

ROADWAY REPAIR AND PERMIT AGREEMENT

FOR STRAUSS WIND ENERGY PROJECT

THIS ROADWAY REPAIR AND PERMIT AGREEMENT (herein “**Agreement**”) is made and entered into this ____ day of _____, 2021 (“**Effective Date**”) by and between the City of Lompoc, a California municipal corporation (“**City**”) and Strauss Wind, LLC, a California limited liability company and affiliate of BayWa r.e. Wind, LLC (“**Strauss**”). City and Strauss are sometimes hereinafter individually referred to as “**Party**” and hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Strauss proposes to construct and operate a commercial wind energy development, the Strauss Wind Energy Project (SWEP), south of the City of Lompoc (“**Wind Development**”).

B. The Wind Development will include up to 29 wind turbine generators (“**WTG**”). Strauss has requested permission from the City to transport WTG parts and related equipment over City streets on their way to the development site.

C. WTG components and other oversized loads will be transported over City streets by truck. Trucks carrying WTG blades or other component parts will be up to 290 feet in overall length, 15 feet in width, and 16 feet in height, and may weigh up to 340,000 pounds. These trucks will exceed the permitted maximum dimensions and weight of vehicles traveling on City streets, per Vehicle Code Section 35000 *et seq.* Therefore, the Project requires transportation permits from the City to operate the oversized vehicles on City streets, per Vehicle Code Section 35780. Additionally, 87 of the trucks carrying WTG components will require extended periods of time to navigate each of three turns along the travel route through the City; therefore, the Project also requires traffic detours to be approved and inspected by the City.

D. Due to the size of the trucks required to transport the WTG components, certain improvements owned by the City and/or in the City’s right of way or on other City property will need to be removed in order to make the City streets passable for the trucks. Furthermore, the City anticipates that the large number of proposed Wind Development-related trips will cause substantial damage to street pavement and other areas driven over. Therefore, Strauss is also required to enter into this Agreement, and to obtain encroachment permits from the City for all proposed removals, interim modifications and maintenance, and ultimate repairs necessary within the City’s right of way.

E. The use of City streets and other City property by Strauss to transport WTG components, other equipment, and materials to the Wind Development site; the removal of certain improvements from the City’s right of way and other City property to allow for passage of the transport trucks; the interim modifications and maintenance of those areas made necessary by such transport and removals; and the ultimate repairs of those areas made necessary by such transport, removals, and modifications, are collectively referred to in this Agreement as the “**Project**.”

F. The Wind Development site is the location of the previously proposed Lompoc Wind Energy Project (LWEP), which was approved by Santa Barbara County in 2009, but never

constructed. A Final Environmental Impact Report was prepared for the LWEP and certified by the County in February 2009 (County EIR No. 06EIR-00000-00004). The County has approved a Supplemental Environmental Impact Report (County EIR Number 18EIR-00000-0001, State Clearinghouse Number 2018071002) for the Wind Development, including the transport of WTG components (“SEIR”).

G. Section 4.17.4, Mitigation Measure TC-1, of the Final SEIR requires that “[Strauss] shall prepare a T[raffic] M[anagement] P[lan] for submittal to the ... City of Lompoc.... The purpose of the TMP is to address potential hazards associated with Project truck traffic and to address level of service impacts. The plan will require measures such as informational signs, flagmen when equipment may result in blockages of throughways, and traffic control to implement any necessary changes in temporary lane configuration.” A list of specific provisions required in the TMP is included in the SEIR.

H. Section 4.17.4, Mitigation Measure TC-3, of the SEIR requires that “[Strauss] shall enter into an agreement with affected jurisdictions to ensure that any damage to roadways attributable to Project traffic is mitigated through repair or reconstruction to original conditions... and all repairs shall be made to the current standards or policies of the affected jurisdiction.”

I. The purposes of this Agreement are to govern the process by which the City may grant Strauss transportation permits (Oversized Vehicle Permits) and Encroachment Permits, to supplement the Traffic Management Plan previously submitted to the City in order to meet the needs of the City, to satisfy the requirements in the SEIR for an agreement for roadway repairs within the City in order to ensure that any damage to City roadways attributable to Project traffic is mitigated through repair or reconstruction to pre-Project conditions, and to establish other terms and conditions necessary to mitigate the impacts of the Project on the City.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 67 m Blade Variance Trip: A Variance Trip involving a vehicle carrying a 67-meter wind turbine blade.
- 1.2 Agent(s): See Section 10.3.
- 1.3 Detour Route(s): One of the designated detour routes shown in Exhibit B.
- 1.4 Encroachment Permit(s): The permit(s) described in Section 2.1.
- 1.5 Oversized Vehicle Permit(s): The permit(s) described in Section 3.1.
- 1.6 Oversized Vehicle: A vehicle or combination of vehicles or special mobile equipment of a size or weight of vehicle or load exceeding the maximum requirements specified in California Vehicle Code 35000 *et seq.*

- 1.7 Project: See Recital E.
- 1.8 Repair Work: See Section 6.2.
- 1.9 SEIR: See Recital F.
- 1.10 Trip: A two-way trip made by an Oversized Vehicle on one or more City streets for purposes of the Project. Trips include, but are not limited to, Variance Trips.
- 1.11 Trip Route: One of the designated routes for Project-related traffic over City streets, as shown in Exhibit A.
- 1.12 Variance Trip: A two-way trip made on one or more City streets for purposes of the Project by a vehicle or combination of vehicles or special mobile equipment, where the vehicle in combination with its freight exceeds any of the following:
 - (a) Total length of 100 feet.
 - (b) Width of 15 feet.
 - (c) Height of 16 feet.
 - (d) Total weight of 120,000 pounds.

ARTICLE 2. ENCROACHMENT PERMITS

2.1 Requirement for Encroachment Permits.

Pursuant to Lompoc Municipal Code Chapter 12.12, Strauss is required to obtain encroachment permits from the City to encroach upon the City’s right of way and other City property for the purpose of making the modifications, temporary improvements, and permanent improvements listed in this Article, and providing the necessary traffic control and associated measures for proposed Trips (each an “**Encroachment Permit**” and collectively, “**Encroachment Permits**”). City will review and provide comment or issue such Encroachment Permits typically within ten (10) business days from receipt of complete and accurate application and associated construction plans, traffic control provisions, and other information necessary to define the work in accordance with City standards and policies, and applicable governing and industry standards.

2.2 Permit Application.

(a) In addition to complying with City’s standard permit application requirements, as a part of its application to the City for each Encroachment Permit, Strauss shall submit to the City copies of each related approved Caltrans encroachment permit with all attachments, plans, and specifications, for Project work located within the City.

(b) As part of the application for an Encroachment Permit to drive in any way other than at normal traffic speed within the single traffic lane designated to traffic moving in the proposed direction, Strauss shall provide to City, and obtain the City Engineer’s approval of, plans clearly and completely showing where the Oversized Vehicle’s tires, edge of truck body, and edge of freight will travel on and along all City streets for the full length of each Trip in both directions.

Encroachments on City streets shall be limited to those encroachments shown in the City approved plans.

2.3 Encroachment Permit Term.

Following approval by the City Engineer, Encroachment Permits shall become effective on the date stated as “Issued” on the permit form and shall expire on the date stated as “Expiration” on the permit form, which shall in no case be longer than 180 calendar days after the date issued.

2.4 Scope of Permitted Encroachment.

Following approval by the City Engineer of such plans and other documents the City determines necessary to be prepared and revised by Strauss to adequately define the proposed work as is acceptable to the City, Strauss shall be permitted to encroach upon the City’s right of way only to the extent necessary and approved in writing by the City in each Encroachment Permit and may only use contractors who are appropriately licensed in California for each item of work they perform.

2.5 Anticipated Encroachments.

The Parties anticipate that the following alterations, temporary improvements, and permanent improvements, and other encroachments, will be required as part of the Project; however, all encroachments will require an Encroachment Permit, whether or not listed below:

(a) Removals on Ocean Avenue and F Street.

- (i) Trim branches of street trees identified on plans to allow Trips to pass, and to provide balanced weight distribution and appearance of trees.
- (ii) Protection and delineation of exposed portions of anchor bolts for City street light on south side of Ocean Avenue just west of F Street, after City crew removes street light.

(b) Additional Interim Modifications.

- (i) Placement of all necessary traffic control devices, and performance of all necessary traffic control work for Encroachment Permit work and for Oversized Vehicle Trips in accordance with traffic control plans approved by the City Engineer, and conforming to the current California Manual on Uniform Traffic Control Devices (CA MUTCD). Such work includes the provision of necessary detours for public traffic, as approved by the City Engineer.
- (ii) Provision and maintenance of all necessary delineation and traffic control to warn and protect pedestrians and other public traffic from the changed conditions created by Strauss.

- (c) Interim Repairs and Emergency Repairs. Performance of interim repairs and emergency repairs in accordance with Article 6.
- (d) Interim Maintenance. Performance of interim maintenance in accordance with Article 6.
- (e) Ultimate Repairs. Performance of Ultimate Repairs in accordance with Article 6.

2.6 Storage of Items to Be Reinstalled.

All removed items that will be reinstalled following removal from City property shall be safely stored by Strauss or may be stored by the City at the City's discretion.

ARTICLE 3. OVERSIZED VEHICLE PERMITS; TRUCK ROUTE REQUIREMENTS

3.1 Requirement for Oversized Vehicle Permits.

Pursuant to Vehicle Code Section 35780, Strauss is required to obtain permits from the City to operate vehicles on City streets that exceed the maximum size and weight requirements established in California Vehicle Code 35000 *et seq.* (each an “**Oversized Vehicle Permit**” and collectively, “**Oversized Vehicle Permits**”). City will review and provide comment or issue such Oversized Vehicle Permits typically within in ten (10) business days from receipt of complete and accurate application and associated schedule, traffic control provisions, and other information necessary to define the hauling, associated impacts, and required mitigation measures in accordance with City standards and policies, and applicable governing and industry standards.

3.2 Permit Applications.

In addition to complying with City's standard permit application requirements, as a part of its application to the City for each Oversized Vehicle Permit, Strauss shall submit to the City copies of each related approved Caltrans transportation permit with all attachments, traffic control plans, and specifications.

3.3 Oversized Vehicle Permit Term.

Following approval by the City Engineer or designee, Oversized Vehicle Permits shall become effective on the date stated in the “Permit Valid: From:” field on the permit form and shall expire on the date stated in the “Permit Valid: To:” field on the permit form, which shall in no case be longer than seven (7) calendar days after the effective date. Each Trip shall require a separate permit.

3.4 Conditions and Limitations.

Oversized Vehicle Permits issued by the City shall be subject to the following conditions and limitations, which are incorporated into each Oversized Vehicle Permit:

- (a) Project Vehicles Only. Oversized Vehicle Permits only apply to vehicles carrying materials, equipment, and parts for the Project.
- (b) Trip Routes Only. Oversized Vehicle Permits only permit travel on a Trip Route.
- (c) Trip Times. Trips, other than Variance Trips, may occur Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m, unless otherwise approved by the City Engineer.
- (d) Variance Trip Times. Variance Trips may **only** occur Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m., but may not occur on official holidays observed by the City, which are listed on the City website, and may not occur during other City-approved events, such as parades, conflicting with such Variance Trips, for which the City will provide at least two weeks advance notice to Strauss.
- (e) Times for Road Closures and Detours. Road closures and Detours as shown on the Map of 67 m Blade Route & Detour Routes included in Exhibit B, shall be limited to a maximum of one (1) consecutive hour per day in total duration (“**Closure Hour**”), shall not begin to be placed prior to 9 AM, and shall be completely removed to allow public traffic by 4 PM. All Trips that will require a stoppage of public traffic for three (3) minutes or longer on any given day shall take place during the Closure Hour for that day.
- (f) Procedure for Road Closures and Detours. Strauss shall comply with all provisions in Section 4.4 prior to setting up any road closure or detour.
- (g) No more than eight (8) Variance Trips may be made during a single day.
- (h) No Variance Trips shall occur later than six (6) months after the date of the first Oversized Vehicle Permit issued by the City for a Variance Trip.
- (i) No more than eight (8) Trips (but not Variance Trips) per month shall occur later than one month after the end of the six-month period described in subsection (h), above, for Variance Trips.

3.5 Liquidated Damages – Trips.

Strauss acknowledges and agrees that the Project will be extremely disruptive to the normal functioning of the City, and therefore that the City has a substantial interest in limiting the disruptive effects of the Project to the greatest extent possible. Strauss further acknowledges that Strauss’s financial obligations under this Agreement for the repair of damage to City property, the expenditure of City resources, and the disruption to the normal functioning of the City have been calculated on the assumption that Strauss will comply with the requirements of the Oversized Vehicle Permits. Finally, Strauss acknowledges and agrees that the damage to the City resulting from Strauss’s failure to comply with the requirements of the Oversized Vehicle Permits, including the terms of this Agreement, would be extremely difficult and impractical to determine. Therefore,

Strauss agrees that in the event of a breach of the requirements of an Oversized Vehicle Permit, which includes but is not limited to a breach of the terms of this Agreement, Strauss and its sureties will be liable for and shall pay liquidated damages to the City, in addition to any other requirement in this Agreement, in the amount of **\$1,000 per Trip/occurrence** when no permit has been secured in advance of such Trip or Variance Trip, or for each Trip or Variance Trip that occurs after the expiration of the subject Oversized Vehicle Permit, as established in Section 3.3, or that occurs in excess of the number of daily or monthly Trips permitted or latest date(s) allowed for such Trips established in Section 3.4, or for Trips, Variance Trips, Road Closures, or Detours that occur outside of the hours or durations allowed for those activities established in Section 3.4. Liability for liquidated damages shall be automatic and shall not require any prior notice by City. Payment of liquidated damages shall be made within 15 days following a written demand by the City.

3.6 Schedule; Schedule Changes.

At least 14 days prior to the first Variance Trip, Strauss shall provide City with a proposed schedule for all Variance Trips that complies with Section 3.4 and this Section. Strauss will be required to revise the schedule if the Variance Trips will interfere with any pre-planned City events or pre-permitted private events, or as deemed necessary by the City to protect health and safety. The City will not approve the schedule until Strauss has also submitted to the City complete and accurate traffic control plans, and other information necessary to define the hauling, associated impacts, and required mitigation measures in accordance with City standards and policies, and applicable governing and industry standards, as reasonably determined by the City Engineer. Strauss shall comply with the final schedule approved by the City (“**Schedule**”). If Strauss becomes aware of a need to revise the Schedule, Strauss shall inform City as soon as possible, and shall submit a revised schedule to the City for review. City will review the revised schedule and Strauss will be required to revise the revised schedule as required by City for the same reasons stated previously in this Section. The City’s agreement to revise the schedule will not waive the City’s right to payment of liquidated damages under Section 3.5, or elsewhere in this Agreement. The Schedule shall include the following information:

- (a) Schedule of All Variance Trips. The Schedule shall include the expected date that each Variance Trip will take place including a proposed date for the first and last Variance Trips. Strauss shall schedule its operations such that no other Project Trips or legal truck loads conflict with, impact, or will be required to detour as a result of Project Variance Trips.
- (b) Detailed Schedule for Each 67 m Blade Variance Trips. The Schedule shall also list proposed times (hour and minute, in Pacific Time) at which the following events will occur for each 67 m Blade Variance Trip:
 - (i) Begin setup for detours and road closures.
 - (ii) Complete setup for detours and road closures.
 - (iii) Each 67 m blade truck arrives at Ocean Avenue/V Street intersection.

- (iv) Each 67 m blade truck arrives at Ocean Avenue/G Street intersection.
- (v) Each 67 m blade truck begins lifting blade on Ocean Avenue near F Street.
- (vi) Each 67 m blade truck completes lowering blade on F Street near alley.
- (vii) Each 67 m blade truck begins lifting blade on F Street near Cypress Avenue.
- (viii) Each 67 m blade truck completes lowering blade on Cypress Avenue near F-G Alley.
- (ix) Each 67 m blade truck begins lifting blade on Cypress Avenue near I Street.
- (x) Each 67 m blade truck completes lowering blade on I Street south of Cypress Avenue.
- (xi) Each 67 m blade truck exits City limit on I Street near Willow Avenue.
- (xii) Complete removal of road closures and detours.

3.7 Force Majeure.

The term of the Oversized Vehicle Permits shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Strauss, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if Strauss shall within ten (10) days of the commencement of such delay notify the City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and revise the Schedule if in the reasonable judgment of the City such revision is justified. The City's determination shall be final and conclusive upon the parties to this Agreement.

3.8 Use of Truck Routes; Liquidated Damages.

All vehicles used by Strauss or its subcontractors for the Project exceeding a maximum gross weight limit of three tons, whether or not they are Oversized Vehicles, shall drive exclusively on designated truck routes when traveling on City streets. Strauss acknowledges and agrees that the Project will be extremely disruptive to the normal functioning of the City, and therefore that the City has a substantial interest in limiting the disruptive effects of the Project to the greatest extent possible. Strauss further acknowledges that Strauss's financial obligations under this Agreement for the repair of damage to City property, the expenditure of City resources, and the disruption to the normal functioning of the City have been calculated on the assumption that

Strauss will comply with the requirements of the Lompoc Municipal Code and other applicable law, using only those truck routes designated by the City, including those described in the exhibits of this Agreement. Finally, Strauss acknowledges and agrees that the damage to the City resulting from Strauss's failure to comply with such designated truck routes, would be extremely difficult and impractical to determine. Therefore, Strauss agrees that in the event a Project vehicle exceeding a maximum gross weight limit of three tons drives on a City street or alley other than the truck routes designated in the Lompoc Municipal Code or in this Agreement, Strauss and its sureties will be liable for and shall pay liquidated damages to the City, in addition to any other requirement in this Agreement, in the amount of **\$250 per occurrence**, unless a larger liquidated damages amount applies to the same action per Section 3.5 in which case the higher liquidated damage amount will be assessed. Liability for liquidated damages shall be automatic and shall not require any prior notice by City. Payment of liquidated damages shall be made within 15 days following a written demand by the City.

ARTICLE 4. TRAFFIC CONTROL

4.1 Traffic Control Plan.

Strauss shall submit complete traffic control plans and a schedule to the City with each application for an Encroachment Permit or Oversized Vehicle Permit when the activity for which a permit is sought will affect public traffic, as determined by the City. Traffic control plans shall be in compliance with all City traffic control standards and policies and with the CA MUTCD. Strauss shall obtain the City Engineer's approval of the traffic control plans prior to the issuance of each permit. Strauss shall comply with the traffic control plans approved by the City. The traffic control plans shall cover all necessary traffic control provisions for the entire term of each permit to which the traffic control plan applies. Strauss shall revise such traffic control plans and/or make adjustments to traffic control in the field as directed by the City Engineer at any time, including after the issuance of related permits. Traffic control work shall at all times accommodate the prompt passage of emergency vehicles by stopping hauling operations as necessary for emergency vehicle passage, making room for emergency vehicles, flagging emergency vehicles through closures and/or other adjacent traffic; shall include all applicable traffic control devices, vehicles, and measures, including but not limited to flag persons, message boards, pilot vehicles, and law enforcement escorts; and shall be performed in accordance with the Traffic Control specifications included in Exhibit C.

4.2 Message Boards.

At least 14 days before the anticipated date of the first Variance Trip, Strauss shall place message boards at locations approved by the City on each affected street in each direction informing drivers of dates and times when they can expect traffic delays. The messages on the message boards and locations of the message boards shall be approved by the City Engineer. Message boards shall remain in place as required by the City until the completion of the last Variance Trip.

4.3 California Highway Patrol Escorts.

Strauss shall provide CHP escorts for all Variance Trips, and also for all Trips on City streets for which CHP escorts are required by either the state of California or by the County of Santa Barbara when those Trips enter those jurisdictions.

4.4 Road Closures and Detours.

- (a) Road Closures and Detours Required. All Trips that will require a stoppage of public traffic for three (3) minutes or longer shall require detours of public traffic in accordance with the Detour Routes showing in Exhibit B, unless otherwise approved by the City Engineer.
- (b) Confirmation of Schedule. Prior to setting up any road closure or detour, Strauss shall call the City Public Works Inspector at (805) 875-8244 or (805) 736-1261 to confirm the schedule and traffic control setup for each day.
- (c) Notification to Dispatch Prior to Arrival of 67 m Blade Loads. Strauss shall notify City Dispatch at (805) 875-8115 approximately 15 minutes prior to first 67 m blade load of each day arriving at the intersection of Ocean Avenue/G Street.

ARTICLE 5. COORDINATION OF WORK

5.1 Primary Representative.

For purposes of coordinating the work contemplated by this Agreement, the following individuals are designated as the primary representative for the City and Strauss (each a “**Primary Representative**,” and collectively, “**Primary Representatives**”).

City:

Craig Dierling

Assistant Public Works Director/
City Engineer

Strauss:

Joerg Beland

Vice President - Operations

The Primary Representative for Strauss shall provide the Primary Representative for City with a phone number where he or she can be reached twenty-four (24) hours a day. The Primary Representative for Strauss shall be authorized to make decisions on behalf of Strauss and City is entitled to rely on the authority of the Primary Representative to act on behalf of Strauss.

5.2 City Electric Representatives; Electrical Work.

For purposes of coordinating Project work to be performed by the City Electric Division and issues affecting City Electric Division infrastructure, the following individuals are designated as the representatives for the City (“**City Electric Representatives**”). All Project work involving or affecting City street lights and related infrastructure, or other City electrical infrastructure, shall

be coordinated in advance with the City Electric Representatives, and the City Electric Division will inform Strauss as to which portions of such work must be performed by the City Electric Division and which portions must be performed by Strauss. Generally, all work on City electrical infrastructure, including street light poles, and street light wiring, must be performed by the City Electric Division, while certain work related to appurtenant Portland Cement Concrete footings, collars, flatwork, aggregate base, empty conduits, and related items must be performed by Strauss.

Office:

Dave Campo
Electrical Estimator

Field:

Craig Gildea
Electrical Supervisor

5.3 Coordination Meetings.

Appropriate Strauss representatives shall meet with City representatives: (a) prior to the commencement of any work under each Encroachment Permit to discuss the proposed work under the Encroachment Permit and (b) prior to the first Variance Trip to discuss traffic control, safety, and other necessary issues. The date and time of these meetings shall be coordinated between the two parties and the meetings may be combined if agreed to by both parties.

5.4 Meeting to Coordinate Repair Work.

When Project-related work causing damage to City streets and other City property (including, but not limited to, Variance Trips, non-Variance Trips, and other Project-related hauling of legal-sized loads) has been substantially completed, as determined by the City Engineer, the parties shall meet to assess the damage caused to City streets and other City property by Project-related work and to coordinate the Ultimate Repairs (as described in Section 6.5).

5.5 Additional Meetings.

Strauss and the City shall also attend additional meetings as requested by the other Party to address issues that arise in the course of the work or Trips occurring under this Agreement, and to coordinate the completion of the Repair Work.

ARTICLE 6. MAINTENANCE & REPAIR OF CITY PROPERTY

6.1 Duty to Document Damage and Notify City.

Strauss shall document and immediately notify the City of all damage to City property caused by Strauss during the term of this Agreement.

6.2 Duty to Repair.

Strauss, at its sole cost, shall repair or fund the repair of, to a like or better state as determined by the City, all City property damaged or modified as a result of actions taken or directed by Strauss, or any agent or subcontractor of Strauss, or as a result of detours of public traffic, as part of the Project (collectively, “**Repair Work**”). Repair Work includes all of the following: (a) Interim Inspection, Maintenance, and Repair, as described in Section 6.3; (b)

Emergency Repairs, as described in Section 6.4; (c) Ultimate Repairs, as described in Section 6.5; and (d) Warranty Work, as described in Section 6.13.

6.3 Interim Inspection, Maintenance, and Repair.

Strauss shall daily inspect, and prepare weekly inspection reports for, all City streets on the Trip Routes and Detour Routes, and maintain City streets on the Trip Routes and Detour Routes, and as otherwise affected by the Project, in a safe and clean condition during the term of the Project. In addition to any other requirements of this Section, prior to the City's issuance of the first Oversized Vehicle Permit, Strauss shall inspect and present the City with a comprehensive inspection report for all Trip Routes and Detour Routes, and perform all necessary pothole repair and patching determined necessary by the City, in accordance with Section 6.3(e), to reduce deterioration or damage to such routes and to prevent dangerous driving conditions. Such maintenance shall include the following:

- (a) Cleanup. Throughout all phases of the Project Strauss shall continually keep all Trip Routes and Detour Routes and all other areas affected by the Project clean and free from dust, debris, and rubbish resulting from the Project.
- (b) Dust Control. Throughout all phases of the Project Strauss shall continually control dust resulting from the Project in conformance with Santa Barbara County Air Pollution Control District requirements and all other applicable regulations including ensuring its operations do not generate dust in amounts damaging to health or property.
- (c) Street Sweeping. Strauss shall provide and operate self-loading motorized street sweepers equipped with functional water spray systems to effectively clean all Trip Routes and other paved surfaces affected by the Project whenever debris or foreign material resulting from the Project has been introduced, without damaging any pavement surface or pavement marking. Operation of street sweepers shall be in conformance with all applicable dust control requirements.
- (d) Protection of City Improvements. Strauss shall take all necessary actions to protect City property and improvements from damage attributable to Project-related work and Trips during the term of the Project.
- (e) Pot Hole Repair and Patching. Strauss shall utilize a California licensed Class A or C-12 contractor to repair and patch pot holes on the Trip Routes and on the Detour Routes as often as on a daily basis if required by the City, and as is acceptable to the City Engineer or designee. Strauss shall use standard asphalt concrete materials approved by the City and shall utilize equipment, tools, and methods acceptable to the City to remove all loose and foreign debris and excess moisture from each repair area, tack coat existing surfaces to bond with new pavement materials, and place and adequately compact the new pavement materials to smoothly match with

the existing surrounding pavement surface without creating bumps or depressions. If Strauss proposes or the City requires a longer lasting and deeper repair be made prior to the Ultimate Repairs, such as when pothole patches fail or the City determines an area of roadway pavement has become too damaged to appropriately serve public traffic, then Strauss shall cause the area of roadway to be repaired in accordance with the requirements stated in Section 6.5(a).

(f) Inspection Reports. At the end of each week, and prior to the beginning of the next week, Strauss shall submit by email to the City Engineer reports of its daily inspection of all Trip Routes, Detour Routes, and any other City streets affected by the Project (“**Inspection Reports**”). Failure by Strauss to email to the City Engineer its complete daily Inspection Reports for the previous week by 7 AM each Monday morning shall cause Strauss to be liable for liquidated damages pursuant to Section 6.12. Inspection Reports shall include for each day:

- (i) Time(s) each Trip Route, Detour Route, and other affected streets were inspected and full name and cellular telephone number of inspector.
- (ii) Location(s) and time(s) of any debris, foreign material, or rubbish found attributable to Project-related work or Trips, and time and description of remedial action(s) such as sweeping or other cleanup.
- (iii) Location(s) and time(s) of any potholes, or other infrastructure damage found, and time and description of remedial action(s) such as patching and repair.
- (iv) Location(s) and time(s) of any other issues observed, and time and description of remedial action(s).

6.4 Emergency Repairs. Any damage caused by Strauss or Strauss’s Agents during the term of this Agreement that creates an imminent threat to the health and safety of the public shall be repaired by Strauss within twenty-four (24) hours of Strauss becoming aware of the nature of such damage and Strauss shall immediately take all necessary protective measures to ensure the safety of the public until the repair is completed (“**Emergency Repairs**”). If Strauss fails to commence and/or complete the repair or the protective measures in a timely manner, City may take over and complete the repair or the protective measures, and Strauss shall reimburse the City for the reasonable cost of such work within thirty (30) days of receiving an invoice from the City for such cost.

6.5 Ultimate Repairs.

Unless City elects to perform the Ultimate Repairs (pursuant to Section 6.9) or elects to require Repair Payments in lieu of completion of the Ultimate Repairs by Strauss (pursuant to Section 8.1), Strauss shall complete the following repairs (“**Ultimate Repairs**”) within six (6)

months following the issuance of a Notice to Proceed by the City Engineer, except that the City may extend such deadline upon a showing of good cause:

(a) Repairs to Asphalt Street Pavement.

(i) Duty to Repair or Make Payments. Following the City Engineer's approval of Strauss' plans and specifications for Ultimate Repairs to City asphalt street pavement, Strauss shall utilize a California licensed Class A or C-12 contractor to repair or reconstruct all areas of City roadways damaged by the Project to equal or better than pre-Project conditions in accordance with the current standards or policies of the City, as determined and approved by the City Engineer.

(ii) Repair Specifications. Other than pavement overlays, all such repairs shall be made to rectangular limits approved by the City Engineer which are not less than half of the width of the affected roadway lane, not less than fifteen feet (15') in length, and not less than six inches (6") in finished compacted thickness of Hot Mix Asphalt (HMA), except that repairs to Portland Cement Concrete (PCC) items shall be made of PCC in accordance with the applicable City standards and specifications as required below. Pavement overlays shall be constructed after the repair of distresses in the existing pavement as required herein, of HMA over the full width of the roadway and the full length of the block where required, not less than two inches (2") in thickness, and shall provide or restore an appropriate roadway crown and cross slope. All utility frames and covers, including those for survey monuments, traffic signals, and landscape irrigation, which are located within roadway repair areas, shall be lowered or adjusted and protected as required below and in Exhibit C in order to perform the paving work unobstructed by such covers, and afterward shall be set to finished grade in accordance with those referenced requirements and applicable City standards. Repair areas located within the same lane which have less than fifteen feet (15') of clear space between them shall be combined. Repair areas located in different lanes which have less than five feet (5') of clear space between them shall be combined. The longitudinal paving joints of each repair area shall be located outside of the wheel paths of typical traffic. When more than fifty percent (50%) of the area of a roadway lane within a particular block of street needs to be repaired per the limits described above and the requirements included herein, then Strauss shall repair the entire roadway lane for the full length of the street block. All pavement repairs to City streets, including overlays, shall be made in accordance with the specifications attached in Exhibit C, except as superseded by revised standards, policies, or specifications provided by the City Engineer.

(iii) Initial Pavement Assessment. Prior to the first Variance Trip, and within 14 days following approval of the Schedule, the City will document the visible pavement distresses along each Trip Route, Detour Route, and along other City streets anticipated to be affected by the Project, and its consultant will perform deflection testing, as described in Section 6.5(a)(iv) ("**Initial Pavement Assessment**"). Variance Trips shall not begin until after completion of the Initial Pavement Assessment. The measures of Pavement Condition Index (PCI) and of associated visible pavement distress levels shall be in accordance with the City's StreetSaver Pavement Management System, including the "Pavement Condition Index Distress Identification Manual For Flexible Pavement, Fourth Edition, published by the Metropolitan Transportation Commission, June 29, 2016 ("**Pavement Assessment Standards**"). After the completion of all Trips, including Variance Trips, and in order to determine the necessary repairs, the City will again

document visible pavement distresses and its consultant will again perform deflection testing, as described in Section 6.5(a)(iv).

(iv) Pavement Testing and Evaluation. Because only limited evaluation of pavement condition and deterioration is possible based upon what is visible on the pavement surface, and what is measurable through profilograph measurements, the City requires additional pavement testing and evaluation. To supplement the visual evaluation of the condition of City street pavement along the Trip Routes, the City's consultant will test, evaluate, and report the pavement condition within 14 days following approval of the Schedule and following completion of all Project Trips. The work before Project Trips will include deflection testing in general conformance with California Test Method (CTM) 356 every 100' along each roadway segment, coring the pavement every 500' to determine the total structural section (asphalt concrete and aggregate base) as well as the native soil's R-value at 1,000' intervals, and video for reference. The work after Project Trips will also include deflection testing and video per above, as well as additional analysis and reporting of the pavement deterioration attributable to the Project as determined through the testing. The cost of the testing, evaluating, and reporting described in this Section 6.5(a)(iv) is estimated at \$81,500, plus any additional fees that become necessary, and shall be reimbursed by Strauss, pursuant to Section 8.2.

(v) Levels of Deterioration Requiring Repair. Pavement areas which deteriorate during the Project according to the following measures or observations shall be included in the Ultimate Repairs by Strauss (measures of visible pavement distresses shall be made by the City or its consultant according to the Pavement Assessment Standards, defined in Section 6.4(a)(iii)):

- (1) Changes in structural deficiency as determined from pre/post deflection testing and analysis. The Ultimate Repairs shall restore the pavement to the pre-Project structural measurements or better.
- (2) Development of alligator cracking (asphalt pavement cracking resulting from traffic loading), increase in the area of alligator cracking, or decline from low to medium or high severity alligator cracking or from medium to high severity alligator cracking.
- (3) Development of one or more potholes, or areas previously patched under the Project, which were not repaired in accordance with the requirements for Ultimate Repairs in this Agreement.
- (4) Occurrence of any rutting, depression, or distortion of the pavement in excess of one-fourth inch ($\frac{1}{4}$ ").
- (5) Occurrence of any raveling of the pavement at medium severity or greater, or any damage to existing slurry seals or chip seals.

(b) Repairs to PCC Sidewalks, Curbs, Gutters, Cross Gutters, and PCC Pavement.

(i) Duty to Repair or Make Payments. Following the City Engineer's approval of Strauss's plans and specifications for Ultimate Repairs to City sidewalks, curbs, gutters, crossgutters, and other PCC pavement areas, Strauss shall utilize a California licensed Class A or C-8 contractor to remove and replace all areas of such City infrastructure damaged by the Project to equal or better than pre-Project conditions in accordance with the current standards or policies of the City, as determined and approved by the City Engineer.

(ii) Repair Specifications. All such repairs shall be made over the full width of the PCC item to limits approved by the City Engineer which are not less than the next joint or score line beyond the actually damaged or broken sections. In the event that joints or score lines do not exist or are more than ten feet (10') from the removed or damaged section, then the damaged portions shall be removed and reconstructed to neat, plane faces, as approved in advance by the City Engineer. Repair areas located within the same item which have less than fifteen feet (15') of clear space between them shall be combined. All repairs shall be made in accordance with the specifications attached in Exhibit C, and with the applicable City standards, except as superseded by revised standards, policies, or specifications provided by the City Engineer. PCC pavement items which have no City standard detail shall be constructed in accordance with the structural section of a City standard cross gutter unless otherwise directed or approved by the City Engineer. Decorative, stamped, or colored PCC items shall be replaced in kind and to match remaining adjacent PCC of that type, to the satisfaction of the City Engineer.

(c) Repairs to Paver Sidewalks and Roadway Pavers.

(i) Duty to Repair or Make Payments. Following the City Engineer's approval of Strauss' plans and specifications for Ultimate Repairs to City paver sidewalks and roadway pavers, Strauss shall utilize a California licensed Class C-29 contractor to replace all areas of such City infrastructure damaged by the Project to equal or better than original conditions in accordance with the current standards or policies of the City, as determined and approved by the City Engineer.

(ii) Repair Specifications. All such repairs shall be made over the full width of the affected paver area to limits approved by the City Engineer which are not less than fifteen feet (15') in length. Repair areas located within the same installation which have less than fifteen feet (15') of clear space between them shall be combined. All repairs shall be made in accordance with the specifications attached in Exhibit C, and with the applicable City standards and policies, except as superseded by revised standards, policies, or specifications provided by the City Engineer. The compacted thickness of Class 2 Aggregate Base below roadway pavers shall not be less than sixteen (16) inches or existing thickness, whichever is greater.

(d) Replacement of Utility Covers, PCC Collars, and PCC Footings.

(i) Duty to Repair or Make Payments. Following the City Engineer's approval of Strauss' plans and specifications for Ultimate Repairs to City utility covers and PCC footings for street lights and other items, Strauss shall utilize a California licensed Class A or C-8

contractor to replace and adjust to finished grade City utility covers and PCC footings with associated anchor bolts and conduits damaged by the Project or located within areas of pavement replacement, to equal or better than pre-Project conditions, in accordance with the current standards or policies of the City, as determined and approved by the City Engineer.

(ii) Repair Specifications. All utility frames and covers, including those for survey monuments, traffic signals, and landscape irrigation, which are located within Project roadway repair areas, shall be lowered or adjusted and protected as required herein in order to perform the paving work unobstructed by such covers, and afterward shall be set to finished grade as required herein. Utility frames or covers which are bent, broken or become sunken or depressed relative to surrounding finished grade during the Project and PCC collars which are cracked during the Project shall be replaced as required herein. All City utility cover replacement and adjustment work, as well as replacement of PCC footings with associated anchor bolts and conduit, shall be made in accordance with the specifications attached in Exhibit C, except as superseded by revised standards, policies, or specifications provided by the City Engineer or by the City Electric Representatives.

(e) Preservation and Restoration of Monumentation. In accordance with applicable state law, prior to beginning work or Trips which may affect any existing survey monument, Strauss shall locate and preserve existing survey monuments, along the Trip Routes, and shall submit to the City Engineer a list of all monuments which may be affected by the Project and the Corner Records or Records-of-Survey showing the references for each monument. Such monument preservation shall include, but not be limited to, a licensed land surveyor researching recorded maps to identify existing monuments, locating the monuments, referencing the monuments, filing Corner Records or Records-of-Survey of the references with the County Surveyor, submitting copies of all such filings to the City Engineer, after Trips and construction verifying the location of the monuments, reestablishing any monuments which were disturbed, and filing post-construction Corner Records or Records-of-Survey with the County Surveyor, and submitting copies of those filings to the City Engineer. Monuments damaged or destroyed by any activity related to the Project shall be replaced in accordance with City standards, with a Corner Record or a Record-of-Survey filed to the satisfaction of the City Engineer and the County Surveyor.

(f) Repair of Encroachments and Other Items. All property affected by encroachments made by Strauss under an Encroachment Permit or otherwise damaged or removed by the Project shall be returned to the same or better condition as before the encroachment, including but not limited to replacement or installation of a new “Trucks Prohibited” sign with associated post and sleeve per City standard practice; replacement or installation of new tree well frame, grate, and any necessary supporting PCC; reinstallation of decorative bird houses; reinstallation of benches and replacement of supporting decorative PCC if damaged; removal of all interim modifications and repair and/or replacement as determined by the City of any other items damaged or removed by the Project. All such work shall be performed in accordance with applicable City standards and applicable portions of the specifications attached in Exhibit C, except as superseded by revised standards, policies, or specifications provided by the City Engineer, and as approved by the City Engineer or designee.

(g) Replacement of Trees, Shrubs, and Plants. Strauss shall replace all removed or damaged trees, shrubs, and plants with trees, shrubs, and plants of the same species, size, and coverage areas, except as otherwise approved or directed by the City Engineer or the City Urban Forestry Supervisor. If any of the replaced trees, shrubs, or plants die within one (1) year after being planted, Strauss shall replace each with a new tree or shrub of the same species, size, and coverage area. Such replacements shall include provision of all necessary topsoil beneath, around, and above the below-grade portion of each plant or tree. Such replacements shall also include provision of all necessary permanent irrigation systems to establish and sustain all new plantings. All such work shall be performed in accordance with applicable City standards, applicable portions of the specifications attached in Exhibit C, except as superseded by revised standards, policies, or specifications provided by the City Engineer, and as approved by the City Engineer or City Urban Forestry Supervisor.

6.6 Additional Repairs. If Strauss causes damage to City property during the term of the Project, and the repair of such damage is not designated as either an Interim Repair under Section 6.3 or an Ultimate Repair under Section 6.5, the City Engineer shall determine in his sole discretion whether the repair will be added to the list of Ultimate Repairs, or whether the repair shall be made at an earlier time, and Strauss shall make the repair in accordance with such determination.

6.7 Authority to Determine Scope of Repairs.

Any dispute about the scope of the Repair Work required by this Agreement or the standards or specifications applicable to the Repair Work shall be resolved by the City Engineer in his sole reasonable discretion. In determining the scope of the Repair Work, the City Engineer shall consider, among other things, visual observations, records, photographs, videos, deflection testing and analysis, professional engineering reports and/or recommendations, other testing and analysis, and other documentation of roadway conditions before, during, and/or after the Project Trips are made. The repairs required under this Agreement shall be those repairs that are necessary to restore City property to at least as good as the condition it was in prior to the commencement of the Project.

6.8 Standard for Repairs; Plans; Permits; Inspection.

Repairs to City property shall be made in compliance with all City standards, policies, and specifications, to the reasonable satisfaction of the City Engineer. Plans and specifications for all repairs shall be submitted to the City for prior approval and repairs shall be made in compliance with City-approved plans. Strauss shall obtain all necessary permits for the repair work, including additional encroachment permits, unless the City determines that the scope of work is already covered by the scope of an existing Encroachment Permit. City may inspect and test all improvements made to City property at any time, and Strauss shall correct, at Strauss's sole cost, any such improvements upon notice from the City that the work does not comply with required standards.

6.9 Repairs Made By City; Reimbursement of Costs.

In the event that Strauss fails to submit to the City complete plans adequately detailing all necessary Ultimate Repairs as acceptable to the City Engineer within sixty (60) days of City's request; or fails to commence Emergency Repairs within 24 hours per Section 6.4, or Interim Repairs within seven (7) days, or Ultimate Repairs within thirty (30) days after City's request, or Warranty Work within ten (10) days of City's request; City may undertake any or all of the Repair Work and Strauss shall reimburse City for the reasonable cost of such work ("**Repair Work Costs**") within thirty (30) days of receipt of an invoice for such work from City, provided however that City will not undertake any such Repair Work without providing Strauss advance written notice and opportunity to commence the Repair Work. Work on or affecting City Electric Division infrastructure shall be coordinated and performed in accordance with Section 5.2. Repair Work Costs shall include all actual costs for design, engineering, environmental review, surveying, inspection and testing, construction management, and construction for the Repair Work, as well as City staff time and City attorney time for administration related to the Repair Work.

6.10 Subcontractors.

All subcontractors performing work under this Agreement shall obtain, at their own or Strauss's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. All subcontractors performing work in the City shall first obtain a City business license.

6.11 Inspection and Final Acceptance of Repair Work.

City may inspect and accept or reject any of Strauss's Repair Work under this Agreement, either during performance or when completed. City shall reject or finally accept Strauss's work within forty-five (45) days after Strauss notifies that City that work is complete. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any Repair Work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 6.13 (Warranty) and Article 7 (Insurance, Indemnification, and Letter of Credit). Strauss shall pay for the City's costs related to inspecting and testing the Repair Work, including but not limited to consulting services for quality assurance, construction engineering support, materials testing, and supplemental inspection. The consulting portion of those costs is estimated at, but not limited to, \$100,000 based upon Strauss's proposed encroachments and Trips as of the Effective Date, and shall be reimbursed by Strauss pursuant to Section 8.2.

6.12 Liquidated Damages – Repair Work and Inspection Reports.

Since the determination of actual damages for any delay in completion of the Ultimate Repairs would be extremely difficult or impractical to determine, Strauss and its sureties shall be liable for and shall pay to the City the amount of **\$1,000 per day** as liquidated damages for each working day of delay in the completion of the Ultimate Repairs beyond the deadline established in Section 6.5 or any extension thereof approved by the City in writing, such extension not to be unreasonably withheld, provided however that liquidated damages shall not apply for work

performed by City in accordance with Section 6.9. Additionally, failure by Strauss to email to the City Engineer its complete daily Inspection Reports for the previous week by 7:00 AM each Monday morning in accordance with Section 6.3 shall cause Strauss to be liable for and to pay to the City the amount of **\$250 per occurrence** as liquidated damages. Liability for liquidated damages shall be automatic and shall not require any prior notice by City. Payment of liquidated damages shall be made within 15 days following a written demand by the City.

6.13 Warranty.

Strauss warrants all Repair Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Strauss agrees that for a period of one (1) year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Strauss shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty in this Section 6.13 at its sole cost and expense (“**Warranty Work**”). Strauss shall act as soon as requested by the City in response to an emergency. In addition, Strauss shall, at its sole cost and expense, repair, remove and replace any portions of the Repair Work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any Repair Work so corrected, Strauss’s obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Strauss shall perform, or pay all costs for City to perform, such tests as the City may reasonably require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Strauss. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Repair Work, whether express or implied, are deemed to be obtained by Strauss for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Strauss agrees to use commercially reasonable efforts to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Strauss fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Strauss’s sole expense. Strauss shall be obligated to fully reimburse the City for any reasonable expenses incurred hereunder with 30 days of receipt an invoice from City.

ARTICLE 7. INSURANCE, INDEMNIFICATION, AND LETTER OF CREDIT

7.1 Insurance Coverages.

Without limiting Strauss’s indemnification of City, and prior to commencement of any Variance Trips or any work under an Encroachment Permit, Strauss shall obtain, provide and

maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Strauss shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$3,000,000 per occurrence, \$6,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

(b) Automobile liability insurance. Strauss shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Strauss arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) Workers’ compensation insurance. Strauss shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000) for employees (as applicable).

(d) Professional liability (errors & omissions) insurance. All persons and entities providing professional services under this Agreement, whether Strauss or its Agents or subcontractors, shall maintain professional liability insurance that covers the work to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Strauss agrees to maintain continuous coverage through a period no less than three (3) years after completion of the work required by this Agreement.

(e) Subcontractors. Strauss shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

7.2 General Insurance Requirements.

(a) Proof of insurance. Strauss shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) Duration of coverage. Strauss shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Strauss, its agents, representatives, employees or subcontractors.

(c) Primary/noncontributing. Coverage provided by Strauss shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any reasonable premium paid by City will be promptly reimbursed by Strauss or City will withhold amounts sufficient to pay premium from Strauss payments, provided however that City will not obtain any insurance under this subsection (d) without providing advance written notice to and opportunity for Straus to provide the required insurance. In the alternative, City may cancel this Agreement.

(e) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Strauss or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Strauss hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(f) Enforcement of contract provisions (non-estoppel). Strauss acknowledges and agrees that any actual or alleged failure on the part of the City to inform Strauss of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(g) Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. 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, or to the exclusion of other coverage, or a waiver of any type. If Strauss maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Strauss. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(h) Notice of cancellation. Strauss agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(i) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(j) Prohibition of undisclosed coverage limitations. 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 City and approved of in writing.

(k) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Strauss's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(l) Pass through clause. Strauss agrees to ensure that its contractors, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Strauss, provide the same minimum insurance coverage and endorsements required of Strauss. Strauss 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 Section. Strauss agrees that upon request, all agreements with contractors, subcontractors, and others engaged in the project will be submitted to City for review.

(m) City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving Strauss ninety (90) days advance written notice of such change.

(n) Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(o) Timely notice of claims. Strauss shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Strauss's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(p) Sufficiency of insurer. Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, Strauss agrees that the minimum limits of the insurance policies required in this Article shall be changed accordingly upon receipt of written notice from the City.

(q) Additional insurance. Strauss shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

7.3 Indemnification.

To the full extent permitted by law, Strauss agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("**Indemnified Parties**") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties,

obligations, errors, omissions or liabilities whether actual or threatened (herein “**claims or liabilities**”) that may be asserted or claimed by any person, firm or entity arising out of or in any way connected with the Project or the work, operations or activities under this Agreement of Strauss, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Strauss is legally liable (“**indemnitors**”), including but not limited to: (i) Strauss’s or indemnitors’ negligent, reckless, or willful misconduct, including both acts and omissions; (ii) Strauss’s or indemnitor’s failure to comply with any term of this Agreement; (iii) actual or perceived economic, health, noise, traffic, or other impacts on local businesses or residents; (iv) any challenge to the City’s issuance of a permit to Strauss or entrance into an agreement with Strauss related to the Project; and (v) any legal action to stop, delay, or otherwise challenge the Project, in whole or part. In connection therewith:

(a) Strauss will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Strauss will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and Strauss agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Strauss for such claims or liabilities, Strauss agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Strauss shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Strauss shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence. The indemnity obligation shall be binding on successors and assigns of Strauss and shall survive termination of this Agreement.

7.4 Letter of Credit.

Within fourteen (14) calendar days after the Effective Date of this Agreement and as a condition precedent to the issuance of any Encroachment Permit or Oversized Vehicle Permit, and in order to secure its obligations under this Agreement, Strauss shall deliver to City an irrevocable nontransferable unconditional standby letter of credit in a form approved by City’s Management Services Director and City Attorney, in the amount of Two Million Dollars (\$2,000,000) (“**LOC**”), in compliance with the following requirements and in a form substantially similar to Exhibit D of this Agreement:

(a) Issuer. The LOC shall be issued by a major U.S. commercial bank or a U.S. branch of a foreign bank with a credit rating of at least “A-” by Standard and Poor’s Ratings Services, Inc., or its successor (S&P) or A3 by Moody’s

Investor Services, Inc., or its successor (Moody's), such as JP Morgan or Citibank ("**Issuer**"). The Issuer shall be registered to operate in California.

- (b) Duration; Non-Renewal; Substitute LOC. The LOC shall be for a period of one (1) year after the date of its issuance and shall be written so as to automatically renew, unless City receives written notice from Issuer, at least sixty (60) days prior to the LOC's expiration, that the Issuer will not be renewing the LOC ("**Non-Renewal Notice**"). This renewal obligation is to ensure the LOC is available to City for the entire LOC Term, as defined below. If the Issuer sends a Non-Renewal Notice, then Strauss may provide a substitute letter of credit identical in form and amount to the existing LOC, which must be: (i) issued by a financial institution (as approved in writing by City) comparable to the financial strength and reputation as the original Issuer, and (ii) delivered to City not less than twenty (20) days prior to the LOC expiration date ("**Substitute LOC**").
- (c) LOC Term; Return of LOC. Strauss shall ensure the LOC or a Substitute LOC remains valid and in place until the last to occur of the following ("**LOC Term**"): (i) City's written acknowledgment of full payment by Strauss of the Repair Payments (as defined in Section 8.1); (ii) the end of the Warranty period (as defined in Section 6.13) for all Repair Work (as defined in Section 6.2) completed by Strauss or its agents or contractors, as acknowledged by the City in writing; (iii) City's written acknowledgment of full reimbursement by Strauss of all City Costs (as defined in Section 8.2); or (iv) City's written acknowledgment of full reimbursement by Strauss of all Repair Work Costs (as defined in Section 6.9). City shall return the LOC or Substitute LOC, as applicable, to Strauss upon the completion of the LOC Term.
- (d) Conditions for Drawing Down LOC; Amount of Draw Down. City may draw down the LOC, without any additional conditions precedent, in the amounts stated below, if one or more of the following occur:
 - (i) Strauss fails to make full and timely payment of the Repair Payments in accordance with the requirements of Section 8.1 of this Agreement, in which event City shall be entitled to draw down the full unpaid amount of the Repair Payments, as determined by the City Engineer, plus any accrued interest.
 - (ii) Strauss fails to reimburse City, fully and timely, for all City Costs, in accordance with Section 8.2 of this Agreement, in which event City shall be entitled to draw down the full unreimbursed amount of the City Costs, as determined by the City Engineer, plus any accrued interest.
 - (iii) Strauss fails to reimburse City, fully and timely, for all Repair Work Costs, in accordance with Section 6.9 of this Agreement, in which

event City shall be entitled to draw down the full unreimbursed amount of the Repair Work Costs, as determined by the City Engineer, plus any accrued interest.

- (iv) Strauss fails to make full and timely payment of any liquidated damages due under any provision of this Agreement as determined by the City Engineer, in which event City shall be entitled to draw down the full amount of any unpaid liquidated damages, plus any accrued interest.
- (v) Strauss fails to deliver or have delivered, in a timely manner, a Substitute LOC, in accordance with Section 7.4(b) of this Agreement, in which event City shall be entitled to draw down the full amount of the LOC or Substitute LOC, as applicable.
- (e) Return of Funds. If City draws down the full amount of the LOC pursuant to subsection (d)(v), then City shall return to Strauss the portion of the amount drawn down to which City does not otherwise have a valid claim under this Agreement upon expiration of the LOC Term. The drawn down amount shall be separately accounted for by City's Management Services Director, but may be comingled with other City revenues. Any interest earned on the drawn down amount shall remain the property of City.
- (f) Notice Of Intent To Draw Funds. Ten (10) calendar days prior to the time the City intends to draw any funds on the LOC, City shall give notice to Strauss of its intention to do so by sending Strauss, in the manner specified herein for giving notices, a copy of the written statement to be submitted to Issuer. Within said ten (10) day period, Strauss shall have the option to provide City a cash payment equal to the amount of the City's intended draw, and the City shall accept said cash payment in lieu of the intended draw from the LOC.

ARTICLE 8. PAYMENTS AND REIMBURSEMENTS

8.1 Payment for Repairs.

(a) Repair Payments. At City's sole option, as determined by the City Manager or designee, Strauss shall make payments in accordance with this Section, in lieu of performing some or all of the Ultimate Repairs ("**Repair Payments**"). The scope of the Ultimate Repairs required under this Agreement shall be determined by the City Engineer, pursuant to Section 6.7. Repair Payments shall be equal to the reasonable estimated cost for the City to perform the Ultimate Repairs for which Repair Payments are required in compliance with all legal requirements for public contracts (including but not limited to competitive bidding and prevailing wages) applicable to California cities.

(b) Amount of Repair Payments. The amount of the Repair Payments shall be determined by the City Engineer in his sole reasonable discretion and shall be based on the following:

(i) The cost for the same or similar work procured by the City through a public bidding process within the last ten (10) years in which the contract was awarded to the lowest responsible bidder; provided, that the City Engineer may make adjustments for inflation based on the increase in a generally accepted price index appropriate for the unit in question (e.g., materials costs, labor costs, etc.) in the Lompoc region, or a broader region including Lompoc, or another region in California if no index including Lompoc is available, between the date that the contract was awarded and the date that the Repair Payments are determined; and provided, that the City Engineer may also factor in differences in costs resulting from: differing quantities of work items, differing dimensions of individual work items, and other such differences as may affect the cost of the work.

(ii) If the Ultimate Repairs include work or materials which are not the same as or similar to work or materials for which the City has contracted in the last ten (10) years, the City Engineer may request copies of contracts for such work or materials awarded by other cities, or by the California Department of Transportation, in Santa Barbara County or San Luis Obispo County to the lowest responsible bidder after a public bidding process and may consider the unit prices in such contracts, adjusted for inflation, and such other adjustments, if necessary, as described in Section 8.1(b)(i).

(iii) If the Ultimate Repairs include work or materials which are not the same or similar to work or materials covered in Sections 8.1(b)(i) and 8.1(b)(ii), then the City Engineer may collect and utilize relevant data, quotations, and time and materials cost rates, and other methods commonly used by cities to estimate the reasonable cost of public works projects in order to estimate the cost of such work.

(iv) The Repair Payment shall include an additional forty percent (40%) of the total construction costs, as determined above, or actual costs if all such costs are readily calculable, in order to reasonably fund the necessary environmental clearances, design, bidding, construction management, inspection, and quality assurance testing required to construct the work.

(c) Disputes Concerning Repair Payments.

(i) The City Engineer shall present his determination of the amount of the Repair Payments to Strauss in writing, accompanied by an explanation of the basis for the amount of the required payments and all documents necessary to understand the basis for such amount.

(ii) Strauss shall have thirty (30) days from the receipt of such written determination to either make full payment of the Repair Payments or provide the City with a written response challenging the City Engineer's determination and fully explaining and documenting the basis for such challenge. If Strauss only challenges part of the City Engineer's determination, the portion of the Repair Payments not in dispute shall be paid to the City at the end of the 30-day period. Any Repair Payments not in dispute and not paid to the City will accrue interest at a rate of 1.5% per month (18% per year) beginning on the 31st day following the receipt of the City Engineer's written determination by Strauss, which shall be deemed to be three (3) days after it was mailed by City.

(iii) If Strauss disputes the City Engineer's determination of the amount of the Repair Payments, the City Engineer shall have thirty (30) days from the receipt of Strauss's response to provide a written counter-response. The City Engineer's counter-response shall respond to each substantive challenge raised by Strauss in sufficient detail to justify the City Engineer's determination, and shall make reasonable adjustments to the amount of the Repair Payments if the City Engineer reasonably determines that such adjustments are warranted. The amount of the Repair Payments stated in the City Engineer's counter-response shall be final, and shall be paid by Strauss to City within 30 days following receipt of the City Engineer's counter-response by Strauss, which shall be deemed to be three (3) days after it was mailed by City.

8.2 Reimbursement of City Costs.

Strauss shall reimburse City for all reasonable costs and fees incurred by the City in relation to the Project (the "**City Costs**"). City Costs include, but are not limited to, staff time, consultant and contractor fees, and attorneys' fees, at the reimbursable rate, required for: (i) processing applications for Oversized Vehicle Permits and Encroachment Permits for the Project, including traffic plans and other related documents submitted to the City for review; (ii) drafting and reviewing this Agreement; (iii) communicating and meetings with Strauss regarding the Project; (iv) costs incurred for pavement testing and evaluation, as described in Section 6.5(a)(iv); (v) inspecting and testing any work performed by Strauss, including costs incurred for work described in Section 6.11 (Inspection and Final Acceptance of Repair Work); (vi) work performed by the City Electric Division under Section 5.2; (vii) assisting with traffic control for the Project; (viii) providing monitoring and oversight of infrastructure conditions, traffic control, traffic safety, and other aspects and effects of Project work, including the provision, installation, configuration, operation, and data storage and management of video equipment and video recordings from various locations along Project travel routes; (ix) processing permits and reviewing plans for all Repair Work; and (x) any other fees and costs incurred by the City reasonably related to the Project. City Costs will be in addition to Strauss's obligations under Article 6, Article 7, and Section 8.1. This reimbursement requirement is retroactive to the first date that the City incurred City Costs.

To that end, Strauss shall, concurrently with the execution of this Agreement, and prior to the City's issuance of any encroachment permit or oversized vehicle permit for a Variance Trip, deposit with City an initial sum of **\$450,000** against which any City Costs reasonably incurred for the Project will be drawn down ("**Deposit for City Costs**"). At no point shall the minimum balance of the Deposit fall below \$50,000.

(a) Additional Deposits by Strauss. Strauss shall make additional deposits to the City within ten (10) days of City's written request. City's written requests for additional deposits shall state what costs have been incurred to date, additional costs anticipated, and how City intends to apply any required additional deposits. Following completion of all Ultimate Repairs and all warranty periods for such work, if deposited sums exceed the costs incurred by City, City shall refund the difference as soon as City determines the amount of such excess.

(b) City's Right to Cease Work. In the event that Strauss does not promptly reimburse the City Costs, by failing to timely pay either the initial Deposit for City Costs or additional requested deposits, City may immediately delay the issuance of, and/or suspend

Oversized Vehicle Permits and Encroachment Permits, or any other required permits for the Project, until all payments are made.

(c) City Account. Any amounts deposited by Strauss shall be maintained by City in an account of City's choice, and may be co-mingled with other City funds in such account. Interest accruing upon any such deposits, if any, shall be considered part of the deposit.

(d) Accounting. City shall keep an accounting of the City Costs and all deposits made by Strauss. Upon written request, City shall provide statements of these accounts to Strauss, which shall include descriptions of the City Costs, including the date, amount, and the type of activity for which the cost was incurred. Failure of City to provide any accounting shall not excuse Strauss's duty to perform any act, including the duty to make full and timely deposits required under this Section. Strauss may question or challenge any use of funds set forth in the accounting and may appeal same to the City Council.

ARTICLE 9. COORDINATION WITH CONCERNED COMMUNITY MEMBERS

9.1 Contact Person for Community Concerns. Strauss and the City recognize that City businesses and residents may have concerns or questions about the safety of their families, customers, and employees, business interruptions, noise, dust, potential property damage, and other potential effects of the Project. In order to provide a single point of contact to address such questions and concerns, Strauss designates _____ as the contact person for all questions and concerns that may be raised by members of the public ("**Community Contact**"). The Community Contract shall be available by phone at (____) _____, and by email at _____, Monday through Friday during normal business hours and shall promptly respond to questions and concerns raised by members of the public. The City may provide contact information for the Community Contact to any member of the Lompoc community who requests it.

9.2 Public Meeting. No less than fourteen (14) days prior to the first Variance Trip, the Community Contact or another Strauss representative shall host a Project meeting at a location in Lompoc that is open to the public in order to answer questions and address concerns that affected business representatives or other members of the public may have concerning the Project. Contact information for the Community Contact shall be provided at the meeting. The meeting shall begin no earlier than 6 pm and no later than 7:30 pm on a Monday, Tuesday, Wednesday, or Thursday, but shall not occur concurrently with a meeting of the Lompoc City Council or Planning Commission. Strauss shall provide notice of the meeting location and time at least seven (7) days before the meeting to the City, through publication in the Lompoc Record newspaper as well as other applicable forums, and through written notices to all businesses and residences with frontage along the following Trip Route segments:

- (a) Ocean Avenue from I Street to E Street.
- (b) F Street from Ocean Avenue to Cypress Avenue.
- (c) Cypress Avenue from E Street to J Street.
- (d) I Street from Ocean Avenue to Willow Avenue.

9.3 Mitigation of Community Impacts; Contact List. Strauss shall confer in good faith with owners or representatives of any property with frontage along the Trip Route segments listed in Section 9.2 to determine whether Strauss can take any actions, in addition to those required in this Agreement, to mitigate the impacts of the Project on such properties and shall, at a minimum, take all such mitigation actions that are commercially reasonable. Prior to the first Variance Trip, Strauss shall provide the City will a list of all property owners or representatives with whom Strauss has communicated pursuant to this Section and shall provide a phone number or email address, and the physical address of the represented property, for each such owner or representative.

9.4 Copy of Schedule. Within three (3) days of the City's approval of Strauss's Schedule pursuant to Section 3.6, Strauss shall provide a copy of the Schedule to the owner or representatives of all properties with frontage along the Trip Route segments listed in Section 9.2, including a printed copy delivered to the front door of each building address. Strauss shall also provide a copy of any revised Schedule approved by the City to the same owners or representatives within three (3) days following the City's approval of such revision. The Schedule shall include contact information for the Community Contact.

ARTICLE 10. ADDITIONAL REQUIREMENTS; RESPONSIBILITY FOR AGENTS

10.1 Additional Requirements in Permits.

The City may unilaterally impose additional terms and conditions in the Oversized Vehicle Permits and Encroachment Permits that the City Engineer determines to be reasonably necessary to protect health and safety, City infrastructure and resources, and private property (“**Additional Requirements**”). Additional Requirements will supplement and not replace the requirements in this Agreement. In the event of any conflict between the terms of this Agreement and any Additional Requirements, the City Engineer will determine which requirement applies, in his sole reasonable discretion. Failure by Strauss to comply with Additional Requirements shall be grounds for City of suspend or withhold issuance of any or all City permits required for the Project.

10.2 SEIR Mitigation Measures.

The SEIR is incorporated herein by reference. Strauss shall comply with all requirements and mitigation measures listed in the SEIR that pertain to the City or are intended to mitigate effects of the Project on the City.

10.3 Responsibility for Agents.

City acknowledges that Strauss will use subcontractors, consultants, and/or other agents to complete Project-related work on behalf of Strauss (“**Agents**”). Such work may include, but is not limited to, applying for, obtaining, and performing work under Encroachment Permits and Oversized Vehicle Permits, and performing Repair Work. Notwithstanding the fact that the City may issue Project-related permits to Agents rather than issuing such permits directly to Strauss, and notwithstanding the fact that Repair Work and other work performed on the Project may be performed by Agents and not directly by Strauss, Strauss shall be responsible for compliance with all the terms and conditions of this Agreement, shall be responsible for controlling all work performed by Agents on the Project, and shall be liable for any breach of this Agreement and for

payment of liquidated damages under this Agreement regardless of whether such breach or event triggering liquidated damages was caused directly by the acts or omissions of Strauss or by the acts or omissions of Agents.

ARTICLE 11. TERM, TERMINATION, ENFORCEMENT

11.1 Term; Termination.

This Agreement shall become effective on the Effective Date and shall remain in full force and effect until Strauss has satisfied all of its obligations to City under this Agreement, as reasonably determined by City.

11.2 City's Right to Suspend or Revoke Permits.

In the event that Strauss is in default under the terms of this Agreement, as determined by the City Engineer, the City may suspend the Encroachment Permits and/or Oversized Vehicle Permits, and may stop all work on the Project and/or refuse passage of Oversized Vehicles on City streets until the breach is remedied to the reasonable satisfaction of the City. If Strauss fails to cure any breach of this Agreement, City may revoke the Encroachment Permits and/or Oversized Vehicle Permits. City's right to suspend or revoke Encroachment Permits and/or Oversized Vehicle Permits extends to all such permits, whether issued directly to Strauss or to its Agents.

11.3 Effect of Revocation.

If City revokes one or more Oversized Vehicle Permits or Encroachment Permits, Strauss shall nonetheless be bound by all terms and conditions of this Agreement.

11.4 Waiver.

Waiver by City of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by City of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work by Strauss shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by City on any default shall impair such right or remedy or be construed as a waiver. Any waiver by City of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

11.5 Rights and Remedies are Cumulative.

The rights and remedies of the City are cumulative and the exercise by City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Strauss.

11.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel

specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Strauss shall file a claim pursuant to Government Code Sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

11.7 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 12. MISCELLANEOUS

12.1 Compliance with Laws.

Strauss shall keep itself informed concerning, and shall perform all actions hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time the actions are taken.

12.2 Delay Caused by City.

In no event shall Strauss be entitled to recover damages against the City for any delay of the Project, however caused. Strauss's sole remedy for such delay shall be a revision of the Schedule and/or an extension of the term of City-issued Project permits, if necessary. Liquidated damages will not be assessed against Strauss for delays caused solely by the City.

12.3 Licenses, Permits, Fees and Assessments.

Strauss shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the Project. Strauss shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Project, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

12.4 Governing Law; Venue.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Santa Barbara, State of California, or any other

appropriate court in such county, and Strauss covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Santa Barbara, State of California.

12.5 No Assignment or Transfer.

Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Unauthorized transfers or assignments shall be void, and Strauss shall continue to be responsible for compliance with this Agreement. An unapproved assignment shall be ground to suspend or revoke any or all Oversized Vehicle Permits and/or Encroachment Permits.

12.6 Relationship Between the Parties.

The Parties agree that this Agreement does not operate to create the relationship of partnership, joint venture, or agency between City and Strauss. Nothing herein shall be deemed to make Strauss an agent of City.

12.7 Notices.

All notices, demands, invoices, and communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City: City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436
Attn: City Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Fax: 949-223-1180
email: jmalawy@awattorneys.com
Attn: Jeff Malawy, City Attorney

To Strauss: Strauss Wind, LLC
5904 Priestly Drive Suite 300
Carlsbad, CA 92008
Attn: Legal Department
notices@baywa-re.us

Copy to: Perkins Coie, LLP
505 Howard Street, Suite 1000
San Francisco, CA 94150-3204
Attn: Laura Zagar
lzagar@perkinscoie.com_____

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail; and by email, upon the sender's receipt of an email from the recipient acknowledging receipt.

12.8 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings used in this Agreement have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

12.9 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

12.10 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Strauss and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

12.11 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

12.12 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF LOMPOC, a municipal corporation

Jenelle Osborne, Mayor

ATTEST:

Stacey Haddon, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Jeff Malawy, City Attorney

STRAUSS:

STRAUSS WIND, LLC, a California limited liability company

By:_____

Name:

Title:

By:_____

Name:

Title:

Address:_____

STRAUSS'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO STRAUSS'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE 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 _____

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER _____ TITLE(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ NUMBER OF PAGES
	_____ DATE OF DOCUMENT

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

TRIP ROUTES

The following are the routes for the Project to make Trips with Oversized Vehicles, as well as with trucks conforming to California standard size and weight regulations:

1. Strauss Project Truck Route / Existing City Truck Route to the south:
 - a. Santa Lucia Canyon Road (City);
 - b. Floradale Road (County);
 - c. Ocean Avenue west of City (County);
 - d. Ocean Avenue within City (Caltrans);
 - e. South F Street (City);
 - f. Cypress Avenue from F Street to I Street (City); and
 - g. South I Street from Cypress Avenue to the south (City).

2. Route to Switchyard Site (not for turbine components):
 - a. Ocean Avenue within City (Caltrans); and
 - b. South Seventh Street (City).

See also map of Project Trip Routes on the following page, and map of 67m Blade Route & Detour Routes in Exhibit B.

MAP OF TRIP ROUTES

City of Lompoc STRAUSS WIND ENERGY PROJECT MAP OF TRIP ROUTES

LEGEND

- STRAUSS' PROJECT TRUCK ROUTE
- ROUTE TO SWITCHYARD SITE
- SWITCHYARD SITE

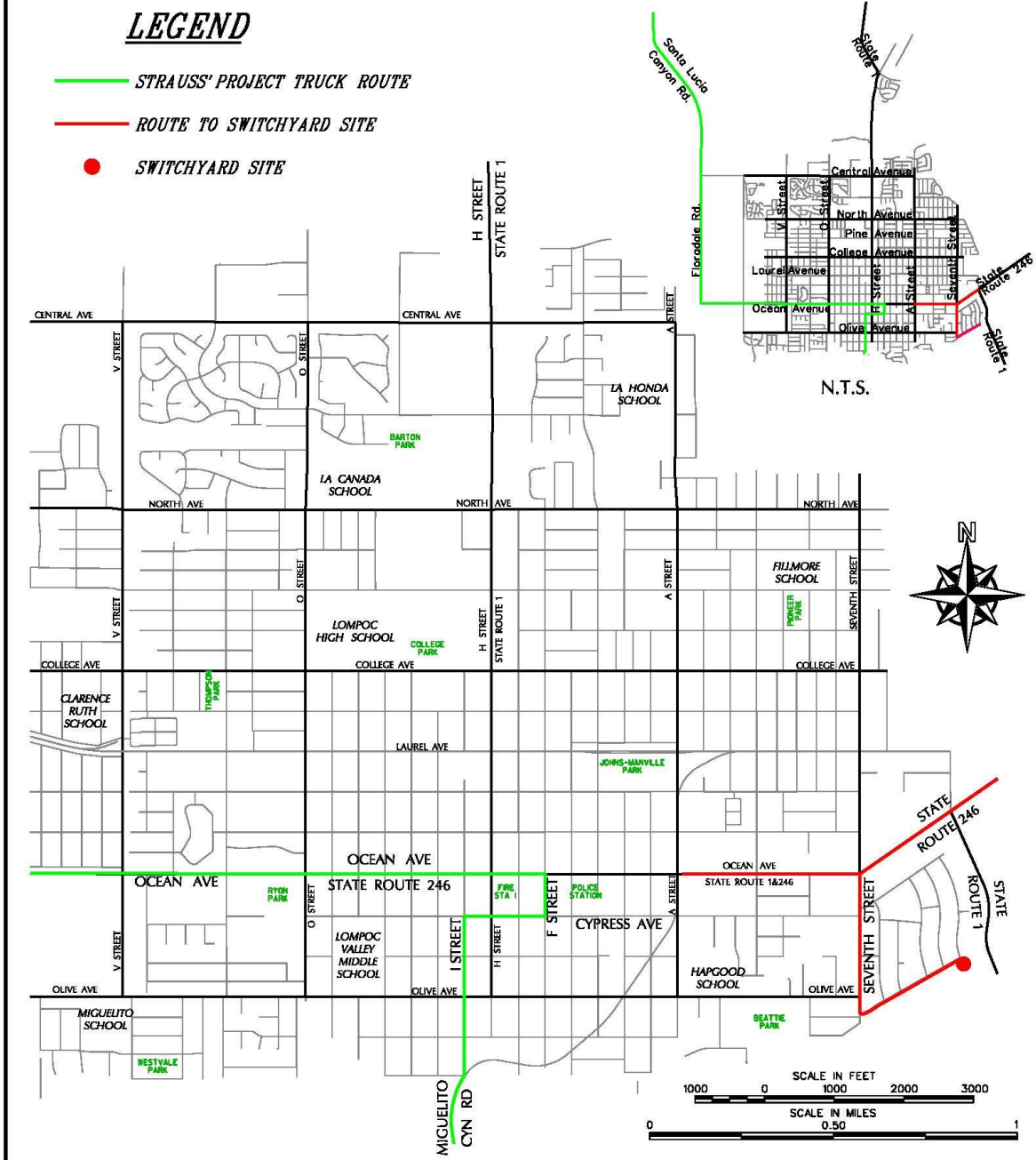


EXHIBIT B

MAP OF 67m BLADE ROUTE & DETOUR ROUTES

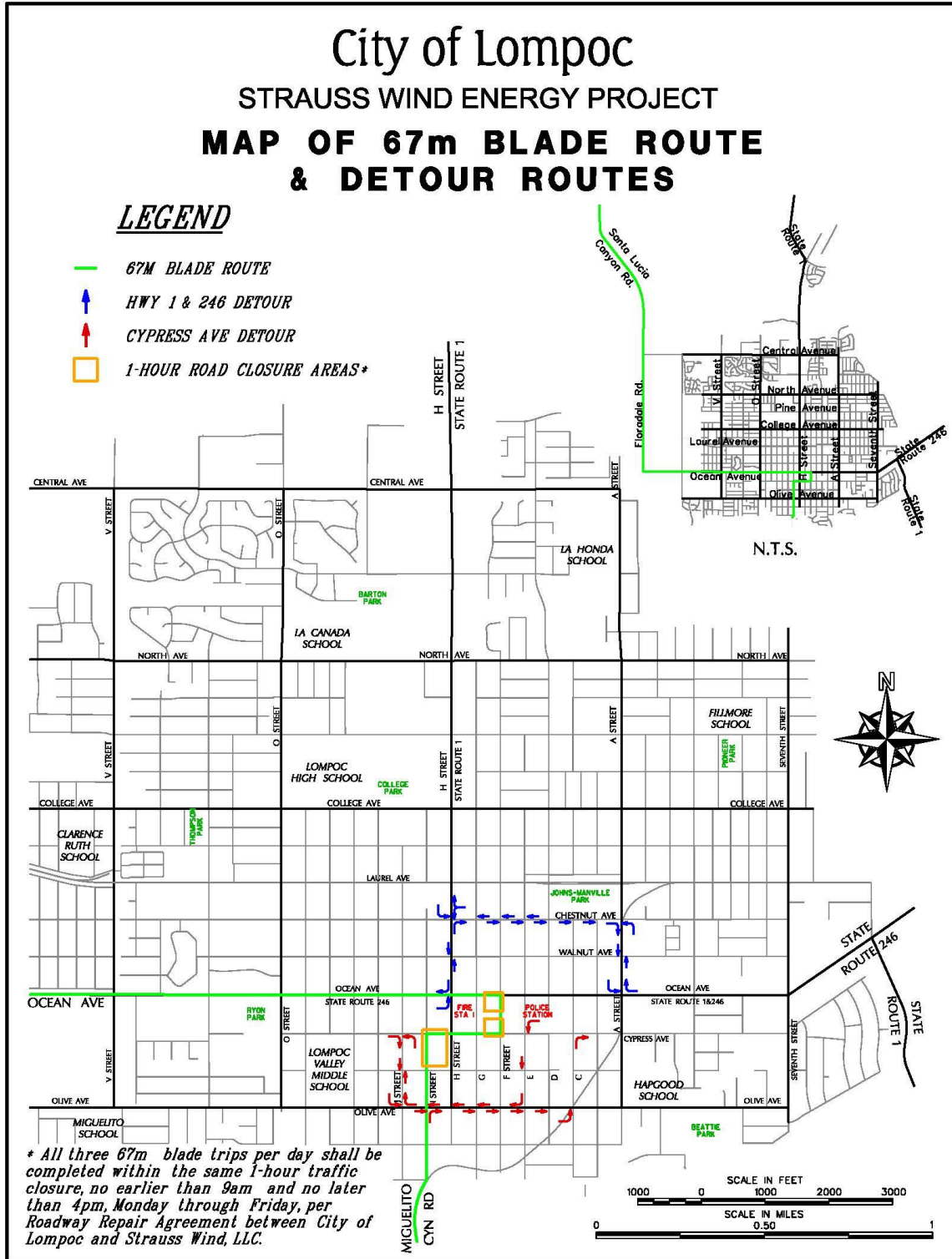


EXHIBIT C

CITY SPECIFICATIONS

[to be added]

EXHIBIT D

SAMPLE LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

ISSUER:

BENEFICIARY:

CITY OF LOMPOC
100 CIVIC CENTER PLAZA
LOMPOC, CA 93436
(805) 736-1261

ACCOUNT PARTY:

STRAUSS WIND LLC
5901 PRIESTLY DR., SUITE 300
CARLSBAD, CA 92008

ISSUE DATE: _____

EXPIRY DATE: _____

EXPIRATION PLACE: AT ISSUER'S COUNTERS

AMOUNT: USD \$2,000,000 (TWO MILLION DOLLARS)

APPLICABLE RULES: ISP LATEST VERSION (SUBJECT TO PRESENTATION BY FAX)

BY ORDER OF APPLICANT, ISSUER HEREBY ISSUES IN FAVOR OF BENEFICIARY THIS IRREVOCABLE STANDBY LETTER OF CREDIT FOR DRAWINGS NOT TO EXCEED THE AGGREGATE SUM OF TWO MILLION DOLLARS (USD \$2,000,000), EFFECTIVE IMMEDIATELY, AS SECURITY REQUIRED PURSUANT TO THE "ROADWAY REPAIR AND PERMIT AGREEMENT FOR STRAUSS WIND ENERGY PROJECT" BETWEEN THE APPLICANT AND THE BENEFICIARY DATED _____, 2021 ("AGREEMENT"). THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE TO (SUBJECT TO THE BELOW PRESENTATION RIGHT VIA FAX) AND PAYABLE FROM ISSUER'S OFFICE LOCATED AT _____, ATTENTION: STANDBY LETTER OF CREDIT DEPARTMENT, AND EXPIRES WITH ISSUER'S CLOSE OF BUSINESS ON _____.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO BENEFICIARY AGAINST BENEFICIARY'S SIGHT DRAFT, DRAWN ON ISSUER, MENTIONING THEREON THE LETTER OF CREDIT NUMBER AND ACCOMPANIED BY A WRITTEN

STATEMENT EXECUTED BY BENEFICIARY'S CITY MANAGER, STATING THE AMOUNT OF THE DRAW, STATING AN ACCOUNT NUMBER AND ROUTING NUMBER FOR WIRE TRANSFER TO BENEFICIARY, AND STATING ONE OR MORE OF THE FOLLOWING:

“STRAUSS WIND LLC HAS FAILED TO MAKE FULL AND TIMELY PAYMENT OF THE REPAIR PAYMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 8.1 OF THE AGREEMENT.”

OR

“STRAUSS WIND LLC HAS FAILED TO REIMBURSE CITY, FULLY AND TIMELY, FOR ALL CITY COSTS, IN ACCORDANCE WITH SECTION 8.2 OF THE AGREEMENT.”

OR

“STRAUSS WIND LLC HAS FAILED TO REIMBURSE CITY, FULLY AND TIMELY, FOR ALL REPAIR WORK COSTS, IN ACCORDANCE WITH SECTION 6.9 OF THIS AGREEMENT.”

OR

“STRAUSS WIND LLC HAS FAILED TO MAKE FULL AND TIMELY PAYMENT OF LIQUIDATED DAMAGES UNDER THE AGREEMENT.”

OR

“STRAUSS WIND LLC HAS FAILED TO DELIVER OR HAVE DELIVERED, IN A TIMELY MANNER, A SUBSTITUTE LETTER OF CREDIT, IN ACCORDANCE WITH SECTION 7.4(b) OF THE AGREEMENT.”

PARTIAL DRAWINGS ALLOWED.
MULTIPLE DRAWINGS ALLOWED.

DOCUMENTS MAY BE PRESENTED BY COURIER, OR BY REGISTERED MAIL TO: _____, ATT: STANDBY LETTER OF CREDIT DEPARTMENT. DRAWINGS HEREUNDER MAY BE PRESENTED BY FACSIMILE/TELECOPY ("FAX") TO FAX NUMBER _____ UNDER TELEPHONE PRE-ADVICE TO _____. SUCH FAX PRESENTATION(S) MUST BE RECEIVED ON OR BEFORE THE EXPIRY DATE IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT. ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT ALSO BE PRESENTED.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR A PERIOD OF ONE YEAR AND THEREAFTER FOR ONE (1) YEAR FROM EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY SUCH EXPIRY DATE ISSUER HAS SENT BENEFICIARY WRITTEN NOTICE BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE THAT ISSUER ELECTS NOT TO EXTEND THE EXPIRY DATE OF THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD. SEPARATE NOTICES TO BENEFICIARY MUST BE CONCURRENTLY PROVIDED TO EACH OF THE FOLLOWING PERSONS:

CITY: CITY OF LOMPOC
ATTN: CITY MANAGER
100 CIVIC CENTER PLAZA
LOMPOC, CA 93436

CITY OF LOMPOC
ATTN: CITY ATTORNEY
100 CIVIC CENTER PLAZA
LOMPOC, CA 93436

CITY OF LOMPOC
ATTN: MANAGEMENT SERVICES DIRECTOR
100 CIVIC CENTER PLAZA
LOMPOC, CA 93436

PAYMENT OF ANY AMOUNT DRAWN UNDER THIS LETTER OF CREDIT SHALL BE MADE IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS BY WIRE TRANSFER TO THE ACCOUNT OF BENEFICIARY IN ACCORDANCE WITH THE INSTRUCTIONS SUBMITTED WITH THE PRESENTATION OF DOCUMENTS, NO LATER THAN THE THIRD BUSINESS DAY FOLLOWING THE DATE SUCH DEMAND FOR PAYMENT IS PRESENTED IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AS USED HEREIN "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY OR SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN NEW YORK CITY ARE AUTHORIZED OR REQUIRED TO CLOSE BY LAW AND A DAY ON WHICH PAYMENTS MAY BE EFFECTED ON THE FEDWIRE PAYMENT SYSTEM.

THE OBLIGATION OF ISSUER UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF ISSUER AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO, AND/OR UPON ISSUER'S ABILITY TO PERFECT A SECURITY INTEREST.

ISSUER HEREBY ENGAGES WITH BENEFICIARY THAT ALL DRAFTS DRAWN UNDER AND IN STRICT COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT

(INCLUDING PRESENTATION FOR PAYMENT BY FAX) ON OR BEFORE THE EXPIRY DATE OF THIS LETTER OF CREDIT.

THE ELECTRONIC TRANSMISSION OR FACSIMILE OF THIS LETTER OF CREDIT SHALL SERVE AS THE OPERATIVE INSTRUMENT. THE ORIGINAL OF THIS LETTER OF CREDIT SHALL BE DELIVERED TO ISSUER AFTER BENEFICIARY RECEIVES PAYMENT FROM ISSUER.

EXCEPT AS OTHERWISE EXPRESSLY STATED (INCLUDING PRESENTATION BY FAX) HEREIN , THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (“ISP98”), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590. AS TO MATTERS NOT GOVERNED BY THE ISP98 AND TO THE EXTENT NOT INCONSISTENT WITH THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. THE COURTS LOCATED IN SANTA BARBARA COUNTY SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION TO ENFORCE ISSUER’S OBLIGATIONS UNDER THIS LETTER OF CREDIT.

SHOULD BENEFICIARY HAVE OCCASION TO COMMUNICATE WITH ISSUER REGARDING THIS LETTER OF CREDIT, COMMUNICATIONS SHALL BE DIRECTED TO: _____, ATT: STANDBY LETTER OF CREDIT DEPARTMENT, MAKING SPECIFIC REFERENCE TO LETTER OF CREDIT NO. _____.

ISSUER’S CHARGES AND FEES FOR ISSUING, AMENDING, OR HONORING THIS LETTER OF CREDIT ARE FOR APPLICANT’S ACCOUNT AND SHALL NOT BE DEDUCTED FROM ANY PAYMENT ISSUER MAKES TO BENEFICIARY UNDER THIS LETTER OF CREDIT.