

**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN NOVATO UNIFIED SCHOOL DISTRICT (NUSD) AND THOMAS AND LIZ EVERS,**  
**dba FOREVERS AQUATICS, FOR OPERATION AND PROGRAMMING**  
**OF THE NUSD POOL AT NOVATO HIGH SCHOOL**

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is entered into and effective as of **April 23, 2016** (“Effective Date”), by and between Novato Unified School District (“NUSD”) and Thomas and Liz Evers, individuals doing business as Forever Aquatics (collectively, the “Parties”). Thomas and Liz Evers, dba Forever Aquatics, are hereafter referred to as “Contractor.”

**WHEREAS**, the Parties enter into this Agreement for the purpose of providing professional services to NUSD under the terms and conditions set forth herein.

**THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Contractor shall provide the services as described in, and in accordance with, the schedule and terms set forth in **Exhibit “A”** attached hereto and incorporated herein (“Services”). The NUSD pool is sometimes referred to jointly hereafter as “the Facilities.”
2. **Compensation: Business Tax Certificate.**
  - A. For the full performance of the Services, Contractor shall receive all proceeds from program fees and charges paid by users of the Facilities. Within thirty days of the conclusion of annual seasonal operations as specified herein, Contractor shall provide NUSD with written ending revenue and expense reports prepared in accordance with standard accounting practices showing Contractor’s costs paid or incurred for the provision of all services provided by Contractor pursuant to this Agreement and all revenue received by Contractor from program fees, charges paid by users of the Facilities and/or any other income received related to the provision of services by Contractor pursuant to this Agreement. NUSD shall have 30 days to review and approve said reports and request any additional information, including but not limited to additional cost and/or revenue detail, if NUSD determines such information is necessary to evaluate annual operations and/or Contractor’s performance. Contractor shall provide NUSD with 25% of the net profit resulting from the Services within 30 days of the termination of the Services.
  - B. Contractor shall possess all licenses and permits necessary for the performance of the service, including currently valid Novato business tax certificate, for the duration of this Agreement. NUSD shall not be responsible for governmental taxes or fees associated with the performance of the Services under this agreement.

3. **Term.** The term of this Agreement commences on the Effective Date and terminates on **August 13, 2016**, unless sooner terminated in accordance with Section 4. Contractor shall have use of the facilities during the hours of operation specified in Exhibit A only. Upon termination, any and all of NUSD's documents or materials provided to Contractor and any and all of the documents or materials prepared for NUSD or relating to the performance of the Services, except for medical records and personally identifiable health information of NUSD employees or prospective employees (unless the employee or prospective employee has authorized the delivery), shall be delivered to NUSD as soon as possible, but not later than fourteen (14) days after termination of the Agreement.
4. **Termination.** NUSD may terminate this Agreement without cause upon ten (10) days' written notice. NUSD may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include Contractor's bankruptcy or insolvency and/or any breach of this Agreement by Contractor, including but not limited to failure to provide adequate staffing, failure to ensure safe pool operations and/or failure to provide any item of service as specified in **Exhibit "A"** to this Agreement. Upon receipt of notice of termination or suspension for cause, Contractor shall immediately stop all work in progress under this Agreement, leave the Facilities premises and surrender all Facilities keys and NUSD equipment to NUSD. If NUSD terminates this Agreement for cause, Contractor shall be liable to NUSD for any excess cost NUSD incurs for completion of the Services.
5. **Contractor's Representation; Independent Contractor.** Contractor represents that Contractor possesses distinct professional skills in performing the Services. NUSD has relied upon said representation as a material inducement to enter into this Agreement. Contractor shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that Contractor, and its agents and employees, shall act in an independent capacity, as an independent contractor, and not as officers, employees or agents of NUSD. This Agreement shall not be construed as an agreement for employment.
6. **Facilities and Equipment.**
  - A. Contractor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing the Services pursuant to this Agreement. NUSD shall furnish to Contractor no facilities or equipment other than as set forth in this Agreement, unless NUSD otherwise agrees in writing to provide the same.
  - B. NUSD agrees to provide to Contractor with the following:
    - (i) Utilities costs associated with all pool operations.
    - (ii) Maintenance of the mechanical, electrical, plumbing and building fixtures and systems.
    - (iii) All paper products, including paper towels, toilet paper, soap and custodial cleaning products including floor and tile cleaner and sink and toilet products.
    - (iv) Provide custodial services at the end of each day.
    - (v) Provide daily Pool Technician prior to opening pool.

- (vi) Use of any pool equipment, program materials or teaching aids currently in NUSD's possession.
- (vii) Keys for swim facilities; pool office, storage room, bathrooms and entrance.
- (viii) Emergency 911 phone available on pool deck.

7. **Damage to Existing Property.** Contractor will be held responsible for any damage to existing NUSD real property, work, materials or equipment, as a result of performance of the Services, and shall repair or replace any damaged real property, work, materials or equipment to the satisfaction of, and at no additional cost to NUSD. If NUSD finds that repairs or changes are required in connection with this Agreement, which, in the opinion of NUSD are rendered necessary as the result of damage by Contractor, the Contractor shall, within five (5) days upon receipt of notice from NUSD, place in satisfactory condition all of such work, correct all defects therein, and make good on all damages. If Contractor fails to correct any such damage at Contractor's expense, NUSD may affect such repair as necessary, and require Contractor to pay for the cost of such repair within 14 days of presentation of a demand for payment from NUSD. Failure to pay any such amount on demand shall constitute breach of this Agreement.
8. **License, Permits, Fingerprinting, Background Checks.** Contractor shall, at Contractor's sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services. All Contractor personnel working at the Facilities during the term of this Agreement are subject to California Department of Justice fingerprinting requirements. Such individual's assignment is contingent upon the submission of fingerprints to the California Department of Justice and the possession of a criminal history that satisfies state requirements in accordance with applicable code. Criminal history reports for Contractor and Contractor's personnel shall be made available at NUSD's request. Each person in Contractor's employ working at the Facilities must be a United States citizen or be an individual who has a legal right to work in the United States. The Contractor must verify citizenship or legal right to work in the United States and retain an I-9 form for all Contractor personnel working at the Facilities. On the I-9 form, the Contractor must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9 prior to said personnel beginning any work at the Facilities. No person designated by Contractor to work at the Facilities shall have been convicted of any felony or a crime relating to theft, violence, sexual misconduct or a violation of the California Health and Safety Code. Any violation of this provision shall constitute grounds for termination of this Agreement.
9. **Time.** Contractor shall devote such time for the performance of the Services as may be reasonably necessary for satisfactory performance of Contractor's obligations pursuant to this Agreement.
10. **Inspection.** Contractor shall provide NUSD every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to inspection and approval by NUSD. The inspection of such work shall not relieve Contractor of any of its obligations pursuant to this Agreement.

11. **Progress Reports**. Upon NUSD's request, Contractor shall provide, in a form acceptable to NUSD, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Contractor's performance of the Services.
12. **Confidentiality**. In the course of Contractor's employment, Contractor may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Contractor shall not directly or indirectly disclose or use any such confidential information, except as required for the performance of the Services.
13. **Conflict of Interest**. Contractor represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services hereunder. Contractor further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. If such conflict of interest arises during this Agreement or any extension, Contractor will immediately advise NUSD and NUSD may, at its sole discretion, immediately terminate this Agreement.
14. **Contractor No Agent**. Except as NUSD may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of NUSD in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind NUSD to any obligation whatsoever.
15. **Standard of Performance**. Contractor shall perform all the Services in a manner consistent with the standards of Contractor's profession and any applicable regulatory or statutory provisions. All instruments of service of whatsoever nature, which Contractor delivers to NUSD pursuant to this Agreement, shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of Contractor's profession. All such instruments of service shall become the sole and exclusive property of NUSD upon delivery of the same.
16. **Assignment/Transfer**. No assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of NUSD.
17. **Subcontractors**. Contractor shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of NUSD. Any such subcontractors shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement, including but not limited to, procuring and maintaining insurance coverage as required herein and which shall name NUSD as additional insured.
18. **Compliance With All Laws**. Contractor shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to the performance of the Services required. To the extent that any other government agency or entity provides compensation for any Services, Contractor shall comply with all rules and regulations applicable to such fiscal assistance.

19. **ADA.** It is the intent of NUSD and Contractor to fully comply with the Americans with Disabilities Act of 1990. Every attempt will be made to hold meetings, hearings, conferences, classes, and other events in accessible locations and auxiliary aides will be provided, if possible, upon request, to participants with disabilities. Complaints regarding Contractor's compliance with the ADA should be directed to Assistant Superintendent, 1015 7<sup>th</sup> St., Novato CA 94945, phone 415-493-4260.
20. **Discrimination.** During the performance of this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.
21. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:
- (i) personal delivery, in which case notice is effective upon delivery;
  - (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
  - (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
  - (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 pm recipient's time or on a nonbusiness day.

**NUSD:** Karen Maloney  
Assistant Superintendent-Business & Operations  
1015 Seventh Street  
Novato, CA 94945  
Telephone: (415) 493-4260  
Facsimile: (415) 898-5790

**Contractor:** Thomas Evers  
Liz Evers  
dba Forevers Aquatics  
PO Box 435  
Novato, CA 94949  
Telephone: (415) 892-2269  
Facsimile: (415) 883-2211

22. **Ownership of Documents.** All original papers, documents or computer material on electronic storage devices and copies thereof, produced as a result of this Agreement, shall be the property of NUSD and may not be used by Contractor without the written consent of NUSD. Copies of such documents or papers shall not be disclosed to others without the written consent NUSD's Assistant Superintendent of Business and Operations or his or her designated representative.
23. **Indemnification.** Contractor shall indemnify, defend with counsel acceptable to NUSD and hold harmless NUSD and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of, or in connection with, Contractor's performance of the Services and use of NUSD facilities and equipment or its failure to comply with any of its obligations contained in this Agreement. In addition, and notwithstanding the foregoing, to the extent that this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code section 2782. In the event that Contractor or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of NUSD, Contractor shall indemnify, defend, and hold harmless NUSD for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of NUSD.
24. **Insurance.** Contractor shall comply with "Insurance Requirements" in **Exhibit "B"**, attached hereto and incorporated herein by reference.
25. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.
26. **Litigation.** If litigation ensues which pertains to the subject matter of Contractor's services hereunder, Contractor, upon request from NUSD agrees to testify therein. To the extent that Contractor's testimony does not relate to Contractor's status as a percipient witness in any matters complained of, NUSD shall pay Contractor a reasonable and customary fee.
27. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and the Parties agree that, notwithstanding Civil Code section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.
28. **Governing Law; Venue.** This Agreement shall be enforced and interpreted und the laws of the State of California, and the City of Novato. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Marin, State of California.

29. **Non-Waiver**. NUSD's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.
30. **Severability**. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
31. **No Third Party Beneficiaries**. The Parties do not intend to create, and nothing in this Agreement shall be construed to create, any benefit or right in any third party.
32. **Mediation**. The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the cost of mediation equally.
33. **Contractor's Books and Records**.
- A. Contractor shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to costs, expenditures, disbursements and/or revenues relating to provision of the Services or Contractor's performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of final compensation to Contractor pursuant to this Agreement.
  - B. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.
  - C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the NUSD Assistant Superintendent of Business and Operations, NUSD Attorney, NUSD Financial Director, or a designated representative of these officers. Copies of such documents shall be provided to NUSD for inspection at the NUSD District Office when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.
  - D. Where NUSD has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, NUSD may, by written request by any of the above-named officers, require that custody of the records be given to NUSD and that the records and documents be maintained at the NUSD District Office. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor in interest.

34. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation of construction of any provisions herein.
35. **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between NUSD and Contractor shall survive the termination of this Agreement.
36. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

**IN WITNESS WHEREOF**, the parties hereto have executed this document the day, month and year first above written.

**NOVATO UNIFIED SCHOOL DISTRICT**

**CONTRACTOR**

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Karen Maloney,  
Assistant Superintendent-Business & Ops

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Thomas Evers, dba Forevers Aquatics

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Liz Evers, dba Forevers Aquatics

## EXHIBIT A

### SCOPE OF SERVICES

Contractor shall perform the following services. All services provided shall be consistent with the following terms and conditions and shall be consistent with all applicable regulatory and generally accepted industry standards for pool operations as recommended or prescribed by the American Red Cross, Marin County Health and Safety Code, or other nationally recognized associations or organizations.

- a. Plan, advertise, implement, staff and supervise aquatic programs at the NUSD Pool for a minimum season program **beginning on April 23, 2016, and concluding on August 13, 2016.**

Minimum programming of the NUSD Pool to include:

#### **SPRING SWIM LESSONS\***

Saturdays, as follows:

1. April 23, 2016 12:30 – 3:00 PM
2. April 30, 2016 12:30 – 3:00 PM
3. May 7, 2016 12:30 – 3:00 PM
4. May 22, 2016 12:30 – 3:00 PM **(Sunday)**  
(USA Swimming Make-A-Splash, free swim lessons & water safety for children)
5. May 28, 2016 12:30 – 3:00 PM
6. June 5, 2016 12:30 – 3:00 PM

\*All swim lessons have available scholarships

#### **SUMMER SWIM PROGRAM**

Hours open to public, Monday – Saturday **(June 13, 2016 – August 13, 2016)**, as follows:

1. 6:30 – 9:00 AM Early Morning Lap Swim
2. 10:00 – 11:30 AM Aqua Fitness Class/Open Exercise
3. 12:00 – 4:00 PM Lap Swim, Recreational Swim, Swim Lessons
4. 4:00 – 6:30 PM Evening Lap Swim

- b. Provide sufficient staffing, including certified personnel to assure staffing levels that meet or exceed industry standards and/or recommendations for safe pool operations. A sufficient number of staff, including those requiring certification, must be available to provide supervision, lifeguarding, instruction, water quality testing and monitoring, program registration, and other necessary office functions, and opening and closing of the facility. Opening and closing activities shall include and may not be limited to:

- i. Check facility for safety hazards
  - ii. Clear gutter, pool, deck, storage and pool office of any debris
  - iii. Monitor water chemistry during use with Test Kit provided by Contractor
  - iv. Pool cover removed each day and replaced each evening unless there is a scheduled event after Contractor's use.
  - v. Secure all deck equipment, serviceable pool covers, land lines, etc., as necessary
  - vi. Secure facility upon departure. If keys are lost Contractor will pay to re-key locks and replace keys.
  - vii. NO MOVING BULKHEAD WITHOUT NUSD APPROVAL
- c. Provide sufficient lifeguarding staff, as recommended by American Red Cross, Marin County Health and Safety Code, and/or at a level that meets an accepted and recognized industry standard. Said staff to be assigned uninterrupted lifeguarding responsibilities, with no other obligations whatsoever during time assigned. Persons performing such duties must be at least 15.5 years of age, currently certified in lifesaving/lifeguarding, and meet the First Aid for Public Safety Personnel requirements of California Code of Regulations, Title 22, Division 9, and Chapter 1.5. Lifeguarding staffing formula must be provided to NUSD prior to commencement of the contracted operations.
- d. Provide supervisory staff at all times from opening to closing, who possess Pool Operation Certification, or who possess certifications in Lifeguarding, CPR, First Aid and AED confirming to all applicable standards.
- e. Prior to commencing operations, provide NUSD with a matrix listing employees, job responsibilities, current certifications, and confirming that fingerprinting and background checks have been completed on all employees. The matrix shall be kept current and a revised list shall be provided to NUSD, providing all required information for any new employee hired by Contractor after commencement of operations.
- f. Prior to commencing operations, provide NUSD with copy of Independent Contractor's emergency response protocol, and schedule of emergency response training, which protocol and schedule shall be adhered to at all times during operations by Contractor.
- g. Develop, implement, and enforce use rules and regulations that assure orderly and safe use of Pool and associated facilities.
- h. Respond to any instructions or requests for corrective action provided by any City, County or State agency, including the City of Novato with respect to pool operations and facility issues, and implement any corrective actions required by any such agency.

- i. Issue and otherwise provide a preliminary schedule of activities to all users in advance of the beginning of the season or session, including communication to all users with respect to revisions and alterations to the schedule. Communication will also include informing users of hours of operation, availability of space, use of assigned space, and all other communication pertinent to aquatics programs. Contractor will provide response to community requests and complaints in a timely manner, and will document such responses for NUSD review.
- j. No subcontracting/sub leasing for non-Contractor events other than the USA Swim program, Make A Splash and Swim America Swim Lesson.
- k. Assure that no staff or user enters equipment or mechanical rooms.
- l. With the exception of equipment affixed to the facility and equipment provided by NUSD, pursuant to paragraph 6 of this Agreement, Contractor shall provide all tools, supplies and equipment for use by Contractor and its employees in the provision of the contracted services at Contractor's sole expense.
- m. Implement Exhibit A-1 pool fees.
- n. Create and make available Swim Lesson scholarship, fee reduction or fee waiver opportunities for prospective students wishing to enroll, but who are unable to afford the cost of lessons. USA Swim program, Make a Splash must be made available. Contractor will hold the Make A Splash USA Swim program, Saturday, May 21, 2016 – 12:30 – 3:00 PM.
- o. Provide NUSD with operating/program schedule covering each session of the season at least 14 days prior to the beginning of the session for NUSD's review and approval.

**EXHIBIT A-1**

**POOL FEES**

**SPRING SWIM LESSONS:**

Six (6) Sessions: \$112

**DAY USE:**

Adult (16 and older): \$5

Youth (up to 16): \$4

Senior: \$4

NUSD Employees: \$4

**SEASON PASS: 9 Weeks, June 13 – August 13, 2016**

Individual: \$72

NUSD Employee: \$60

Family (up to 3): \$115

Family (4): \$130

Family (5 and over): \$145

\*\*Non-Novato residents add \$25 per pass

**SwimAmerica Swim Lessons**

Families register on-line, by mail or at NHS pool

\$150.00 for 2 weeks (Eight 30 minute lessons)

## EXHIBIT B

### INSURANCE REQUIREMENTS

Contractor and any subcontractor shall not commence work under this Agreement until Contractor has obtained all insurance required under this paragraph, and legal counsel for NUSD as to form and carrier and the Assistant Superintendent of Business and Operations as to sufficiency have approved such insurance. Contractor shall not allow any contractor or subcontractor to commence work on this contract or subcontract until all similar insurance required of the Contractor and/or subcontractor has been obtained and approved. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Contractor shall procure and maintain, for the duration of the agreement, all necessary insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors.

#### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
  - a. Personal injury;
  - b. Contractual liability.
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Such other insurance coverages and limits as may be required by NUSD.

#### **B. Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

1. General Liability: \$5,000,000 per occurrence for bodily injury, personal injury, property damage, and contractual complete operations. If Commercial General Liability Insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident  
Bodily Injury by Disease - \$1,000,000 policy limit  
Bodily Injury by Disease - \$1,000,000 each employee
4. Such other insurance coverages and limits as may be required by NUSD.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by NUSD. At the option of NUSD, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects NUSD, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**D. Other Insurance Provisions**

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

1. NUSD, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to NUSD, its officers, officials, employees, agents or volunteers.
2. For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects to the District, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by NUSD, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to NUSD, its officers, officials, employees, agents or volunteers.
4. The Contractor's insurance shall 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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to NUSD.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**F. Verification of Coverage**

Contractor shall furnish NUSD with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by NUSD. All endorsements are to be received and approved by NUSD before work commences. As an alternative to NUSD's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by NUSD.