its proposed models of vehicle comply with all federal, state and local laws. Compliance with such laws shall include, without limitation, U.S.C, Title 15 Section 2052 (a) (1) and 2085, C.F.R. 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations, and Article 4, sections 21200-21213, and Article 5, section 407.5 and sections 21220-21235, of the California Vehicle Code.

11) Parking

- a) Operators shall submit for approval a set of typical plans showing where their vehicles are intended to be parked within the public right of way under several example roadway and land use types found in Oakland. If approved, these plans will constitute a minor encroachment permit.
- b) Operators shall ensure their Vehicles are not parked in a way that violates the terms of their encroachment permit, impedes the regular flow of travel in the public way, or in any way impedes the clearance on sidewalks needed for ADA compliance. Operators shall ensure their vehicles are parked in the landscape/furniture zone of the sidewalk, preferably within a bicycle rack, an on-street bike corral, or in another area specifically designated for bicycle parking and/or scooter parking. Improperly parked vehicles are subject to fines.

- c) Operators shall inform Customers on how to properly park a vehicle. Operators shall report to the City the effectiveness of efforts to enforce proper parking within their mobile application.
- d) Vehicles shall be upright when parked.
- e) Vehicles shall not be parked in the landscape/furniture zone adjacent to or within:
 - a. Disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
 - b. Curb ramps;
 - c. Red curb zones;
 - d. Loading zones;
 - e. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
 - f. Locked to street furniture that requires pedestrian access (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
 - g. Entryways; and
 - h. Driveways.
- f) Any Vehicle that is parked in one location for more than 3 consecutive days without moving may be removed and taken to a City facility for storage at the expense of the Operator.
- g) Operators shall propose to the City a minimum of one designated scooter parking area per 15 permitted scooters. Each designated parking area must have a minimum capacity of 15 scooters. Operators shall conduct outreach to adjacent businesses, residents, and neighborhood groups to solicit their feedback on potential designated scooter parking locations. Designated parking areas may be placed in the parking lane or on the sidewalk.
- h) Operators shall institute geo-fencing around designated scooter parking areas and implement in-app technology to require their use in high-density areas.
- i) Operators shall remove electric scooters from the public right-of-way when they are damaged or their battery has been depleted.

12) User education and safety plan

- a) Provide screenshots, images and explanations of all existing User education materials and technologies, including those in the mobile application, on the Vehicle, and via in-person interaction.
- b) Describe any additional education, incentives, training, scooter modifications, notification systems, infrastructure, etc. you propose.
- c) Describe how you would monitor compliance, including any technology innovations that allow monitoring, and how you would address users who are noncompliant.

13) Fleet Size and Service Area Coverage

- a) Operator must provide a minimum of 250 scooters to ensure service availability.

- b) Operator must serve the public right of way in the entire City of Oakland. An operator shall not restrict use of its system within geographical areas of the City without written permission, such as in the case of geofencing for high density areas.
- c) Dockless scooters should be distributed equitably throughout Oakland. More than 50% of scooters must be deployed in Oakland's Communities of Concern, as designated by the Metropolitan Transportation Commission.
- d) Operators shall provide real-time access to data showing the location of all their scooters.
- e) Permission to operate the scooter share system outside the public right of way shall require permissions of appropriate department, agency, or property owner(s).
- f) Operator shall have a means of communicating to the customer when the scooter has been operated in non-permitted areas. The communication to the User shall be sent electronically at the end of the ride.
- g) Operators will closely monitor ridership and adjust scooter density and location accordingly to maximize the convenience of the greatest number of riders.
- h) If charging or servicing of scooters is contracted to third parties, Operators must take steps to prevent conflicts between contractors seeking to charge or service scooters. This may include partnering with local organization to provide this service, allocating scooters to charging personnel in a coherent way, hiring charging staff directly, or other such mechanisms that removes or reduces the incentive for conflicts.

14) Accessibility

- a) Operators must provide adaptive scooters for persons with disabilities. The total percentage of adaptive scooters shall be based on expected need, performance, and usage.
- b) If the Operator is unable to deploy adaptive scooters at the time of permit issuance, a plan must be submitted to the Department of Transportation within three months of permit issuance detailing a timeline for incorporation of shared adaptive scooters. This plan should detail the types and numbers of adaptive scooters that will be made available.
- c) Operators may pay an in-lieu fee to OakDOT or a third party to operate a scooter sharing service for persons with disabilities, if approved by OakDOT.
- d) Mobile apps and other customer interface technology must be fully accessible to persons with disabilities and accessible to screen readers, and must comply with Section 508 of the United States Workforce Rehabilitation Act of 1973.

15) Affordability

- a) Operators shall make available ways to use and pay for the service that do not require a smart phone or credit card.
- b) Operators shall offer a discounted membership for those with low-income, equivalent to \$5 for one year of unlimited 30 minute rides for those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE). Low-income plans will be considered equivalent if a significant discount is provided.
- c) Operators shall implement a marketing and targeted outreach plan at its own cost or pay an in-lieu fee to OakDOT to increase awareness of low-income discount options.
- d) Operators must report quarterly the status of their low-income discount programs, including how many riders have signed up, how many rides have been taken at a discounted rate, and other aspects of the program as requested by staff.

16) Personal Data and Privacy

- a) Operator must employ an electronic payment system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS), and provide proof of compliance.
- b) Operator must provide a Privacy Policy that safeguards customers' personal, financial, and travel information and usage.
- c) Operator should clearly communicate to the public and to the City what personal information is being collected about Users, how it is being used, and for how long.
- d) Operator should produce a Privacy Policy that complies with the California Online Privacy Protection Act (CalOPPA) and any data protection laws applicable to minors, and further, expressly limits the collection, storage, or usage of any personally identifiable information to the extent absolutely required to successfully accomplish the provision of the Dockless Scooter Sharing system.

17) Data Reporting

- a) Operators shall make real-time data available to the City and designated third parties via the data standard developed by the North American Bikeshare Association, known as the "General Bikeshare Feed Specification (GBFS)", or similar standard as determined by the City.
 - a. The City has designated the Mobility Data Specification (MDS) as the required data standard. The MDS is a way to implement realtime data sharing, measurement and regulation for municipalities and mobility as a service providers. It is meant to ensure that governments have the ability to enforce, evaluate and manage providers. More information about MDS can be found online at <https://github.com/CityOfLosAngeles/mobility-data-specification>

- b) Operators must provide reports on key performance indicators, including, but not limited to, the following:
 - a. Utilization rates
 - b. Total downloads, active users, and repeat user information
 - c. Total trips by day of week and time of day
 - d. Origins and destinations
 - e. Trips per vehicle by day of week, time of day
 - f. Average trip distance
 - g. Vehicle maintenance reports
 - h. Incidents of theft and vandalism
 - i. Number of complaints
 - j. Crash information
 - k. Payment method information
 - l. Rebalancing to designated service areas
 - m. Outreach activities completed
 - n. Total number of free or discounted helmets distributed
 - o. Number of Users taking advantage of low-income discount
 - p. Number of discounted rides taken
- c) Operators must provide reports on a weekly or quarterly basis, as agreed upon between the operator and the City.
- d) Operators must agree to distribute an opt-in user survey, developed by OakDOT, to all users and to provide input into survey questions.

18) Community Engagement

- a) Operators must provide a plan for community engagement, including a list of planned presentations, activities and events with community based organizations, Business Improvement Districts, and other key stakeholders in the service area.
- b) Operators must have a way to receive and respond to complaints in multiple languages, including, but not limited to, Spanish and Chinese. A summary of complaints must be submitted to OakDOT on a weekly or quarterly basis.
- c) Operators must provide a method for Users and non-users to suggest scooter placement locations, and report this data to OakDOT.
- d) Operators shall make available free or discounted helmets through in-person events or through their mobile application.

19) Permit Revocation or Suspension

- a) The Director of OakDOT (Director) may revoke or suspend a permit, effective immediately, at the reasonable discretion of the Director for reasons including, but not limited to, the following:

- i. A failure to comply with the Oakland Municipal Code;
 - ii. A failure to comply with the Terms and Conditions of the permit;
 - iii. A determination that the operation of Shared Scooters by the Permittee poses a risk to public safety;
 - iv. A determination that the operation of Dockless Scooters by the Permittee conflicts with the DOT's obligation to manage the Right-of-Way responsibly;
 - v. A transfer of the permit to another party without prior written approval by the Director;
 - vi. A material misstatement or omission in the permit application or any other associated document;
 - vii. The Permittee sells or shares confidential and individual User data;
 - viii. The Permittee does not pay required fees, surcharges or penalties;
 - ix. The Permittee blocks or alters the presentation of any information or denies access to its company application by any City employee authorized to enforce the provisions of the associated permit and this Rule, or for the purpose of thwarting or interfering with any City employee's enforcement or oversight of the associated permit or this Rule; and
 - x. Consistent failure by the Users associated with a specific Permittee to comply with applicable laws.
- b) The Director may allow the temporary continuation of a permit that is otherwise subject to revocation or suspension if, in the determination of the Director, the public welfare would not suffer thereby.

20) Administrative Review and Appeals

- e) The Director may review a decision by OakDOT to terminate an existing permit following the receipt of a request for reconsideration.

Permit Application Instructions

Submissions

Please review the Terms and Conditions in detail, and submit all relevant application materials to:

Oakland Department of Transportation
ATTN: Shared Mobility Coordinator
250 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94610

Additionally, please submit one electric copy of the application to: scootershare@oaklandca.gov

Permit Costs

Checks should be made out to:

City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94610

Application Fee: \$2,500 non-refundable one-time fee

Permit Fee: \$30,000 annual fee

Vehicle Fee: \$64 per vehicle per year

Parking Fee: \$0.10 per park in metered zone

Additional Selection Criteria and Process

The City is seeking the best qualified operators. In evaluating applications, the selection committee will be reviewing based on the Shared Mobility Principles. Each criterion shall be rated on a score of 1 to 10, with 1 being extremely unqualified and 10 being extremely qualified.

1. Inclusive outreach and engagement
2. Racial equity
3. Traffic safety
4. Equitable access to services
5. Public transit
6. Affordability
7. Healthy communities and environment
8. Employment and economic development
9. Privacy and personal data
10. Collaboration and accountability

The selection committee will consist of City staff with knowledge and experience in issues related to shared mobility devices, including their impact on safety and health.

Appeals Process

The Director may review a decision by OakDOT to deny a permit application following the receipt of a request for reconsideration.

Timeline

October 30, 2018	First Reading of Terms and Conditions
November 27, 2018	Second Reading of Terms and Conditions
December 1, 2018	Final Applications Open
December 15, 2018	Applications Due
January 15, 2018	Permits Approved and Issued; Fees Due

Application Materials

1. Proof of Insurance
2. Business license
3. Liability Proof
4. Proof of Privacy Policies and User Data Collection Policies
5. Proof of compliance with data sharing requirements
6. Certificates of compliance with federal product safety regulations
7. Proof of PCI DSS compliance
8. Scooter availability and service area plan, describing:
 - a. Hours of operation
 - b. Proposed fleet size and service area at launch
 - c. Proposed deployment locations
 - d. Methods for deploying and redistributing scooters
 - e. Proof of 50% distribution in Communities of Concern
9. Proposed Scooter Parking Zone Locations
10. Standard Operating Procedures for retrieval of scooters from bodies of water
11. User education and safety plan
12. Rate Structure and low-income discount plan
13. Plan for adaptive scooters for persons experiencing disabilities (if adaptive scooters not included in fleet)
14. Calculation and Payment of Fees
15. Performance Bond of \$10,000
 - a. Each Operator will be responsible for paying into a public property repair and maintenance performance bond that the City can draw upon in the event of default of a Permittee on its obligations.
16. Example vehicle (s) for inspection

Attachments

- A. Schedule Q Insurance Requirements

Schedule Q

DOCKLESS SCOOTER SHARE PROGRAM INSURANCE REQUIREMENTS

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations, personal & advertising injury, and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, the general aggregate shall have a limit of not less than \$10,000,000 annually and shall apply separately to dockless scooter operations.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

- iii. **Workers' Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insureds under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and

v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such

deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.