

## **VALET PARKING AGREEMENT HUGH FUTRELL CORPORATION**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF SANTA ROSA** (“CITY”), a municipal corporation, and Hugh Futrell Corporation, a California corporation (“HUGH FUTRELL CORPORATION”).

### **RECITALS**

- A. HUGH FUTRELL CORPORATION desires to provide, or cause its independent third-party contractor (“PARKING CONTRACTOR”) to provide, in conjunction with its hotel operations, valet parking services (“SERVICE”) at a specific location in the downtown area in the City of Santa Rosa for a period of up to twenty-nine (29) years.
- B. HUGH FUTRELL CORPORATION desires to use the CITY’s Parking Garage 12 (“PARKING FACILITY”) located at 555 1<sup>st</sup> Street to provide the SERVICE.
- C. HUGH FUTRELL CORPORATION warrants to the CITY that it and its PARKING CONTRACTOR possess specialized skill in valet parking and facilitating traffic movement.
- D. CITY is willing to make available certain areas of the PARKING FACILITY to HUGH FUTRELL CORPORATION for its provision of the SERVICE.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and HUGH FUTRELL CORPORATION hereby agree as follows:

#### 1. VALET PARKING OPERATIONS.

a. The SERVICE will be provided at 37, 25 & 19 Old Courthouse Square (“HOTEL”). CITY shall allow HUGH FUTRELL CORPORATION or its PARKING CONTRACTOR to park up to sixty-five (65) vehicles in the PARKING FACILITY, provided that HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR, as the case may be, shall not park any vehicles outside of the designated valet parking area as designated by CITY. CITY shall designate a valet parking area on the roof of PARKING FACILITY for the first five years of the TERM, or up to the date this Agreement is terminated, whichever comes first, which provides for stacked parking, and thereby reduces the number of striped parking spaces (self-park stalls) that will be required to accommodate HOTEL patron vehicles. CITY will install a “nested” gate controlled system to control access to the designated valet parking area, the entire cost of which will be paid for by HUGH FUTRELL CORPORATION. CITY and HUGH FUTRELL CORPORATION agree to review valet operations at the end of the fourth year of the TERM to evaluate effectiveness of valet operations, actual utilization of spaces, and to consider operational and equipment changes to improve efficiencies. If CITY is unable to accommodate 65 vehicles within the PARKING FACILITY, it shall provide the contracted spaces at other parking garages

or lots owned or operated by CITY. The use of parking spaces is subject to all generally applicable City of Santa Rosa Parking Division rules and regulations, either currently in force or as may be hereafter adopted, as well as the Santa Rosa City Code and California Vehicle Code provisions and any other State or Federal laws regarding the subject matter of this Agreement, including, but not limited to, valet parking.

b. HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR shall operate all vehicles valeted under the SERVICE in a safe manner and speed and shall not exceed posted speed limits. HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR shall abide by all applicable laws, rules, regulations, policies, and ordinances relating to traffic safety.

c. HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR shall have no authority to prevent non-valet vehicle access to the PARKING FACILITY.

d. HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR shall each possess a valid City of Santa Rosa Business Tax Certificate to operate the SERVICE within the CITY. Any PARKING CONTRACTOR used by HUGH FUTRELL CORPORATION to provide the SERVICE must have at least one-year of experience in operating a valet parking service. All employees of HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR providing the SERVICE must possess and carry a valid California driver's license, and wear a standard company uniform and a name tag identifying the name of the employee and the valet parking service provider.

e. HUGH FUTRELL CORPORATION's and its PARKING CONTRACTOR's failure to comply with any of the above requirements at all times shall be considered a violation of this Agreement and CITY may, in its sole discretion, demand immediate remedy upon written notice to HUGH FUTRELL CORPORATION. Should the deficiency cited in the written notice fail to be cured within five (5) business days, then CITY may take additional appropriate enforcement actions, up to and including the right to suspend PARKING FACILITY access until the deficiency is cured. Nothing in this subsection is intended to limit the remedies available to CITY under Section 19 of this Agreement or any other rights or remedies available to CITY at law or in equity.

f. PARKING CONTRACTOR. HUGH FUTRELL CORPORATION may subcontract the SERVICES to a third party licensed and authorized by the CITY to provide valet parking services in the downtown area. Any such PARKING CONTRACTOR must first be approved by the City and such approval will not be unreasonably withheld.

## 2. FEES.

a. HUGH FUTRELL CORPORATION shall pay the CITY a fixed fee of \$140.00 per month per designated parking space (each "space" equaling an existing, currently striped self-park stall) for the first five (5) years of the TERM. At the end of such initial five (5) year period and through the end of the TERM as outlined in Section 3 below, HUGH FUTRELL CORPORATION shall pay to CITY for each such designated parking space, a fee equal to the

monthly reserved parking permit rate, per the Schedule of Parking User Fees adopted by the Santa Rosa City Council, as may be amended and updated from time to time. A designated parking space is defined as a standard existing striped parking space, and not over striped or restriped areas for stacked, valet parking. HUGH FUTRELL CORPORATION may utilize stacked parking, which can increase the capacity of vehicles parked within the designated parking area, meaning that although a fixed number of designated spaces are assigned for valet use, HUGH FUTRELL CORPORATION may park more vehicles in the designated spaces by parking vehicles closer together. Fees are payable in advance on a monthly basis and due on or before the 1st of each month. A late penalty charge of 15% of the invoice amount shall be imposed on HUGH FUTRELL CORPORATION in the event payment is not received by CITY by the 1<sup>st</sup> of the month in which it was due.

b. CITY intends to replace its parking access and revenue control system in the next five years and this new technology may provide features that will streamline the management of valet parking. CITY wishes to engage in good faith negotiations with HUGH FUTRELL CORPORATION as new technology is implemented, which may provide for parking charges based on actual valet parking occupancy, rather than a fixed fee, so long as the actual cost to HUGH FUTRELL CORPORATION is not increased above the cost increase schedule defined in Section 2(a).

3. TERM. The term of this Agreement shall be for a period of nine (9) years (“TERM”) commencing on the Effective Date; provided, however, that the TERM may be extended for up to four (4) additional five (5) year terms for a total of twenty-nine (29) years by the mutual, written agreement of the parties prior to the end of the TERM or any extension term by providing written notice to CITY at least 60 days prior to the end of the TERM or any extension term. Unless otherwise agreed in writing and documented as an Amendment to the Agreement by CITY and HUGH FUTRELL CORPORATION, the terms and conditions of this Agreement shall fully and completely convey to any option period exercised by HUGH FUTRELL CORPORATION.

4. ACCESS CARD FEE. If access cards are utilized, then in addition to the fees set out in Section 2 above, HUGH FUTRELL CORPORATION shall pay \$10 per access card issued by CITY to authorize entrance into the PARKING FACILITY. HUGH FUTRELL CORPORATION shall pay \$20 per access card to replace any lost, stolen or missing access cards.

5. STRIPING FOR STACKED SPACES. HUGH FUTRELL CORPORATION may provide recommendations to CITY for any striping needed to effectuate the stacked parking described in this Agreement. The striping configuration shall be subject to approval by CITY. CITY shall be responsible for making any striping changes. The cost of striping changes required to accommodate SERVICES shall be paid by HUGH FUTRELL CORPORATION.

6. SIGNS. HUGH FUTRELL CORPORATION shall not place, maintain, nor permit on any door, wall, or window of the PARKING FACILITY any sign, awning, canopy, marquee. HUGH FUTRELL CORPORATION may request that CITY install signage at HUGH FUTRELL CORPORATION expense, which consent shall not be unreasonably withheld. Furthermore, HUGH FUTRELL CORPORATION shall not place any decoration, designation, lettering, or

advertising matter on the glass of any window, wall or door, or surface of the PARKING FACILITY. HUGH FUTRELL CORPORATION may request that CITY install such decoration, designation, lettering or advertising matter at HUGH FUTRELL CORPORATION expense, which approval shall not be unreasonably withheld. If CITY consents to any sign, awning, canopy, marquee, decoration, or advertising matter, HUGH FUTRELL CORPORATION shall reimburse CITY for the costs to maintain it in good appearance and repair at all times during the TERM and any extension term. At the termination of this Agreement, CITY shall remove any of the items mentioned in this Section from the PARKING FACILITY and make them available to HUGH FUTRELL CORPORATION for pick-up. Any items mentioned in this Section that are not retrieved by HUGH FUTRELL CORPORATION within ten (10) days of notification by CITY will be destroyed by CITY without any damages or liability attributable to CITY.

7. PROHIBITED USE OF PREMISES.

a. HUGH FUTRELL CORPORATION agrees not to use the PARKING FACILITY for any unlawful purpose or any use contrary to applicable laws, rules, regulations, policies, and ordinances.

b. HUGH FUTRELL CORPORATION shall not commit any acts in the PARKING FACILITY, nor use the PARKING FACILITY in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the PARKING FACILITY or the improvements to the PARKING FACILITY. HUGH FUTRELL CORPORATION shall, at HUGH FUTRELL CORPORATION's own cost and expense, comply with all requirements of City's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the PARKING FACILITY and the improvements to the PARKING FACILITY.

c. HUGH FUTRELL CORPORATION shall not commit any waste or any public or private nuisance upon the PARKING FACILITY.

8. REPAIR OR DAMAGE. HUGH FUTRELL CORPORATION agrees to promptly notify CITY of any damage to CITY property, the PARKING FACILITY, or to any improvements or property located thereon, caused by HUGH FUTRELL CORPORATION, its PARKING CONTRACTOR, or any of their officers, agents or employees, and agrees to reimburse CITY for the cost and expense of repair. Likewise, CITY agrees to maintain and repair in a timely and complete manner, any improvements, equipment, or property located within the parking structure that is necessary for HUGH FUTRELL CORPORATION's productive and efficient use of the parking structure for its valet parking service.

9. INSURANCE.

a. HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by HUGH FUTRELL CORPORATION. Failure by HUGH FUTRELL CORPORATION or its PARKING CONTRACTOR to (i) maintain or renew coverage, (ii) provide

CITY notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by CITY as a material breach of this Agreement by HUGH FUTRELL CORPORATION, whereupon CITY shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by HUGH FUTRELL CORPORATION or its PARKING CONTRACTOR to maintain required insurance coverage shall not excuse or alleviate HUGH FUTRELL CORPORATION from any of its other duties or obligations under this Agreement.

b. HUGH FUTRELL CORPORATION agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. HUGH FUTRELL CORPORATION agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

10. USE OF PARKING SPACES. HUGH FUTRELL CORPORATION hereby accepts the parking spaces utilized under this Agreement in their present "as is" condition, and warrants that the spaces shall not be used, nor will HUGH FUTRELL CORPORATION or its PARKING CONTRACTOR allow them to be used, for any purposes other than vehicle parking. CITY agrees that the parking spaces designated to HUGH FUTRELL CORPORATION shall be maintained by CITY to the "as is" or better level existing at the time of approval of this Agreement, during the TERM and any extension term. HUGH FUTRELL CORPORATION and its PARKING CONTRACTOR, as the case may be, shall use their best efforts to ensure that no vehicle contains, transports or stores any hazardous, toxic, flammable or other dangerous chemicals, goods, items or materials on, over or within the PARKING FACILITY except as those chemicals, goods, items or materials may reasonably and normally be anticipated to be present in type and amount in similar PARKING FACILITY situations.

11. INDEMNIFICATION. HUGH FUTRELL CORPORATION shall indemnify, hold harmless, and defend CITY, its representatives, agents, employees, and elected and appointed officials, from and against all liability, claims, damages, suits, losses, and expenses of any sort, including reasonable attorneys' fees and costs (and reasonable attorneys' fees and costs on appeal), arising out of or resulting from the SERVICE as described or provided in this Agreement, and caused by the willful or negligent act or omission of HUGH FUTRELL CORPORATION, its PARKING CONTRACTOR, or any of their officers, agents, or employees, or anyone for whose act or acts any of them may be liable, unless caused by the willful act or sole active negligence of CITY. The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 11, nor shall the limits of such insurance limit the liability of HUGH FUTRELL CORPORATION hereunder.

12. DISCLAIMER OF WARRANTIES. **THE CITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, MERCHANTABILITY OR FITNESS FOR**

**ANY PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PARKING FACILITY OR ANY PORTION OR ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THERETO. HUGH FUTRELL CORPORATION ACKNOWLEDGES THAT THE CITY IS NOT A MANUFACTURER OR DEALER OF THE IMPROVEMENTS TO THE PARKING FACILITY, THAT HUGH FUTRELL CORPORATION USES THE PARKING FACILITY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY HUGH FUTRELL CORPORATION. IN NO EVENT SHALL CITY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR USE OF THE PARKING FACILITY BY HUGH FUTRELL CORPORATION.**

13. ASSIGNMENT AND TRANSFER OF RIGHTS.

a. HUGH FUTRELL CORPORATION shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of CITY, which consent will not be unreasonably withheld. Any purported or attempted assignment of this Agreement or any of the rights hereunder that is not in accordance with the terms and conditions set forth herein shall be deemed null, void and of no legal effect.

b. HUGH FUTRELL CORPORATION shall not lease, sell, transfer, assign, convey, pledge, encumber, mortgage, or otherwise hypothecate any rights in the PARKING FACILITY without the express prior written consent of City, which consent will not be unreasonably withheld. Any purported or attempted hypothecation that is not in accordance with the terms and conditions set forth herein shall be deemed null, void and of no legal effect.

14. NOTICES. All notices required to be given to CITY shall be in writing, and shall be given by hand delivery or U.S. Mail, postage prepaid, to the following address:

Parking Manager  
City of Santa Rosa  
90 Santa Rosa Avenue  
Santa Rosa, CA 95404

All notices required to be given to HUGH FUTRELL CORPORATION shall be in writing, and shall be given by hand delivery or U.S. Mail, postage prepaid, to the following address:

Hugh Futrell Corporation  
200 Fourth Street, Suite 240  
Santa Rosa, CA 95401  
ATTN: Hugh Futrell

15. AMENDMENT. This Agreement may be amended or modified only by a writing of import equal to this Agreement duly authorized and executed by the parties.

16. TERMINATION. This Agreement may be terminated: (a) by the mutual agreement of the parties with sixty (60) days written notice, or (b) as may otherwise be provided in this Agreement.

17. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date the Certificate of Occupancy for HOTEL is issued, provided the Certificate of Occupancy is issued within three (3) years of the date this Agreement is made as set forth in the first paragraph of this Agreement. If the Certificate of Occupancy is not issued within three (3) years of such date, the Agreement shall automatically terminate.

18. EVENTS OF DEFAULT DEFINED.

The following shall be "Events of Default" hereunder and the term "Event of Default" shall mean, whenever it is used herein, any one or more of the following events:

a. The failure by HUGH FUTRELL CORPORATION to pay any amount in full when it is due under this Agreement;

b. The failure by HUGH FUTRELL CORPORATION to perform any obligation under this Agreement, which by its nature HUGH FUTRELL CORPORATION has no capacity to cure;

c. The failure by HUGH FUTRELL CORPORATION to perform any other obligation under this Agreement, if the failure has continued for a period of ten (10) days after CITY demands in writing that HUGH FUTRELL CORPORATION cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, HUGH FUTRELL CORPORATION may have a longer period as is necessary to cure the failure, but this is conditioned upon HUGH FUTRELL CORPORATION promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. HUGH FUTRELL CORPORATION shall indemnify and defend CITY against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

d. Any of the following:

- i. A general assignment by HUGH FUTRELL CORPORATION for the benefit of HUGH FUTRELL CORPORATION's creditors; any voluntary filing, petition, or application by HUGH FUTRELL CORPORATION under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise;
- ii. The appointment of a trustee or receiver to take possession of all or substantially all of HUGH FUTRELL CORPORATION's assets; or of HUGH FUTRELL CORPORATION's interest in this Agreement, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against HUGH FUTRELL

- CORPORATION, or any general partner of HUGH FUTRELL CORPORATION if HUGH FUTRELL CORPORATION is a partnership, or
- iii. A petition to have HUGH FUTRELL CORPORATION, or any partner of HUGH FUTRELL CORPORATION if HUGH FUTRELL CORPORATION is a partnership, declared bankrupt, or
  - iv. A petition for reorganization or arrangement of HUGH FUTRELL CORPORATION under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

19. REMEDIES ON EVENT OF DEFAULT.

Upon the occurrence of an Event of Default, CITY, in addition to any other rights or remedies available to CITY at law or in equity, shall have the right to:

a. Terminate this Agreement and all rights of HUGH FUTRELL CORPORATION under this Agreement upon an Event of Default, by giving HUGH FUTRELL CORPORATION written notice that this Agreement is terminated, in which case CITY may recover from HUGH FUTRELL CORPORATION the aggregate sum of:

- i. any unpaid fees and amounts owing at the time of termination;
- ii. any costs related to removing the “nested” gate control system and restriping that may be required to restore the FACILITY to its original configuration;
- iii. any other amount necessary to compensate CITY for all the detriment caused by HUGH FUTRELL CORPORATION or its PARKING CONTRACTOR; and
- iv. all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law; or

b. Continue this Agreement, and from time to time, without terminating this Agreement, recover all fees and other amounts payable as they become due.

c. None of the following remedial actions, alone or in combination, shall be construed as an election by CITY to terminate this Agreement unless CITY has in fact given HUGH FUTRELL CORPORATION written notice that this Agreement is to be terminated or unless a court of competent jurisdiction decrees termination of this Agreement. If CITY takes any of the previous remedial actions without terminating this Agreement, CITY may nevertheless at any later time terminate this Agreement by written notice to HUGH FUTRELL CORPORATION.

After the occurrence of an Event of Default, CITY, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default at the expense of HUGH FUTRELL CORPORATION. However, CITY must by prior notice, per Section 18(c), first allow HUGH FUTRELL CORPORATION a reasonable opportunity to cure, except in cases of emergency, where CITY may proceed without prior notice to HUGH FUTRELL



CORPORATION. HUGH FUTRELL CORPORATION shall, upon demand, immediately reimburse CITY for all costs, including costs of settlements, defense, court costs, and attorney fees that CITY may incur in the course of any cure.

Indemnification. The exercise of the CITY of any one or more of the remedies set forth in this Section shall not affect the rights of CITY or the obligations of HUGH FUTRELL CORPORATION under the indemnity provisions set forth in Section 11 hereof.

20. NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to CITY is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle CITY to exercise any remedy reserved to it in this Section it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

21. ENTIRE AGREEMENT. This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between CITY and HUGH FUTRELL CORPORATION, oral or written, relating to the subject matter of this Agreement. CITY has made no representations, warranties or promises not expressly contained herein. No subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon CITY or HUGH FUTRELL CORPORATION unless reduced to writing and signed by both of them.

22. VALIDITY; VENUE. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

23. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. If any agreement contained herein should be breached by either party and thereafter waived by the other party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

24. NOTICE REGARDING PROPERTY TAXES. CITY hereby notifies HUGH FUTRELL CORPORATION, pursuant to California Revenue and Taxation Code § 107.6, that this Agreement may create a possessory interest which may be subject to property taxation. HUGH FUTRELL CORPORATION shall timely pay all property taxes levied on said possessory interest.

25. RETENTION OF RECORDS. HUGH FUTRELL CORPORATION shall maintain the records related to the performance of this Agreement and shall allow CITY access to

such records during the performance of this Agreement and for a period of four (4) years after termination of this Agreement.

IN WITNESS WHEREOF, CITY has executed this Agreement in its respective names and HUGH FUTRELL CORPORATION has caused this Agreement to be executed in its name all as of the date first above written.

**HUGH FUTRELL CORPORATION,**  
a California corporation

**CITY OF SANTA ROSA, CALIFORNIA**

By: *Hugh Futrell*

BY: \_\_\_\_\_  
Mayor

Print Name: Hugh Futrell

Title: *Pres / CFO*

By: \_\_\_\_\_

APPROVED AS TO FORM

BY: *Angel Casapunta*  
City Attorney

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

Business Tax Certificate #: *84-1702658*

BY: \_\_\_\_\_  
City Clerk

**ATTACHMENT ONE  
INSURANCE REQUIREMENTS  
VALET PARKING AGREEMENT**

**A. Insurance Policies:** HUGH FUTRELL CORPORATION shall, at all times during the TERM, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to CITY.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. <b>Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.</b>
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if HUGH FUTRELL CORPORATION has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CITY for all services performed by HUGH FUTRELL CORPORATION, its employees, agents and subcontractors.

**B. Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
  - a. For any claims related to this Agreement, HUGH FUTRELL CORPORATION's insurance coverage shall be primary and any insurance

or self-insurance maintained by CITY shall be excess of the HUGH FUTRELL CORPORATION's insurance and shall not contribute with it; and,

- b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to HUGH FUTRELL CORPORATION's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

**C. Verification of Coverage and Certificates of Insurance:** HUGH FUTRELL CORPORATION shall furnish CITY with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the CITY before the TERM commences and must be in effect for the duration of the TERM. The CITY reserves the right to require complete copies of all required policies and endorsements.

**D. Other Insurance Provisions:**

1. No policy required by this Agreement shall prohibit HUGH FUTRELL CORPORATION from waiving any right of recovery prior to loss. HUGH FUTRELL CORPORATION hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by HUGH FUTRELL CORPORATION and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either HUGH FUTRELL CORPORATION or CITY. Self-insured retentions above \$10,000 must be approved by CITY. At CITY's option, HUGH FUTRELL CORPORATION may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. CITY reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.