ITEM 10.H.

SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MOORPARK AGENDA REPORT

TO: **Honorable Successor Agency Board**

FROM: **Jessica Sandifer, Management Analyst**

DATE: **February 6, 2014 (CC Meeting of February 19, 2014)**

SUBJECT: **Consider an Agreement with Pedersen Fence and Patio Company, Inc. for General Fencing Repair and Installation Services at Various Successor Agency Properties**

BACKGROUND & DISSCUSSION

During the year, the Successor Agency has need for a licensed fencing contractor to be on-call to perform fencing related repair and installation services at various successor agency-owned properties. Staff is recommending that the Successor Agency Board approve an Agreement with Pedersen Fence and Patio Co., Inc. at a total cost of $20,000.00 for one year.

FISCAL IMPACT

There is no impact to the FY 2013/14 successor agency budget as funding has been provided in the current property maintenance budgets for Successor Agency-owned properties

STAFF RECOMMENDATION:

Award a contract to Pedersen Fence and Patio Co., Inc. for a total cost of $20,000.00; and authorize the Executive Director to execute the Agreement, subject to final language approval by the Executive Director.

Attachments: Pedersen Fence and Patio Co., Inc. Agreement

ATTACHMENT

AGREEMENT BETWEEN THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE SUCCESSOR AGENCY OF MOORPARK AND PEDERSEN FENCE AND PATIO COMPANY, INC., FOR ON-CALL FENCING INSTALLATION AND REPAIRS FOR VARIOUS SUCCESSOR AGENCY PROPERTIES

THIS AGREEMENT, is made and effective as of this _____ day of_____, 2014, between the Successor Agency of the Redevelopment Agency of the Successor Agency of Moorpark, a municipal corporation ("Successor Agency") and Pedersen Fence and Patio Company, Inc., a corporation ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, Successor Agency has the need for fencing services at various Successor Agency properties; and

WHEREAS, Contractor specializes in providing such services and has the proper work experience, certifications, and background to carry out the duties involved; and

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

1. TERM

The term of the Agreement shall be one year from the date of execution unless this Agreement is terminated or suspended as referred to herein.

2. SCOPE OF SERVICES

Successor Agency does hereby retain Contractor in a contractual capacity to provide construction services related to on-call fencing repairs at various Successor Agency properties. Contractor will provide a proposal per job request. In the event there is a conflict between the provisions of said proposal, the language contained in this Agreement shall take precedence. Contractor shall perform the tasks described and set forth in the proposal.

Compensation for the services to be performed by Contractor shall not exceed the rates or total value of twenty thousand dollars ($20,000.00) annually without a written Amendment to the Agreement executed by both parties. Payment by Successor Agency to Contractor shall be as referred to in this Agreement.

Successor Agency and Contractor acknowledge that this project is a public work to which prevailing wages apply. Contractor agrees to comply with and be bound by all the terms, rules and regulations described in (a) Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations implementing such statutes, as though set forth in full herein, including any applicable amendments made thereto during the term of this Agreement. For every subcontractor who will perform work on this project, Contractor

shall be responsible for subcontractor's compliance with (a) and (b), and Contractor shall take all necessary actions to ensure subcontractor's compliance.

3. PERFORMANCE

Contractor shall at all times faithfully, competently, and to the best of Contractor's ability, experience, and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

4. MANAGEMENT

The individual directly responsible for Contractor's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between Successor Agency and Contractor shall be Don Pedersen, and no other individual may be substituted without the prior written approval of the Executive Director.

The Successor Agency's contact person in charge of administration of this Agreement, and to serve as principal liaison between Contractor and Successor Agency, shall be the Executive Director or the Executive Director's designee.

5. PAYMENT

The Successor Agency agrees to pay Contractor monthly upon receipt of an invoice based upon actual time spent on the proposed tasks. This amount shall not exceed twenty thousand dollars ($20,000.00) annually for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Executive Director. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by Executive Director and Contractor at the time Successor Agency's written authorization is given to Contractor for the performance of said services.

Contractor shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the Successor Agency disputes any of Contractor's fees it shall give written notice to Contractor within thirty (30) days of receipt of any disputed fees set forth on the invoice. Contractor shall provide appropriate documentation, as determined by the Successor Agency, for all reimbursable expenses.

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The Successor Agency may at any time, for any reason, with or without cause, suspend, or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Successor Agency suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Contractor may terminate this Agreement only by providing Successor Agency with written notice no less than thirty (30) days in advance of such termination. In the event of such termination, Contractor shall be compensated for such services up to the date of termination. Such compensation for work in progress shall be prorated as to the percentage of progress completed at the date of termination.

If the Executive Director or the Executive Director's designee determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, the Successor Agency may proceed in the manner set forth in Section 6-4 of the Greenbook.

7. DEFAULT OF CONTRACTOR

The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, Successor Agency shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

If the Executive Director or the Executive Director's designee determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have five (5) working days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the Successor Agency shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. LIQUIDATED DAMAGES

If the Contractor fails to complete the work, or any portion thereof, within the time period required by this Agreement or as duly extended in writing by the Executive Director, Contractor shall forfeit and pay to the Successor Agency, as liquidated damages, the sum of one hundred and twenty-five dollars ($125.00) per day for each

calendar day the work, or portion thereof, remains uncompleted after the above specified completion date. Liquidated damages shall be deducted from any payments due or to become due to the Contractor under the terms of this Agreement [Government Code Sec. 53069.85]. Progress payments made by the Successor Agency after the above specified completion date shall not constitute a waiver of liquidated damages by the Successor Agency.

9. OWNERSHIP OF DOCUMENTS

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Successor Agency that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of Successor Agency or its designees at reasonable times to such books and records; shall give the Successor Agency the right to examine and audit said books and records; shall permit Successor Agency to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of ten (10) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the Successor Agency and may be used, reused, or otherwise disposed of by the Successor Agency without the permission of the Contractor. With respect to computer files, Contractor shall make available to the Successor Agency, at the Contractor's office and upon reasonable written request by the Successor Agency, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

10. INDEMNIFICATION AND HOLD HARMLESS

Contractor shall indemnify, defend with legal counsel approved by Successor Agency, and hold harmless Successor Agency, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the Successor Agency. Should conflict of interest principles preclude a single legal counsel from representing both Successor Agency and Contractor, or should Successor Agency

otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the Successor Agency its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the Successor Agency (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the state of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of Successor Agency under any provision of this agreement, Contractor shall not be required to indemnify and hold harmless Successor Agency for liability attributable to the active negligence of Successor Agency, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Successor Agency is shown to have been actively negligent and where Successor Agency active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of Successor Agency.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subcontractor or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this Section.

Failure of Successor Agency to monitor compliance with these requirements imposes no additional obligations on Successor Agency and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Successor Agency as set forth here is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or Section.

This Indemnity shall survive termination of the Agreement or Final Payment hereunder. This Indemnity is in addition to any other rights or remedies that the Indemnitees may have under the law or under any other Contract Documents or Agreements. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, Successor Agency may, in its sole discretion, reserve, retain, or apply any monies to the Contractor under this Agreement for the purpose of resolving such claims; provided, however, Successor Agency may release such funds if the Contractor provides Successor Agency with reasonable assurance of

protection of the Indemnitees' interests. Successor Agency shall, in its sole discretion, determine whether such assurances are reasonable.

11. INSURANCE

Contractor shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full.

12. INDEPENDENT CONTRACTOR

Contractor is and shall at all times remain as to the Successor Agency a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither Successor Agency nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Successor Agency. Contractor shall not incur or have the power to incur any debt, obligation, or liability against Successor Agency, or bind Successor Agency in any manner.

No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, Successor Agency shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for Successor Agency. Successor Agency shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

13. LEGAL RESPONSIBILITIES

The Contractor shall keep itself informed of local, state, and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act and Occupational Health and Safety Administration laws and regulations. The Successor Agency, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

14. ANTI DISCRIMINATION

Neither the Contractor, nor any subcontractor under the Contractor, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or gender of such person, except as provided in Section 12940 of the Government Code. The Contractor shall have responsibility for compliance with this Section [Labor Code Section 1735].

15. UNDUE INFLUENCE

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the Successor Agency in connection with the award, terms, or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Successor Agency will receive compensation, directly or indirectly from Contractor, or any officer, employee, or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the Successor Agency to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the Successor Agency, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

17. CONFLICT OF INTEREST

Contractor covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Contractor further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or subcontractor. Contractor further covenants that Contractor has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Contractor and/or its subcontractors shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, while under contract with the Successor Agency and for a one (1) year time period following termination of this Agreement.

18. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: Executive Director
Successor Agency of the Redevelopment
Agency of the City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

To: Don Pedersen
Pedersen Fence and Patio Company, Inc.
91 South Dawson Drive
Camarillo, California 93012

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

19. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the Successor Agency in order that proper steps may be taken to have the change reflected in the Agreement documents.

20. ASSIGNMENT

Contractor shall not assign this Agreement or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that Contractor is uniquely qualified to perform the services provided for in this Agreement.

21. LICENSES

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

22. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The Successor

Agency and Contractor understand and agree that the laws of the state of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

23. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

24. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, Sections, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, Sections, and Exhibits hereof.

25. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by both parties to this Agreement.

26. TIME OF COMPLETION

Successor Agency and Contractor agree that time is of the essence in this Agreement. Successor Agency and Contractor further agree that Contractor's failure to perform on or at the times set forth in this Agreement will damage and injure Successor Agency, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, Successor Agency and Contractor agree that any failure to perform by Contractor at or within the times set forth herein shall result in liquidated damages as defined in this Agreement for each and every day such performance is late. Successor Agency and Contractor agree that such sum is reasonable and fair. Furthermore, Successor Agency and Contractor agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

27. PRECEDENCE

In the event of conflict, the requirements of the Successor Agency's Agreement shall take precedence over those contained in the Contractor's proposals for each job.

28. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall

not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

29. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

30. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MOORPARK

By:_____
Steven Kueny, Executive Director

PEDERSEN FENCE AND PATIO CO, INC.

By:_____
Don Pedersen, President

Attest:

_____
Maureen Benson, Agency Secretary

EXHIBIT A

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Successor Agency in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the Successor Agency.

Contractor shall provide the following types and amounts of insurance:

1. Commercial General Liability

Commercial General Liability Insurance shall be provided by an Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than $1,000,000 per occurrence for all covered losses and no less than $2,000,000 general aggregate.

Contractor's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

a. Explosion, collapse or underground hazard (XCU)

b. Products and completed operations

c. Pollution liability

d. Contractual liability

Coverage shall be applicable to Successor Agency for injury to employees of contractors, subcontractors, or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

2. Workers' Compensation

Workers' Compensation insurance shall be provided on a state-approved policy form providing statutory benefits as required by law with employers' liability limits no less than $1,000,000 per accident for all covered losses.

3. Business Auto Coverage

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent shall be provided. Limits shall be no less than $1,000,000 per accident, combined single limit. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contract shall provide evidence of personal auto liability coverage for each such person.

4. Excess or Umbrella Liability

Excess or Umbrella Liability insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Successor Agency for injury to employees of contractor, subcontractors, or others involved in the Work. The scope of coverage provided is subject to the approval of Successor Agency following receipt of proof of insurance as required herein. Limits are subject to review.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with A.M. Best rating of A- or better and a minimum financial size of VII.

Contractor and Successor Agency agrees as follows:

1. Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds Successor Agency, Successor Agency, its officials, employees, agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985. Contractor also agrees to require all contractors, subcontractors, and any one else involved in any way with the project contemplated by this Agreement to do likewise.

2. Any waiver of subrogation express or implied on the part of the Successor Agency to any party involved in this Agreement or related documents applies only to the extent of insurance proceeds actually paid. Successor Agency, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, Contractor agrees to waive subrogation rights against Successor Agency regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors, or others involved in any way with the project contemplated by this Agreement to do likewise.

3. All insurance coverage maintained or procured by Contractor or required of others by Contractor pursuant to this Agreement shall be endorsed to delete the subrogation condition as to the Successor Agency, or to specifically allow

Contractor or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.

4. It is agreed by Contractor and Successor Agency that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of Successor Agency, or to the supervisory role, if any, of Successor Agency. All insurance coverage provided pursuant to this or any other Agreement (express or implied) in any way relating to Successor Agency is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving Successor Agency in relation to the project contemplated by this Agreement is intended to be construed to limit the application of insurance coverage in any way.

5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Successor Agency and approved of in writing.

6. All coverage types and limits required are subject to approval, modification, and additional requirements by the Successor Agency, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discover period) that may affect Successor Agency's protection without Successor Agency's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, shall be delivered to Successor Agency at or prior to the execution of this Agreement. In the event such proof of insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, Successor Agency has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by Successor Agency shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at Successor Agency option.

8. Contractor agrees to endorse, and to required others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to Successor Agency and the appropriate tender prior to cancellation or reduction of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require contractors, subcontractors, and any other party in any way involved with the project contemplated by this Agreement to do likewise.

9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, and any other party involved with the project who is brought onto or involved in the project by Contractor, is intended to apply first and on a primary non-contributing basis in

relation to any other insurance or self insurance available to the Successor Agency.

10. Contractor agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request, all agreements with subcontractors and others engaged in this project will be submitted to Successor Agency for review.

11. Contractor agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. Contractor agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.

12. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, engineer, or other entity or person in any way involved in the performance of Work on the project contemplated by this Agreement to self-insure its obligations to Successor Agency. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the Successor Agency. At that time the Successor Agency shall review options with the Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

13. The Successor Agency reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor 90 days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the Successor Agency will negotiate additional compensation proportional to the increased benefit to Successor Agency.

14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this Agreement.

15. Contractor acknowledges and agrees that any actual or alleged failure on the part of Successor Agency to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on Successor Agency nor does it waive any rights hereunder in this or any other regard.

16. Contractor will renew the required coverage annually as long as Successor Agency, or its employees or agents face an exposure from operations of any type pursuance to this Agreement. This obligation applies whether or not the

Agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until Successor Agency executes a written statement to that effect.

17. Contractor agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the Successor Agency, and to require all subcontractors and any other person or entity involved in the project contemplated by this Agreement to do likewise.

18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.

19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties to be interpreted as such.

20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this Agreement and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by Successor Agency.

21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to change Successor Agency or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Successor Agency. It is not the intent of Successor Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Successor Agency for payment of premiums or other amounts with respect thereto.

22. Contractor agrees to obtain and provide to Successor Agency a copy of Professional Liability coverage for Architects or Engineers on this project through Contractor. Successor Agency shall determine the liability limit.