

## **EXHIBIT L-5**

### **INSURANCE REQUIREMENTS**

**DEVELOPER'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT DEVELOPERS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.**

#### **I. INSURANCE**

Without limiting the Developer's indemnification of VTA, the Developer must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Developer's operation and use of the licensed premises. The cost of such insurance must be borne by the Developer. The Developer must furnish complete copies of all insurance policies, within three (3) business days of any request for such by VTA.

##### **A. MINIMUM SCOPE OF INSURANCE**

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable. This insurance must be continuously maintained for a minimum of ten (10) years following completion of this Agreement.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Contractor's Pollution/Environmental Impairment Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material. This coverage must be continuously maintained for a minimum of ten (10) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section D.
5. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Agreement. This coverage must be continuously maintained for a minimum of ten (10) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section D.

##### **B. MINIMUM LIMITS OF INSURANCE**

- a. Developer must maintain limits no less than:

1. General Liability: \$10,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying general liability policy, and a “Drop Down” provision
  2. Automobile Liability (including umbrella/excess liability): \$5,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying auto liability policy, and a “Drop Down” provision
  3. Workers’ Compensation and Employers Liability: Workers’ compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
  4. Contractor’s Pollution/Environmental Impairment Liability: \$5,000,000 per occurrence.
  5. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim.
- a. Notwithstanding any language in this Agreement to the contrary, if Developer carries insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

#### **C. SELF-INSURED RETENTION**

The certificate must disclose the actual amount of any deductible or self-insured retention for all coverages. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Developer is a publicly-traded company) must be declared to and approved by VTA. If Developer is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the Developer must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer must reduce or eliminate such self-insured retention as respects VTA, its officers, officials, employees and volunteers; or the Developer must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)**

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy retroactive date must be no later than the date of this Agreement.

2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Developer must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must be of at least ten (10) years.
3. No prior acts exclusion to which coverage is subject that predates the date of this Agreement.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

## **E. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

### **1. General Liability**

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of premises licensed to, occupied or used by the Developer. The coverage must contain no special limitations on the scope of protection afforded to VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. The Developer's insurance coverage must be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, its officers, officials, employees, or volunteers must be excess of the Developer's insurance and may not contribute with it.
- c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
- d. Coverage must state that the Developer's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The General Liability General Aggregate limit must apply per project, not per policy.
- f. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

### **2. All Coverages**

The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from the licensed premises.

### **3. Other Insurance Provisions**

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.

- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the right to require the Applicant to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

#### **F. ACCEPTABILITY OF INSURERS**

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

#### **G. CERTIFICATES OF INSURANCE**

Developer must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form. The Developer must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to [real.estate@vta.org](mailto:real.estate@vta.org).

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")  
3331 North First Street  
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Agreement number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement Documents.

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If the Developer receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Developer or insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

#### **H. MAINTENANCE OF INSURANCE**

If Developer fails to maintain such insurance as is called for herein, VTA, at its option, may deny the Developer access to the licensed premises until a new policy of insurance is in effect.