

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this ____ day of _____ 20__ (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (“the **City**”), and TERRAPHASE ENGINEERING INC., a California S corporation, whose address is 1400 Franklin Street, Suite 600, Oakland, CA 94612 (“**Provider**”), in reference to the following facts and circumstances:

RECITALS

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: environmental support services. Provider was selected on a sole source basis because Provider has rendered satisfactory services to the City in the past. The environmental consulting services in this Agreement represent the next phase of soil clean-up as required by the California Department of Toxic Substances Control.
- C. Provider is specially trained, experienced and competent to perform the special services which will be required by this Agreement.
- D. Whereas, the City Council authorized the City Manager to execute this Agreement on _____.
- E. The City and Provider desire to enter into an agreement for environmental support services, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Provider agree as follows:

1. TERM:

The term of this Agreement shall commence on the ____ day of _____ 2023, and shall terminate on the 30th day of June, 2027, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference.

b. The total compensation for this Agreement shall not exceed \$200,000 including contingencies. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

4. TIME IS OF THE ESSENCE:

Provider and the City agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE:

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by the City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave, are available from the City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider and its employees, contractors, and agents shall not harass or discriminate against any job applicant, City employee, or any other person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, disability (both mental and physical)

including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Provider agrees that any violation of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. To the fullest extent permitted by law, Provider shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers ("Indemnitees") from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever, including reasonable attorney's fees and costs of litigation ("Claims"), arising from or in any manner connected to Provider's performance of its obligations under this Agreement or out of the operations conducted by Provider even if the City is found to have been negligent. If the Claims filed against Indemnitees allege negligence, recklessness or willful misconduct on the part of Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Provider. Provider shall not have any obligations to indemnify Indemnitees if the loss or damage is found to have resulted solely from the negligence or the willful misconduct of the City. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

b. As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (4). The Certificate Holder should be The City of Alameda, 2263 Santa Clara, Ave., Alameda, CA 94501. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda. Attention: Risk Manager."

Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best's rating of no less than A:VII or Standard & Poor's Rating (if rated) of at least BBB unless otherwise acceptable to the City. Provider shall deliver updated insurance certificates to the City at the address described in Section 17.f. prior to the expiration of the existing insurance certificate for the duration of the

term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.


Provider Initials

b. COVERAGE REQUIREMENTS:

Provider shall maintain insurance coverage and limits at least as broad as:

(1) Workers' Compensation:

Statutory coverage as required by the State of California, as well as a Waiver of Subrogation (Rights of Recovery) endorsement.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 aggregate - all other

Property Damage:	\$1,000,000 each occurrence
	\$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. Provider shall also submit declarations and policy endorsements pages. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required. The Additional Insured Endorsement shall include primary and non-contributory coverage at least as broad as the CG 2010.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

(4) Professional Liability:

Professional liability insurance which includes coverage appropriate for the professional acts, errors and omissions of Provider's profession and work hereunder, including, but not limited to, technology professional liability errors and omissions if the services being provided are technology-based, in the following minimum limits:

\$2,000,000 each claim

Technology professional liability errors and omissions shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of Provider. If not covered under Provider's liability policy, such "property" coverage of the City may be endorsed onto Provider's Cyber Liability Policy as covered property as follows: cyber liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of Provider.

As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. Such insurance is not additional to or contributing with any other insurance carried by or for the benefit of the City.

c. SUBROGATION WAIVER:

Provider hereby agrees to waive rights of subrogation that any insurer of Provider may acquire from Provider by virtue of the payment of any loss. Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Provider, its employees, agents and subcontractors.

d. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in Provider's name or as an agent of Provider and shall be compensated by Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

e. ADDITIONAL INSURED:

The City, its City Council, boards, commissions, officials, employees, agents, and volunteers shall be named as additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any

extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. Additional Insured coverage under Provider's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured(s).

f. SUFFICIENCY OF INSURANCE:

The insurance limits required by the City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider. The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to Provider; whichever is greater.

g. EXCESS OR UMBRELLA LIABILITY:

If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including but not limited to, the additional insured, SIR, and primary insurance requirements stated therein. No insurance policies maintained by the indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the primary and excess liability policies carried by or available to the Provider are exhausted.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement require Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or their designee may consent or reject such request in their sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock, membership interest, partnership interest, or the equivalent, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of Provider.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in their sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by Provider.

c. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement. Provider shall include the following language in their agreement with any sub-provider: "Sub-providers hired by Provider agree to be bound to Provider and the City in the same manner and to the same extent as Provider is bound to the City."

d. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information that Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City business license that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of the City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or their designee.

c. Provider shall, at such time and in such form as City Manager or their designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of the City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to the City shall be addressed to the City at:

City of Alameda
Planning, Building and Transportation Department
City Hall
2263 Santa Clara Avenue, Room 120
Alameda, CA 94501
ATTENTION: Gail Payne, Project Manager
Email: gpayne@alamedaca.gov
Ph: (510) 747-6892

e. All notices, demands, requests, or approvals from the City to Provider shall be addressed to Provider at:

Terraphase Engineering Inc.
1400 Franklin Street, Suite 600
Oakland, CA 94512
Attention: Andrew Romolo, PG
Vice President/Principal Geologist
Email: andrew.romolo@terrphase.com
Ph: (510) 326-1473

f. All updated insurance certificates from Provider to the City shall be addressed to the City at:

City of Alameda
Planning, Building and Transportation Department
City Hall
2263 Santa Clara Avenue, Room 120
Alameda, CA 94501
ATTENTION: Gail Payne, Project Manager
Email: gpayne@alamedaca.gov

18. SAFETY:

a. Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from the City of written notice of default, specifying the nature of such default and the

steps necessary to cure such default, the City may thereafter immediately terminate the Agreement forthwith by giving to Provider written notice thereof.

b. The foregoing notwithstanding, the City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEYS' FEES:

In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

21. HEALTH AND SAFETY REQUIREMENTS.

Provider acknowledges that the City shall have the right to impose, at the City's sole discretion, requirements that it deems are necessary to protect the health and safety of the City employees, residents, and visitors. Provider agrees to comply with all such requirements, including, but not limited to, mandatory vaccinations, the use of personal protective equipment (e.g. masks), physical distancing, and health screenings. Provider also agrees to make available to the City, at the City's request, records to demonstrate Provider's compliance with this Section.

22. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City.

23. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

24. WAIVER:

A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. INTEGRATED CONTRACT:

Subject to the language of Section 30, the Recitals and exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Provider.

26. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

27. COUNTERPARTS:

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. SIGNATORY:

By signing this Agreement, signatory warrants and represents that they executed this Agreement in their authorized capacity and that by their signature on this Agreement, they or the entity upon behalf of which they acted, executed this Agreement.

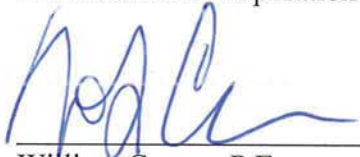
29. CONTROLLING AGREEMENT:

In the event of a conflict between the terms and conditions of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

TERRAPHASE ENGINEERING, INC.
A California S Corporation



William Carson, P.E.
President

CITY OF ALAMEDA
A Municipal Corporation

Jennifer Ott
City Manager



Andrew Romolo, PG
Vice President

RECOMMENDED FOR APPROVAL

DocuSigned by:



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Allen Tai
Acting Planning, Building and
Transportation Director

APPROVED AS TO FORM:
City Attorney

DocuSigned by:



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Celena H. Chen
Chief Planning Counsel



Exhibit A: Work
Scope

August 1, 2023

Ms. Gail Payne
Project Manager
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

sent via email to: GPayne@alamedaca.gov

Subject: Budget Proposal, Clement Avenue/Tilden Way, Project Environmental Support

Dear Ms. Payne:

Terraphase Engineering Inc. (Terraphase) is pleased to provide this proposal to the City of Alameda ("the City") in support of the Clement Avenue/Tilden Way ("the Site") project. Terraphase has prepared this proposal to assist with the implementation of the Department of Toxic Substances Control (DTSC) Voluntary Cleanup Agreement (VCA) provided as Attachment 1 to this letter. It is expected that the Site will be used as a public walking/biking trail and roadway segment. Since the proposed end use is for transportation and recreation, it is anticipated that the remedial alternative selected would need to be protective of the recreational user and construction/maintenance worker. The scope of work provided below incorporates an assumed level of effort based on the history of the project and preliminary discussions with the DTSC in 2019. This scope of work may need to be revised as the documents and associated assessments are fully defined in coordination with the DTSC.

Scope of Work

Task 1: DTSC Scoping Meeting and Document Review

Terraphase will provide the DTSC with the project background information in preparation for a scoping meeting. The documents to be provided include the October 17, 2019, *Phase II Technical Memorandum: Soil and Groundwater Investigation*, prepared by Terraphase. Terraphase will develop a proposed path forward regarding the types and extent of additional data collection and assessment, which will be presented to the DTSC during the scoping meeting.

Task 2: Supplemental Site Investigation, Work Plan, Implementation, and Report

The scope of work for this task includes the preparation of a work plan, its implementation, and the preparation of the resulting report. Terraphase assumes the documents will be submitted to the DTSC for review and approval. Terraphase assumes only one round of comments will be provided by the DTSC prior to approval of the Work Plan and the resulting investigation report. The scope of work is assumed to include the following activities:

- One additional soil assessment event with a scope of work that can be completed in one day, including:

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Budget Proposal, Clement Avenue/Tilden Way, Project Environmental
Support

- Approximately 5-10 additional soil borings, advanced using direct push technology using a track-mounted rig. It is assumed the soil borings will not exceed 15 feet in depth.
- Up to 2 soil samples collected from each boring for submittal to a state certified analytical laboratory for the analysis of Title 22 metals using Environmental Protection Agency test method 6010.
- A 4-hour effort to complete a utility clearance.
- A 4-hour effort to coordinate the removal of investigation-derived waste.
- Preparation of a health and safety plan.
- It is assumed that a Quality Assurance Project Plan will not be required for this effort.

Task 3: Risk Assessment

In accordance with the DTSC VCA, Terraphase anticipates preparing a Risk Assessment Report to develop the remedial goals and objectives of the project. The purpose of this document will be to identify the chemicals of concern at the Site and the corresponding screening values to be achieved through implementation of a remedial action.

Task 4: Remedial Decision and Design Document

Terraphase assumes that preparation of a Removal Action Work Plan (RAW) will be required by the DTSC. The following is the anticipated scope for preparing the RAW:

- A description of the onsite contamination.
- The goals to be achieved by the removal action.
- An analysis of the alternative options considered and rejected and the basis for that rejection.
- A description of the recommended remedial alternative.
- Administrative record list.
- Sampling and Analysis Plan.
- An update to the Health and Safety Plan.

Task 5: Remedial Implementation Report

Terraphase assumes that the implementation of the RAW will be documented in a Remedial Implementation Report. The report will demonstrate that the goals and objectives of the RAW have been achieved. Deviations from the RAW will be documented in this report.

Task 6: Remedy Implementation Oversight

Terraphase assumes that the implementation of the remedy can be completed within two weeks (10 business days total). Terraphase assumes the field oversight can be completed by one Senior Staff person.

Task 7: General Regulatory Correspondence

Terraphase has included this task to support general correspondence with the DTSC, including project updates. It is assumed, for the purpose of this proposal, that the following documents will be prepared by the DTSC and that Terraphase will only provide supporting information when requested:

- Tribal Outreach
- California Environmental Quality Act
- Public Participation

To complete the above scope of work, Terraphase is proposing the time and materials budget presented in Table 1. As discussed earlier, the budget is based on an assumed scope of work. The scope of work will be further defined in coordination with the DTSC as each task is completed. Terraphase will discuss with the City deviations to the budget assumptions as the project progresses. The budget was completed in accordance with the rate schedule provided as Attachment 2. We are grateful for the opportunity to offer our services on this important project. If you have any questions or comments regarding this proposal, please contact Mr. Andrew Romolo at 510-326-1473.

Sincerely,

For Terraphase Engineering Inc.



Andrew Romolo, PG
Vice President/Principal Geologist

Attachments:

Table 1: Clement Avenue/Tilden Project Environmental Support, Cost Estimate

Attachment 1: Voluntary Cleanup Agreement

Attachment 2: Standard Schedule of Charges with 10% Discount/10% ODC

This proposal is hereby accepted by a duly authorized representative of the Client to whom it is addressed:

Signature: _____

Printed Name: _____

Title: _____ Date: _____

Exhibit B: Fee Schedule

Table 1
Clement Avenue/Tilden Way Project Environmental Support
Cost Estimate
City of Alameda, CA

Category	Units	2023 Standard Rate	Discount	Rate	Task 1: DTSC Scoping Meeting and Document Review		Task 2: Supplemental Site Investigation, Workplan, Implementation and Report		Task 3: Risk Assessment Report		Task 4: Remedial Decision and Design Document		Task 5: Remedial Implementation Report		Task 6: Remedial Implementation Oversight		Task 7: General Regulatory Correspondence		TOTALS	
					QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost
Labor	Senior Principal	\$ 287.00	10%	\$ 267.30	32	\$ 8,554	8	\$ 2,138	16	\$ 4,277	16	\$ 4,277	8	\$ 2,138	4	\$ 1,069	24	\$ 6,415	108	\$ 28,868
	Principal	\$ 278.00	10%	\$ 250.20	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Senior Associate	\$ 259.00	10%	\$ 233.10	40	\$ 9,324	32	\$ 7,459	32	\$ 7,459	40	\$ 9,324	24	\$ 5,594	16	\$ 3,730	32	\$ 7,459	216	\$ 50,350
	Project	\$ 225.00	10%	\$ 202.50	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Senior Staff	\$ 194.00	10%	\$ 174.60	16	\$ 3,024	40	\$ 7,560	24	\$ 4,536	40	\$ 7,560	32	\$ 6,048	40	\$ 7,560	16	\$ 3,024	208	\$ 39,312
	Staff II	\$ 158.00	10%	\$ 142.20	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Staff I	\$ 137.00	10%	\$ 123.30	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Senior Technician	\$ 145.00	10%	\$ 130.50	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Technician 3	\$ 125.00	10%	\$ 112.50	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Project Coordinator	\$ 155.00	10%	\$ 139.50	4	\$ 558	8	\$ 1,116	6	\$ 837	6	\$ 837	6	\$ 837	0	\$ -	0	\$ -	30	\$ 4,185
	Total Terphase Labor					\$ 21,460		\$ 23,861		\$ 17,109		\$ 27,585		\$ 20,205		\$ 26,327		\$ 16,898		\$ 153,445
Equipment and Supplies	Field Tablet	\$ 35.00		\$ 35.00	0	\$ -	1	\$ 35	0	\$ -	0	\$ -	30	\$ 1,050	5	\$ 175	0	\$ -	36	\$ 1,260
	PID	\$ 120.00		\$ 120.00	0	\$ -	1	\$ 120	0	\$ -	0	\$ -	30	\$ 3,600	5	\$ 600	0	\$ -	36	\$ 4,320
	Misc Field Supplies	\$ 100.00		\$ 100.00	0	\$ -	1	\$ 100	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Total Equipment and Supplies					\$ -		\$ 255		\$ -		\$ -		\$ 4,650		\$ 775		\$ -	1	\$ 100
Subcontractor	Drilling contractor - mobilization	\$ 750.00		\$ 750.00	0	\$ -	1	\$ 750	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	1	\$ 750
	Drilling contractor - Geoprobe rig and support truck	\$ 3,000.00		\$ 3,000.00	0	\$ -	1	\$ 3,000	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	1	\$ 3,000
	Drilling contractor - concrete coring	\$ 200.00		\$ 200.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Drilling contractor - DT liners	\$ 20.00		\$ 20.00	0	\$ -	25	\$ 500	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	25	\$ 500
	Drilling contractor - cement grouting	\$ 20.00		\$ 20.00	0	\$ -	100	\$ 2,000	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	100	\$ 2,000
	Drilling contractor - waste drums	\$ 90.00		\$ 90.00	0	\$ -	3	\$ 270	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	3	\$ 270
	Solids - TPHdg (EPA Method 8260)	\$ 55.00		\$ 55.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Solids - TPHdg and TPHmo (EPA Method 8015)	\$ 45.00		\$ 45.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Solids - VOCs (EPA Method 8260)	\$ 90.00		\$ 90.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Solids - PAHs (EPA Method 8270-SIM)	\$ 25.00		\$ 25.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Solids - PCBs (EPA Method 8082)	\$ 130.00		\$ 130.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Solids - Total Title 22 metals (EPA Method 6010-7470/21)	\$ 75.00		\$ 75.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
Other	Sample Disposal Fee (soil only)	\$ 6.00		\$ 6.00	0	\$ -	20	\$ 2,200	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Waste Characterization Sample (soil and decon water)	\$ 536.00		\$ 536.00	0	\$ -	20	\$ 10,720	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	20	\$ 10,720
	WET or TCLP extraction	\$ 60.00		\$ 60.00	0	\$ -	2	\$ 120	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	2	\$ 120
	STLC or TCLP - individual leachable metals	\$ 20.00		\$ 20.00	0	\$ -	2	\$ 40	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	12	\$ 240
	Waste Disposal (non-hazardous)	\$ 1,000.00		\$ 1,000.00	0	\$ -	2	\$ 2,000	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	2	\$ 2,000
	Private Utility Locator	\$ 3,000.00		\$ 3,000.00	0	\$ -	1	\$ 3,000	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	1	\$ 3,000
	Traffic Control Plan w/o engineer stamp	\$ 4,000.00		\$ 4,000.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Traffic Management	\$ 4,000.00		\$ 4,000.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
	Total Subcontractor Costs					\$ -		\$ 15,072		\$ -		\$ -		\$ -		\$ 4,100		\$ -		\$ 19,172

Table 1
Clement Avenue/Tilden Way Project Environmental Support
Cost Estimate
City of Alameda, CA

Category	Units	2023 Standard Rate	Discount	Rate	Task 1: DTSC Scoping Meeting and Document Review		Task 2: Supplemental Site Investigation, Workplan, Implementation and Report		Task 3: Risk Assessment Report		Task 4: Remedial Decision and Design Document		Task 5: Remedial Implementation Report		Task 6: Remedial Implementation Oversight		Task 7: General Regulatory Correspondence		TOTALS	
					QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost	QTY	Cost
Other Direct Costs																				
Mailing	lump	\$ 100.00		\$ 100.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
Miscellaneous (report binding, repro.)	lump	\$ 50.00		\$ 50.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
Boring Permits	parcel	\$ 1,500.00		\$ 1,500.00	0	\$ -	1	\$ 1,500	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	1	\$ 1,500
Total Other Direct Costs						\$ -		\$ 1,500		\$ -		\$ -		\$ -		\$ -		\$ -		\$ 1,500
Direct Cost Handling		10%		10.0%		\$ -		\$ 1,683		\$ -		\$ -		\$ 465		\$ 488		\$ -		\$ 2,635
Total Direct Costs						\$ -		\$ 16,510		\$ -		\$ -		\$ 5,115		\$ 5,363		\$ -		\$ 28,987
Terraphase Equipment																				
Truck/Vehicle	day	\$ 184.00		\$ 184.00	0	\$ -	1	\$ 184	0	\$ -	0	\$ -	30	\$ 5,520	0	\$ -	0	\$ -	31	\$ 5,704
Truck/Vehicle	week	\$ 550.00		\$ 550.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -		\$ -	1	\$ 550	0	\$ -	1	\$ 550
Total Terraphase Equipment						\$ -		\$ 184		\$ -		\$ -		\$ 5,520		\$ 550		\$ -		\$ 6,254
Travel Costs																				
Mileage	mile	\$ 0.55		\$ 0.55	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
Total Travel Costs						\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -
Total Estimated Project Unit Costs						\$ 21,460		\$ 42,555		\$ 17,109		\$ 27,585		\$ 30,840		\$ 32,239		\$ 16,898		\$ 188,686

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Tilden Way & Clement Avenue
Transportation Improvement Site
Tilden Way and Clement Avenue
Alameda, California 94501

Proponent:

City of Alameda
2263 Santa Clara Avenue Rm 130
Alameda, California 94501

Docket No. HSA-FY22/23-125

Standard Voluntary Agreement

Health and Safety Code
Section 25355.5(a)(1)(C)

The California Department of Toxic Substances Control (DTSC) and the City of Alameda (Proponent) enter into this Standard Voluntary Agreement (Agreement) and agree as follows:

1. Site. This Agreement applies to the Site located at Tilden Way; Alameda, in Alameda County, California 94501 (Site), identified by Alameda County Assessor's Parcel Number(s) 70-196-27-2 and 70-196-42, and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is approximately 1.44 acres in size and is bordered by residential and commercial properties to the north, Tilden Canal to the east, Tilden Way to the south, and Broadway to the west. The Site is currently a vacant lot. The Site is separated by Blanding Avenue. Historically, the Site operated as a railroad corridor for Union Pacific, a loading platform is present on-site near the western end. A Site location map and a Site diagram are attached as Exhibits A and B.

2. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at or from the Site.

3. Purpose. The purpose of this Agreement is for Proponent to investigate, remediate, and/or evaluate a release, a threatened release, or a potential release of any hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership and Notification.

4.1. The Site is owned by the City of Alameda.

4.2. Prior to DTSC providing oversight or review or comment on any document, Proponent shall provide DTSC with all of the following: (a) proof of the identity of all current record owners of fee title to the Site and their mailing addresses; (b) written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by Proponent; and (c) an acknowledgment of the receipt of the notice required in subparagraph (b) from the property owners or proof that Proponent has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

4.3. Proponent shall notify DTSC of any changes in ownership of the Site subsequent to the Effective Date of this Agreement and provide written evidence that Proponent notified the new owner(s) of record of the actions completed or proposed by Proponent under this Agreement.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances, including metals.

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 18 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1 Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2 In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.

10. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file compatible with Adobe Acrobat or a formatted file compatible with Microsoft Word. Proponent shall provide the electronic copy via EnviroStor's Electronic Submittal of Information (ESI) portal unless otherwise instructed by DTSC. Additionally, Proponent shall upload sampling data to the ESI portal in the Electronic Deliverable Format (EDF).

11. Photographs and Drawings. Upon request by DTSC, Proponent shall provide DTSC with photographs Proponent has in its possession of the Site and activities at the Site, as well as drawings Proponent has in its possession in connection with redevelopment plans for the Site. Proponent shall allow DTSC to take photographs of the Site, including activities at the Site, whenever DTSC accesses the Site pursuant to Paragraph 9. Proponent grants DTSC the right to distribute, transmit, publish, or copy, in any medium, either in whole or in part, the photographs or drawings DTSC obtains pursuant to this paragraph for any use, including, but not limited to, project documentation, public outreach, web and social media content, and marketing materials. This paragraph does not apply to drawings that contain confidential business information.

12. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports,

and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

13. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

14. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. The Proponent's Project Manager shall have the technical expertise in project management, regulatory compliance, and hazardous substance site investigation and remediation sufficient to fulfill his or her responsibilities. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

15. Proponent's Consultant and Contractor. All engineering work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional engineer licensed in California, with expertise in hazardous substance site investigation and remediation. All geological work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional geologist licensed in California, with expertise in hazardous substance site investigation and remediation. Proponent's contractors and consultants shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the registered professional engineer and/or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

16. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document

incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

17. Payment.

17.1 Proponent is required to pay (a) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement; and (b) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents and activities described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice.

17.2 An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an adjusted cost estimate as the work progresses. Prior to adjusting the cost estimate, DTSC will provide Proponent with a written notice and a detailed explanation of the change to the cost estimate. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 30 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

17.3 In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of **\$67,212** to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. DTSC will draw-down from the advance payment, which will be documented in DTSC's invoice. When the advance payment is depleted, DTSC will continue to request payment through the invoice process.

17.4 All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control" and bearing on its face the project code for the Site (Site # **202296**) and the docket number **HAS-FY22/23-125** of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards or electronic funds transfer. Payments by check shall be sent to:

Accounting Office
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

17.5 DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17.6 In addition to direct costs incurred by DTSC, DTSC also bills its indirect costs associated with direct staff costs. Such indirect costs are only applied to DTSC direct labor costs and not to DTSC contractor costs or DTSC staff travel costs. DTSC calculates separate indirect cost rates (salary/benefits and general operating costs) for each of its major programs (Site Mitigation and Restoration, Hazardous Waste Management, and Safer Products and Workplaces Programs). Because the ratio of direct to indirect costs varies among DTSC's various programs, the indirect cost rates associated with those programs will also vary. Pursuant to Health and Safety Code section 25269.4, the Department calculates and updates its indirect cost rates every six months. These indirect rates are reflected in the Cost Estimate in Exhibit D.

18. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

19. Termination for Convenience.

19.1 Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 19.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

19.2 If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 19.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent

or between DTSC and a party responsible for the required operation and maintenance activities.

20. Calendar of Tasks and Schedules. The attached Exhibit E (Calendar of Tasks and Schedules) is merely for the convenience of listing in one location the submittals required by this Agreement. The Calendar of Tasks and Schedules lists activities specific to this project based on the available information. DTSC and Proponent shall make a reasonable effort to complete the activity within the schedule outlined in Exhibit E. A schedule for each related activity shall be established as part of this Agreement.

If Proponent is unable to meet the activity's schedule, Proponent will notify DTSC's Project Manager 10 days prior to the scheduled action or submittal date. If DTSC is unable to meet the activity's schedule, DTSC will notify Proponent 10 days prior to the scheduled action or submittal date.

21. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

22. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to the Proponent under applicable laws.

23. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

24. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

25. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or the Site resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

26. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in

the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

27. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

28. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

29. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

30. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

31. Representative Authority. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

32. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document. This Agreement and documents related to it may be executed and transmitted by facsimile or pdf copy, which copies shall be deemed to be, and utilized in all respects as, an original. However, Proponent must provide the wet-inked signed original of each counterpart to DTSC by mail within 14 calendar days of signing.

Date: _____

Marikka Hughes, P.G.
Unit Chief, Acting Branch Chief – Berkeley Region
Site Mitigation and Restoration Program
Department of Toxic Substances Control

Date: _____

Jennifer Ott
City Manager
City of Alameda

LIST OF EXHIBITS TO THE AGREEMENT

EXHIBIT A: SITE LOCATION MAP

EXHIBIT B: SITE DIAGRAM

EXHIBIT C: SCOPE OF WORK

EXHIBIT D: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES

EXHIBIT E: CALENDAR OF TASKS AND SCHEDULE

EXHIBIT A SITE LOCATION MAP

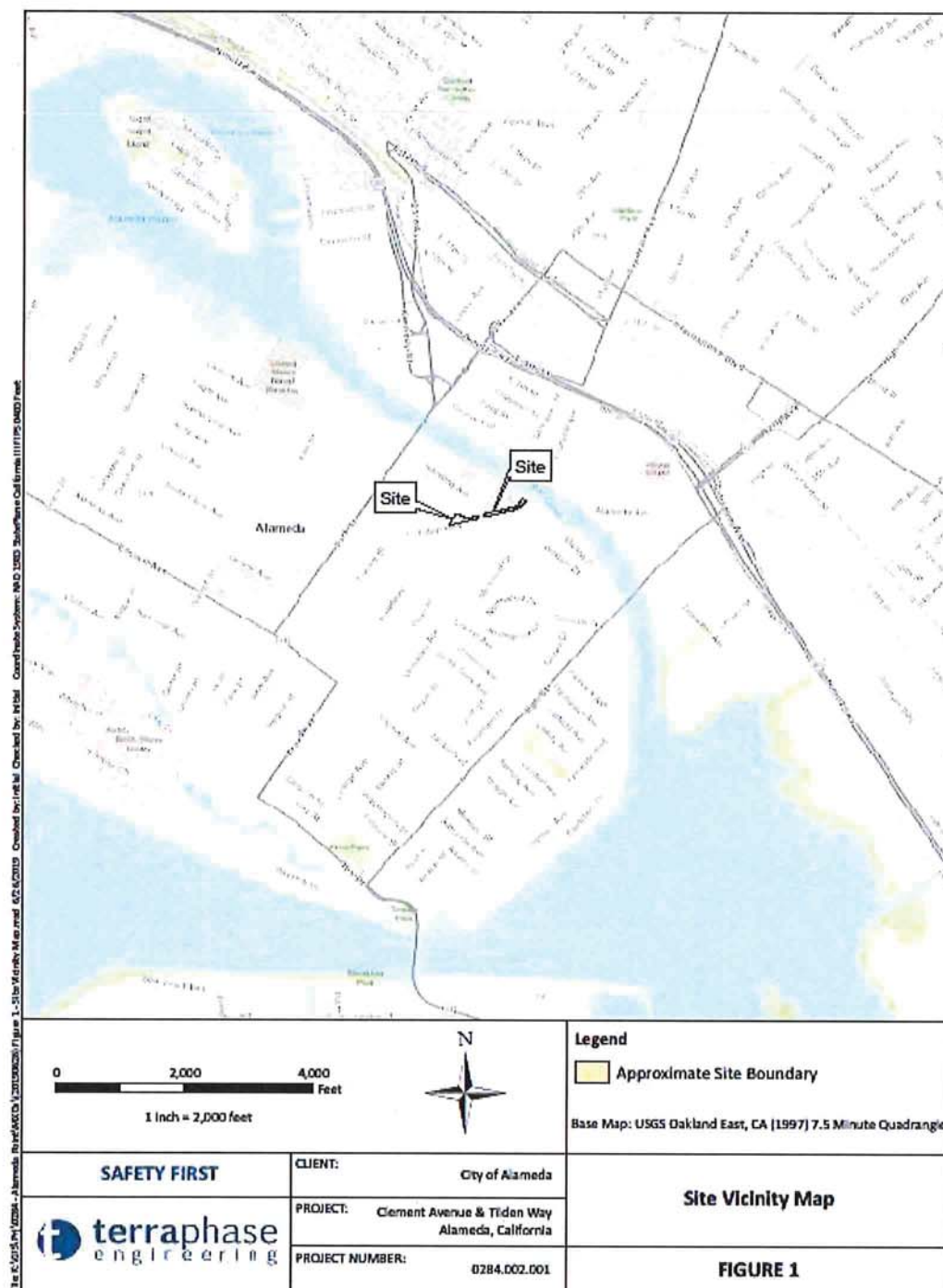


EXHIBIT B
SITE DIAGRAM

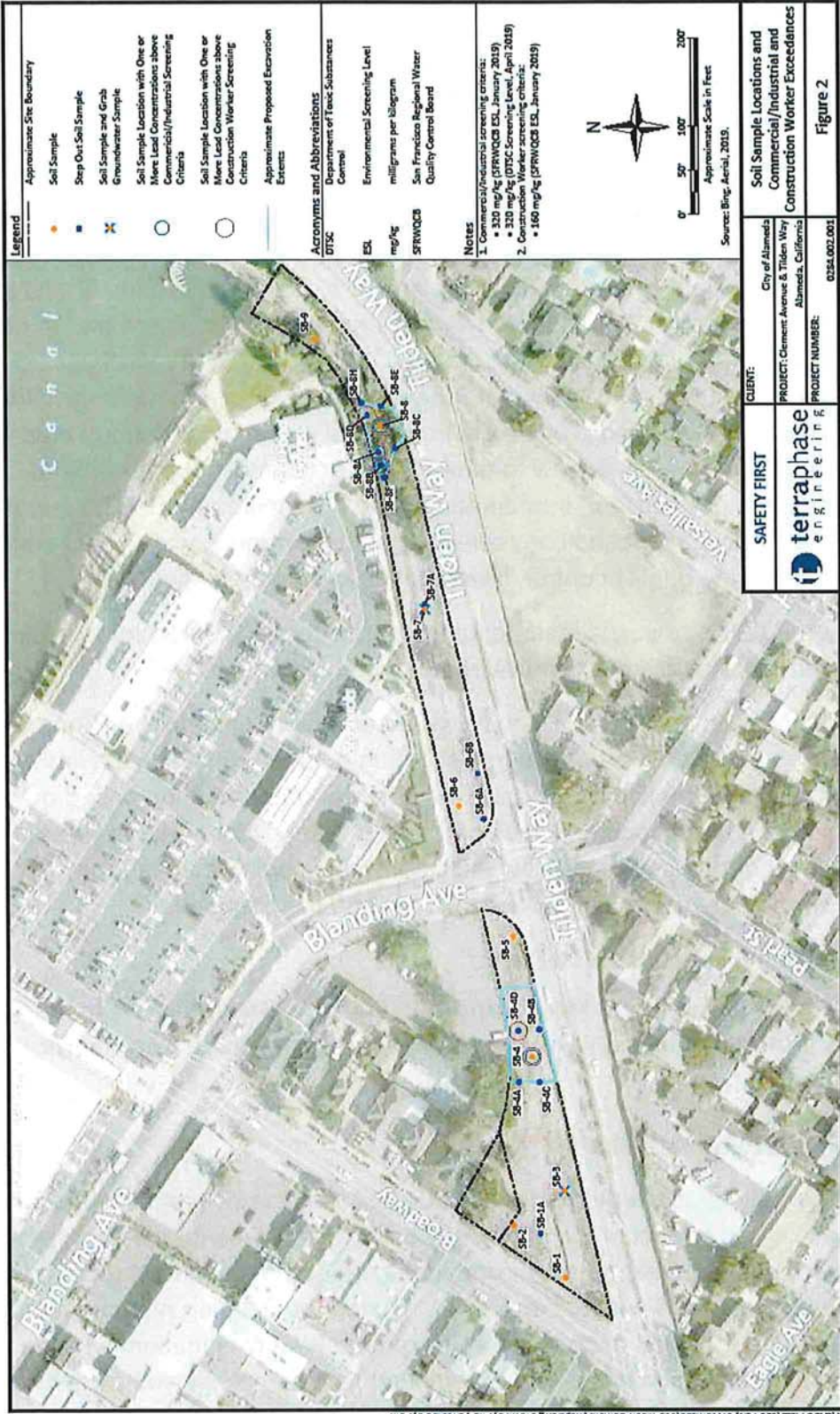


EXHIBIT C SCOPE OF WORK

The following tasks will be completed as part of this Agreement:

TASK 1 Document Review

Proponent will submit to DTSC available background information, environmental assessment reports, and any other information pertinent to the hazardous substance management, release, characterization, and/or cleanup of the Site. DTSC may review some or all the information to identify areas and media of concern and to determine the additional work, if any, required to complete the investigation (which includes assessment/evaluation activities not requiring field sampling) and/or remediation of the Site. Proponent may also provide environmental investigation and/or cleanup-related documents for a specific review to determine if actions conducted without DTSC oversight were protective of human health and the environment. The information submitted by Proponent shall be reviewed for conformance with DTSC standards for quality assurance/quality control, investigation, and remediation.

Based on DTSC's review, these documents may be considered to be Preliminary Endangerment Assessment equivalent documents.

Subsequent to its review, DTSC may issue correspondence to the Proponent describing deficiencies of the environmental investigation or cleanup, indicate a limited concurrence with the findings, or make a different determination based on specific circumstances and documents included in the review. For projects where the scope of work is limited to document review only, a formal scoping meeting may not be required, based on mutual agreement between DTSC and the Proponent.

Documents included in this task are:

- 1. Phase II Technical Memorandum: Soil and Groundwater Investigation, Clement Avenue/Tilden Way Property, Terraphase Engineering, October 17, 2019.**

TASK 2 Scoping Meeting (completed)

Scoping meetings are required for all voluntary projects where investigation or cleanup is an anticipated aspect of the scope of work; these are conducted shortly after the agreement has been executed, or depending on specific circumstances, may be held during the agreement-negotiation period. During the scoping meeting, potential issues, concerns, opportunities to optimize and expedite the investigation (which includes assessment/evaluation activities not requiring field sampling) and cleanup process, as applicable, and end-points/exit criteria will be discussed.

An abbreviated version of the scoping meeting is recommended prior to submittal of work plans, reports and cleanup plans to ensure that both the Proponent and DTSC are moving forward with clear and well-defined expectations.

The following elements may be addressed during the Scoping Meeting:

- a) **Site Objectives:** current and proposed future land uses and redevelopment plans and timetables, etc.
- b) **Site History:** historic operations and land uses, chemical uses, hazardous substance releases, permits, etc.
- c) **Conceptual Site Model:** identification of size, location, geology, lithology, hydrogeology, areas of concern, contaminants of concern, recognized environmental conditions, historic sampling locations and results, data gaps, risk assessments, offsite concerns, etc.
- d) **Scope of Work:** scope of work (phases) as specified in the Agreement based on the available information and preliminary document review; may include discussion about the cleanup determination (e.g., "No Further Action") and decision document proposed for the Site, e.g., Preliminary Endangerment Assessment, Removal Action Work Plan for removal action with costs below \$2 million, or Remedial Action Plan for projects exceeding \$2 million in capital costs, or proposing innovative technologies, etc.
- e) **Data Quality Objectives and Remedial Action Objectives:** discussion of specific Data Quality Objectives to ensure that appropriate data of sufficient quality is collected to facilitate decision-making; discussion of potential cleanup goals and objectives.
- f) **Risk Assessment and Models:** evaluation of published screening levels, if available and appropriate, or use of project-specific risk assessments; discuss risk management and risk communication strategies.
- g) **California Environmental Quality Act (CEQA) requirements:** identification of project-specific requirements where applicable, e.g., cultural resources, traffic concerns, ecological resource protection, etc.; identify what DTSC's CEQA role is predicted to be, which documents will be developed, and how to integrate CEQA needs within the overall schedule.
- h) **Public Participation & Tribal Outreach:** discussion of community and tribal involvement and public outreach process, methods, translation needs, and schedule.
- i) **Schedule:** agreed-upon submittal and review dates and timelines for work plans, fact sheets, reports and other key documents; development of optimal sequencing of activities to efficiently reach project goals.

- j) **Resources:** Review checklists, quick reference sheets, and templates are available for use by those developing documents for DTSC review and approval. (These tools will be periodically updated and may be made available to Proponents by the DTSC Project Manager)
- k) **Exit Strategy & Completion of Agreement:** proposed future land use, Site acquisition and construction dates, funding limitations or requirements, approval for occupancy, etc. to ensure alignment of Proponent and DTSC goals.
- l) **Site Visit:** A visit to the Site will be conducted to verify and confirm current conditions and project discussions; the visit may take place on the same date as the scoping meeting. Subsequent visits may be needed if Site conditions change, if new staff are assigned, or for field oversight.

TASK 3 Supplemental Site Investigation (SSI)

- 3.1 **SSI Work Plan.** Proponent will submit a work plan that describes the activities proposed to further characterize soil, soil gas, surface water and/or groundwater. The work plan should also include a health and safety plan, quality assurance/quality control plan, sampling plan, and implementation schedule. Proponent will begin implementation of the approved work plan in accordance with the approved implementation schedule. DTSC may provide oversight of work plan implementation.
- 3.2 **SSI Report.** Proponent will submit an SSI Report that, at a minimum, presents the data, summarizes the findings of the investigation, validates the data, and includes recommendations and conclusions.

TASK 4 Health Risk Assessment

Proponent will conduct a risk evaluation consistent with [U.S. EPA Risk Assessment Guidance for Superfund](#) and the most current version of the applicable [DTSC guidance documents](#). This evaluation must identify chemicals of concern and potential routes of exposure; characterize the potential risk and/or non-cancer hazard; evaluate potential threats to environmental receptors; consider existing and contemplate uses; and identify cleanup goals.

TASK 5 Remedy Selection Document

- 5.1 **Removal Action Work Plan.** If DTSC determines a removal action is appropriate, Proponent will prepare a Removal Action Work Plan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1. The Removal Action Work Plan will include:
 - A description of the onsite contamination;

- The goals to be achieved by the removal action;
- An analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- A description of the recommended alternative (including any required land use covenants, financial assurance, and operation and maintenance plan and agreement requirements).
- Administrative record list;
- Sampling and Analysis Plan with corresponding Quality Assurance Plan to confirm the effectiveness of the RAW, if applicable; and
- Health and Safety Plan describing methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action. A detailed community air monitoring plan shall be included if requested by DTSC.

5.2 Remedial Action Plan. If the proposed removal action does not meet the requirements of Health and Safety Code section 25356.1(h), Proponent will prepare a Remedial Action Plan (RAP) in accordance with Health and Safety Code section 25356.1(c) for DTSC review and approval.

The RAP summarizes the results of the site characterization, risk evaluation and feasibility study and sets forth in detail appropriate steps to remedy soil, surface water and groundwater contamination at the Site and adjacent areas. In addition, the RAP shall contain a schedule for implementation of all proposed removal and remedial actions.

TASK 6 California Environmental Quality Act (CEQA)

In order to meet [CEQA](#) obligations, DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents.

TASK 7 Remedial Design and Implementation Plan

Proponent will either (a) prepare and submit a Remedial Design and Implementation Plan (RDIP) in accordance with the agreed upon schedule contained in the approved Remedy Selection Document; or (b) depending on the complexity of the proposed removal or remedial action, incorporate the factors typically addressed in a RDIP into the Remedy Selection Document.

The factors typically addressed in a RDIP are:

- a) technical and operational plans and engineering designs for implementation of the approved remedial or removal action alternative(s);
- b) a schedule for implementing the construction phase;
- c) a description of the construction equipment to be employed;
- d) a site specific hazardous waste transportation plan (if necessary);
- e) any required registration requirements for contractors, transporters and other persons conducting the removal and remedial activities for the Site;
- f) post-remedial sampling and monitoring procedures for air, soil, surface water and groundwater;
- g) operation and maintenance procedures and schedules;
- h) a health and safety plan; and
- i) a community air monitoring plan, if required by DTSC.

TASK 8 Implementation of Remedy

Upon DTSC approval of the final RAW or RAP and RDIP (if required), the Proponent shall implement the remedy, as approved.

TASK 9 Remedial Action Completion Report

Proponent shall submit a report documenting the implementation of the final RAW or RAP and RDIP and noting any deviations from the approved plan.

During implementation of the final RAW or RAP and RDIP, DTSC may specify such additions, modifications and revisions to the RAW or RDIP as deemed necessary to protect human health and safety or the environment or to implement the RAW or RAP.

TASK 10 Public Participation

DTSC requires that specific [public engagement](#) activities be conducted for projects undergoing a PEA, RAW, or RAP. However, based on the level of community interest, media interest, sensitive land uses, demographics and other factors, as determined by DTSC, public engagement activities may be requested for other projects types as well. Proponent will be responsible for all costs associated with the translation and/or interpretation of public participation content required under DTSC's policies, procedures, guidance documents, and state and federal law.

The following tasks apply only if a RAW or RAP is being required by DTSC:

- 10.1 Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest, if needed. Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making

process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 (and 25356.1(e), if conducting a RAP) and with DTSC's review and approval.

- 10.2 A scoping meeting regarding the RAW or RAP will include a discussion on the appropriate activities that will be conducted to address public participation.
- 10.3 DTSC may conduct an assessment of community interest in the Site, which may include, but will not be limited to, the development of a survey, outreach to local elected and public officials and community members, distribution of the survey through mail and/or social media, analysis of survey results, and community interviews. Results of the survey will be shared with the Proponent and should be included in the community profile.
- 10.4 Proponent, working collaboratively with DTSC, shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; surrounding land uses; demographic profile and languages; CalEnviroScreen results; information repositories; recommended public engagement activities; and involvement of community groups and elected officials. The community profile may also include a quarter-mile radius mailing list for the Site, a list of applicable elected officials, and any known community members who may have expressed an interest in the Site.
- 10.5 Proponent, working collaboratively with DTSC, shall develop and submit fact sheets or community updates to DTSC for review and approval when specifically requested by DTSC. Proponent may be responsible for printing and distribution of fact sheets or community updates upon DTSC approval using the approved community mailing list.
- 10.6 Proponent, as directed by DTSC, shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW/RAP for public review and comment. The public comment period shall last a minimum of thirty (30) days.
- 10.7 DTSC may require that Proponent hold a public meeting to inform the public of the proposed activities and to receive public comments on the RAW/RAP.
- 10.8 After the close of the public comment period, DTSC will prepare a response to the public comments received. If required, Proponent shall submit the information necessary for DTSC to prepare this document.
- 10.9 If appropriate, Proponent will revise the RAW/RAP on the basis of comments received from the public and submit the revised RAW/RAP to DTSC for review and approval. If significant or fundamental changes are required, additional public

participation activities, including an additional review and comment period, may be required. Proponent will also notify the public of any significant changes from the action proposed in the RAW/RAP.

TASK 11 Tribal Outreach and Consultation

DTSC's assigned Project Manager will coordinate with DTSC's Office of Environmental Equity to ensure compliance with DTSC's Tribal Consultation Policy. This process may include consultation with California tribes to determine whether or not they have an interest in Site activities.

TASK 12 Land Use Covenant

A [land use covenant](#) (LUC) pursuant to California Code of Regulations, title 22, section 67391.1 may be necessary to ensure full protection of the environment and human health. DTSC may require such a LUC in a DTSC-approved remedy based on a RAW, RAP, PEA, or other decision document. If Proponent is the owner of the Site, Proponent agrees to record the LUC as approved by DTSC within ten (10) days of receipt of a fully executed original.

If the Proponent is not the owner of the Site and a LUC is required, Proponent will work with the owner to provide DTSC with written confirmation that the owner will cooperate in implementing the DTSC-approved remedy, which may include a LUC. The Proponent must provide DTSC with the owner's written confirmation prior to the date the draft decision document is to be circulated for public notice and comment. If the Proponent is unable to provide DTSC with written confirmation from the owner, a LUC may not be executed for the Site and the proposed remedy will be reevaluated.

TASK 13 Operation and Maintenance (O&M)

Proponent shall comply with any and all operation and maintenance requirements in accordance with the final RAW, final RAP, or a DTSC-approved RDIP or O&M Plan. If deemed necessary, DTSC may require Proponent to enter into an O&M Agreement with DTSC.

TASK 14 Financial Assurance

Proponent shall establish and maintain a [financial assurance mechanism](#) pursuant to California Health and Safety Code section 25355.2 and DTSC's costs incurred in overseeing these activities prior to implementing any required O&M activities, LUC-related activities, and five-year review activities. Proponent shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

TASK 15 Discontinuation of Remedial Technology

Any remedial technology employed in implementation of the final RAP/RAW shall be left in place and operated by Proponent until and except to the extent that DTSC authorized Proponent in writing to discontinue, move or modify some or all of the remedial technology because Proponent has met the criteria specified in the final RAW/RAP for its discontinuance, or because the modifications would better achieve the goals of the final RAW/RAP.

TASK 16 Health and Safety Plan

The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192. The Health and Safety Plan shall be submitted before field activities begin.

TASK 17 Quality Assurance/Quality Control (QA/QC) Plan

All sampling and analysis conducted by Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by Proponent and approved by DTSC. The QA/QC Plan will describe:

- a) The procedures for the collection, identification, preservation and transport of samples;
- b) The calibration and maintenance of instruments;
- c) The processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- d) How the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

EXHIBIT D COST ESTIMATE

EXHIBIT D

COST ESTIMATE WORKSHEET

Type of Agreement: Standard Voluntary Agreement

Date: July 2023

Site Name: Tilden Way & Clement Avenue Transportation Improvement Site

Site Code: 202296

Task No. In Agreement	DTSC Project Team	VCP Coord.	Project Management	Supervision	Toxicology	Geology	Industrial Hygienist	HQ Engineering	Public Participation	HQ CEQA	OEJTA	Legal	Project Assistants	
	Classification (personnel)	HSE	HSE	Sr. ES (Sup)	Staff Toxicologist	Engineering Geologist	Assoc IH	Sr. HSE	PPS	Senior Environmental Planner	Sr. ES (Spec)	Attorney IV	Associate Program Analyst	Office Technician (Typing)
	TASK: (enter # hrs)													
	Agreement			3									1	1
	Prep/Negotiation	5	7											
	Project Management		20	5										
	Scoping Meeting	1	1	1										
	Site Visit		8			16	4							
	Review Background Information													
	(Phase II)		8	2	4	4								1
	Supplemental Site Characterization													
	- Workplan		8	2	4	16								
	- Implementation		8	2	4	16								1
	- Report		3	1	8									
	Risk Analysis		16						44				1	1
	Public Participation									15				
	CEQA		8											
	Cleanup Plan (RAW, CLRR Response Plan, RAP, etc.)		45	5	16	16					20			1
	Implement Cleanup Plan													
	Cleanup Completion Report		12	4	8	8		8						1
	Design		4					8						
	Certification		16	5										
	Deed Restriction		16	2								2	1	1
	Operation & Maint													
	Total No. Hours/Class	6	180	32	44	76	4	16	44	15	20	2	3	7
	Hourly Rate/Class	\$286	\$286	\$317	\$280	\$287	\$238	\$336	\$180	\$245	\$238	\$369	\$180	\$110
	Cost/Class	\$1,716	\$51,480	\$10,144	\$12,320	\$21,812	\$952	\$5,376	\$7,920	\$3,675	\$4,760	\$738	\$540	\$770
	Subtotal	\$122,203												
	Contingency (10%)	\$12,220												
	Grand Total Cost	\$134,423												
	Advance Payment	\$67,212												

Notes:

Revised 6/19/2023

EXHIBIT E

CALENDAR OF TASKS AND SCHEDULE

Activity	Schedule
Scoping Meeting	During Agreement negotiation, or shortly after Agreement execution based on DTSC evaluation of project needs
Advance Payment	Within 10 days of Agreement execution
Submit existing data	Within 10 days of Agreement execution, or as requested by DTSC
DTSC Completion of Document Review	Within 30-45 days of receipt of documents included in review and/or completion of Scoping Meeting
Submit investigation work plan	Within 30 days of scoping meeting, or as decided during scoping meeting
DTSC decision on investigation work plan	Within 75 days of date received by DTSC ¹
Submit investigation report	Within 45 days of completion of field work ²
DTSC decision on investigation report	Within 100 days of receipt by DTSC ¹ . May include recommendation for further investigation or cleanup, no further action, or no further action with conditions.
Submit draft cleanup plan	As directed by DTSC
Submit Community Profile	Within 30 days of DTSC's request
Submit CEQA documentation	Concurrent with the cleanup plan

¹ Note that DTSC approvals in the target timeframes are contingent upon receiving documents that meet industry standards, comply with DTSC's direction, and that responses to DTSC questions and/or comments are received in a timely manner.

² If workplan activities are not initiated within six months of the date of DTSC approval, DTSC may require additional investigation, public participation activities, and/or revision to the document.

Public Review/Comment Period, mailing of fact sheet to site mailing list and placement of public notice.	Upon DTSC's approval of cleanup plan for public review and comment.
DTSC decision on cleanup plan	DTSC to approve cleanup plan, if appropriate, after addressing public comments, within ~150 days of receipt of draft.
Implement cleanup	Within 90 days of DTSC approval of cleanup plan, or as directed by DTSC in conjunction with Proponent ³
Submit cleanup completion report	Within 90 days from the date of implementation of cleanup plan
DTSC decision on cleanup completion report	Within 100 days of received by DTSC ¹ . May include recommendation for no further action, or no further action with conditions.
Submit Operation and Maintenance Plan	As directed by DTSC
Operations and Maintenance Agreement	As directed by DTSC
Land Use Covenant	As directed by DTSC
Invoices	DTSC issues quarterly
Cost estimate and Scope of Work Updates and Amendments	DTSC updates the scope and cost estimate annually, or as needed, based on work needed to complete the Agreement. Amendments are issued on an as-need basis.

³ If cleanup plan activities are not initiated within one year of the date of DTSC approval, DTSC may require additional investigation, public participation activities, or revision to the document.



2023 Standard Schedule of Charges with 10% Discount/10% ODC

Labor Classification	Standard Hourly Rate	Hourly Rate with 10% Discount
Senior Principal	\$297	\$267.30
Principal Engineer/Scientist	\$278	\$250.20
Senior Associate Engineer/Scientist	\$259	\$233.10
Associate Engineer/Scientist	\$240	\$216.00
Senior Project Engineer/Scientist	\$225	\$202.50
Project Engineer/Scientist	\$210	\$189.00
Senior Staff 2 Engineer/Scientist	\$194	\$174.60
Senior Staff 1 Engineer/Scientist	\$177	\$159.30
Staff 2 Engineer/Scientist	\$158	\$142.20
Staff 1 Engineer/Scientist	\$137	\$123.30
Senior Technician	\$145	\$130.50
Technician 3	\$125	\$112.50
Technician 2	\$106	\$95.40
Technician 1	\$88	\$79.20
Senior Editor/Senior Project Coordinator	\$155	\$139.50
Editor 2/Project Coordinator 2/Accountant 2	\$135	\$121.50
Editor 1/Project Coordinator 1/Accountant 1	\$115	\$103.50
Administrator/Project Assistant/Billing Specialist	\$95	\$85.50

Labor Charges

All time will be recorded and charged to nearest 0.1 hour. Expert testimony at trials, hearings and depositions will be billed at 150% of the standard hourly rate. For each day when testimony is provided, a minimum of 8 hours will be billed. Preparatory time will be billed at standard rates.

Expenses

Subcontractor fees and other direct costs, such as air travel, project supplies and rental equipment, etc. will be itemized and billed at our cost plus a ten percent handling charge. Vehicle mileage when itemized is billed at the standard government rate in effect at the time of travel (www.gsa.gov/mileage).

Payment

Payment is to be made to Terraphase Engineering Inc. as follows:

Check Payments:	Wire/ACH Payments:
Terraphase Engineering Inc. P.O. Box 102399 Pasadena, CA 91189-2399	Terraphase Engineering Inc. JPMorgan Chase Bank Account Number 217693099 Routing Number 322271627

Payment is due within 30 days of receipt of invoice. A service charge of 1.5% per month or the allowable legal rate may be charged on amounts that are past due for more than 30 days.

Annual Escalation

Rates are subject to revision by annual calendar year escalation in January. Rates on invoices will reflect rates in effect at time of invoicing.



TERRENG-02

AGEORGE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0C36861 Seattle-Alliant Insurance Services, Inc. 1420 Fifth Ave 15th Floor Seattle, WA 98101	CONTACT NAME: Melanie Kelly PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: Melanie.Kelly@alliant.com
INSURED Terraphase Engineering, Inc. 1300 Clay Street, Suite 1000 Oakland, CA 94612	INSURER(S) AFFORDING COVERAGE INSURER A : Crum & Forster Specialty Insurance Company NAIC # 44520 INSURER B : Hartford Accident and Indemnity Company 22357 INSURER C : Travelers Property Casualty Company of America 25674 INSURER D : INSURER E : INSURER F :

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	EPK-141223	10/4/2022	10/4/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	72UECCF8294	10/4/2022	10/4/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	X	X	EFX-121276	10/4/2022	10/4/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	UB-7J183014	10/4/2022	10/4/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Prof Liab/Pollution			EPK-141223	10/4/2022	10/4/2023	Each Claim/Each Occ 5,000,000
A	Prof Liab/Pollution			EPK-141223	10/4/2022	10/4/2023	Aggregate 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The City, its City Council, boards, commissions, officials, employees, agents, and volunteers are additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance.

CERTIFICATE HOLDER

CANCELLATION

City of Alameda 2263 Santa Clara Ave Alameda, CA 94501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
 - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B.** If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Person(s) or Organization(s):	Location And Description Of Completed Operations
Blanket when specifically required in a written contract with the named insured.	Blanket when specifically required in a written contract with the named insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. Section III – Who Is An Insured** within the Common Provisions is amended to include as an insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the “products-completed operations hazard”.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) of Covered Operations
Blanket when specifically required in a written contract with the named insured.	Blanket when specifically required in a written contract with the named insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section III – Who Is An Insured within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” cause, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;
in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to “bodily injury” or “property damage” occurring after:

3. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
4. That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person(s) or Organization(s)
Blanket when specifically required in a written contract with the named insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section VI – Common Conditions, paragraph 17. Transfer Of Rights Of Recovery Against Others To Us within the **Common Provisions** is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or “damages” arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard”. This waiver applies only to the person or organization shown in the Schedule above.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDED WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART
ERRORS AND OMISSIONS LIABILITY COVERAGE PART
THIRD PARTY POLLUTION LIABILITY COVERAGE PART
ONSITE CLEANUP COVERAGE PART

SCHEDULE

Name of Person(s) or Organization(s)
Blanket when specifically required in a written contract with the named insured.

SECTION VI – COMMON CONDITIONS, item 17. Transfer Of Rights of Recovery Against Others To Us within the Common Provisions is amended by the addition of the following:

Solely as respects the person(s) or organization(s) indicated in the Schedule shown above, we waive any right of recovery we may have against the person(s) or organization(s) indicated in the Schedule shown above because of payments we make for “damages” arising out of your ongoing operations or “your work” performed under a written contract with that person(s) or organization(s) and included in the “products-completed operations hazard”.

However, this waiver shall not apply to “damages” resulting from the sole negligence of the person(s) or organization(s) indicated in the Schedule shown above.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED WITH WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART
ERRORS AND OMISSIONS LIABILITY COVERAGE PART
THIRD PARTY POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) or Organization(s)
Blanket when specifically required in a written contract with the named insured.

- A. **SECTION III – WHO IS AN INSURED** within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but solely with respect to “claims” caused in whole or in part, by “your work” for that person or organization performed by you, or by those acting on your behalf.

This insurance shall be primary and non-contributory, but only in the event of a named insured’s sole negligence.

- B. We waive any right of recovery we may have against the person(s) or organization(s) indicated in the Schedule shown above because of payments we make for “damages” arising out of “your work” performed under a designated project or contract with that person(s) or organization(s).
- C. This Endorsement does not reinstate or increase the Limits of Insurance applicable to any “claim” to which the coverage afforded by this Endorsement applies.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED NOTICE OF CANCELLATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART
ERRORS AND OMISSIONS LIABILITY COVERAGE PART
ONSITE CLEANUP COVERAGE PART
THIRD PARTY POLLUTION LIABILITY COVERAGE PART**

In consideration of the premium charged and solely with respect to the coverage parts shown above, it is hereby agreed that the **Common Provisions**, Section **VI – Common Conditions** is amended by the addition of the following:

Limited Notice Of Cancellation

In the event that we cancel this Policy for any reason other than non-payment of premium and;

- a. The effective date of cancellation is prior to the expiration date of this Policy; and
- b. You are under an existing written contractual obligation to notify a certificate holder when this Policy is canceled and have provided to us, either directly or through your broker of record, the email address of a contact at each such certificate holder; and
- c. We received this information after you received notice of cancellation of this Policy and prior to the effective date of cancellation, via an electronic spreadsheet that is acceptable to us,

We will provide notice of cancellation via email to each such certificate holder within thirty (30) days of your providing such information to us. Proof of our emailing the notice of cancellation, using the information provided by you, will serve as evidence that we have satisfied our obligations under this condition.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

POLICY NUMBER: UB-7J183014

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.

ENVIRONMENTAL EXCESS LIABILITY POLICY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured stated in Item 1. of the Declarations. The term Insured means any person or organization qualifying as an insured in the "controlling underlying insurance". The words "we", "us" and "our" refer to the Company stated on the Declarations providing this insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION III DEFINITIONS** and other provisions of this policy for such meanings.

I. INSURING AGREEMENT

We will pay on behalf of the Insured the "ultimate net loss":

1. In excess of all "underlying insurance",
2. Provided the injury or offense takes place during the Policy Period of this policy, and
3. Only after all "underlying insurance" has been exhausted by the payments of the limits of such insurance for losses arising out of "occurrences", "pollution conditions" or "wrongful acts" insured by all of the policies designated in the Declarations as "underlying insurance".

If any "underlying insurance" does not pay a loss for reasons other than the exhaustion of an aggregate limit of insurance, then we shall not pay such loss.

We have no obligation under this insurance with respect to any claim or suit settled without our consent.

The amount we pay is limited as described in **SECTION IV. LIMIT OF LIABILITY**.

If we are prevented by law from paying on behalf of the Insured for coverage provided under this insurance, then we will indemnify the Insured.

The Agreements, Definitions, Terms, Conditions, and Exclusions of the "controlling underlying insurance" scheduled in Item 5. of the Declarations, in effect at the inception date of this policy, apply to this coverage unless:

1. They are inconsistent with provisions of this policy; or
2. There are provisions in this policy for which a similar provision is not contained in the "controlling underlying insurance"; or
3. They relate to premium, subrogation, any obligation to defend, the payment of expenses, Limits of Insurance, cancellation or any renewal agreement.

With respect to the exceptions described in 1., 2. or 3. above, the provisions of this policy will apply.

II. DEFENSE PROVISIONS AND SUPPLEMENTAL PAYMENTS

A. DEFENSE PROVISIONS

We shall not be called upon to assume charge of the investigation, settlement or defense of any claim made or suit brought against the Insured, but we shall have the right and be given the opportunity to be associated in the defense and trial of any claims or suits relative to any "occurrence", "pollution condition" or "wrongful act" which, in our opinion, may create liability on the part of us under the terms of this policy.

If we assume such right and opportunity, we shall not be obligated to defend any suit after the

applicable limits of this policy have been exhausted by payment of the "ultimate net loss".

B. SUPPLEMENTAL PAYMENTS

The only supplemental payments and expense that we shall pay under this policy are as follows:

1. All expenses incurred by us and solely at our discretion;
2. All interest on that part of any judgment which accrues after entry of the judgment and before we have paid, offered to pay, or deposited into court that part of the judgment, payable under this policy, which does not exceed the Limits of Insurance, and to which this policy applies;
3. If all "underlying insurance" pays pre-judgment interest, then we will pay related pre-judgment interest awarded against the Insured on the part of the judgment we pay. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer.

C. DEFENSE AND SUPPLEMENTAL PAYMENTS CONDITION

Defense provisions and supplemental payments are subject to all of the foregoing and:

1. If defense and/or supplemental payment expenses are included within the limit of insurance of any "underlying insurance", then any such expense payment we make shall reduce the Limits of Insurance of this policy.
2. If none of the policies of "underlying insurance" includes defense and/or supplemental payment expenses within the limit of insurance of the "underlying insurance", then any such expense payment we make shall not reduce the Limits of Insurance of this policy.

III. DEFINITIONS

- A. "Controlling underlying insurance" means the policy or policies of insurance as stated in Item 5. of the Declarations.
- B. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- C. "Pollution condition" means the discharge, dispersal, seepage, migration, release, escape, presence or movement of "pollutants". Two or more "pollution conditions" arising out of the same or related acts of discharge, dispersal, seepage, migration, release, escape or movement of "pollutants" shall be deemed to be a single "pollution condition".
- D. "Ultimate net loss" means the amount of the principal sum, award or verdict actually paid or payable in cash in the settlement or satisfaction of claims for which the insured is liable, either by adjudication or compromise with the written consent of us, after making proper deduction for all recoveries and salvages.

Defense and supplemental expense payments shall be included within the "ultimate net loss", provided that such expense payments are included within the agreements, terms, conditions, and limits of insurance of any "underlying insurance" in accordance with **SECTION II., Paragraph C. DEFENSE AND SUPPLEMENTAL PAYMENTS CONDITION.**

- E. "Underlying insurance" means the policy or policies of insurance as described in Item 5. of the Declarations, including "controlling underlying insurance".
- F. "Wrongful act" means an act, error or omission in the rendering or failure to render "professional services" by any insured covered under an underlying Errors and Omissions policy.

IV. LIMIT OF LIABILITY

The Limit of Liability stated in the Declarations as applicable to Each Occurrence shall be the total limit of our liability for all loss sustained as the result of any one "occurrence", "pollution condition" or "wrongful act". If a deductible amount is stated in Item 4. of the Declarations, our liability for loss sustained as the result of any one "occurrence", "pollution condition" or "wrongful act" shall be limited to amounts in excess of that deductible.

The Limit of Liability stated in the Declarations as "aggregate" shall be the total limit of our liability for all losses sustained during each annual period of this policy except for losses covered in the "underlying insurance" to which no underlying aggregate limit applies and for which any "underlying insurance" provides coverage that is subject to an aggregate limit.

This policy shall apply in excess of the "underlying insurance" limits shown in the Declarations. However, if the "underlying insurance" limit has been reduced or exhausted solely by reason of losses paid thereunder arising out of "occurrences", "pollution conditions" or "wrongful acts" which take place during the policy period of this policy, then this policy shall:

1. In the event of reduction, pay the excess of the reduced underlying limit;
2. In the event of exhaustion, continue in force as "underlying insurance".

However, when 1. or 2. above apply, we will not pay that portion of a loss that is within the underlying limits of insurance which you have agreed to fund by self-insurance or means other than insurance.

The Limit of Liability of this policy shall apply to the entire policy period and will not reinstate annually if the policy period is greater than twelve months. If the Policy Period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Liability.

V. EXCLUSIONS

This insurance does not apply to:

A. ASBESTOS AND LEAD

Any liability arising out of or in any way related to:

1. Asbestos, asbestos fibers, or any product containing asbestos or asbestos fibers; or
2. The actual, alleged, or threatened exposure to lead or any substance containing lead.

This policy does not apply to Economic Loss, Diminution of Property, Abatement Costs, or any other loss, cost, or expense including Equitable Relief, in any way or to any extent arising out of or involving:

1. Asbestos, asbestos fibers or any product containing asbestos, or asbestos fibers; or
2. Lead or any substance containing lead.

This policy provides no coverage for any fees, costs, or expenses of any nature whatsoever in the investigation or defense of any claim or suit arising out of or involving:

1. Asbestos, asbestos fibers, or any product containing asbestos or asbestos fibers; or
2. Lead or any substance containing lead.

As used in this exclusion:

Abatement Costs means any actual or potential damages, costs, fees, or expenses, including

the costs of inspection, removal, or replacement.

Diminution of Property means the diminishing or lessening in value of property.

Economic Loss means any actual or potential damages, costs, fees, expenses, or lost profits arising out of or involving the manufacture or utilization of a good or product.

Equitable Relief means any remedy of relief, including restitution or injunctive relief, sought in a court with equitable powers.

B. POLLUTION

1. Any liability arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
2. Any loss, cost or expense arising out of any:
 - a. Request, demand or order that you or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of pollutants; or
 - b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effect of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

C. CONTROLLING UNDERLYING INSURANCE

Any liability excluded by "controlling underlying insurance".

D. NUCLEAR ENERGY

1. Under any Liability Coverage to injury, sickness, disease, death or destruction.
 - a. With respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limits of liability; or
 - b. Resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.
2. Under any Medical Payments coverage or under any Supplementary Payments provision relating to immediate medical or surgical relief to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear facility by any person or organization.
3. Under any Liability coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
 - a. The nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of an Insured or (2) has been discharged or dispersed there from;
 - b. The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an Insured; or

- c. The injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

4. As used in this policy:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear or by-product material;

"source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel," means any fuel element or fuel component, solid or liquid which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facilities under paragraph (a) or (b) thereof;

"nuclear facility" means:

- a. any nuclear reactor;
- b. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
- c. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operation;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

"Property damage" includes all forms of radioactive contamination of property.

E. E.R.I.S.A

Any obligation or liability for which the Insured or any of its insurers may be held liable under the Employees' Retirement Income Security Act of 1974 (E.R.I.S.A.), and any amendments thereto or any similar federal, state, local, or foreign law.

F. PUNITIVE OR EXEMPLARY DAMAGES

Punitive or exemplary damages, fines or penalties.

G. COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

Liability arising directly or indirectly out of:

1. Any actual or alleged failure, malfunction or inadequacy of:
 - a. Any of the following, whether belonging to Insured or to others:
 - (1) Computer hardware, including microprocessors;
 - (2) Computer application software;
 - (3) Computer operating systems and related software;
 - (4) Computer networks;
 - (5) Microprocessors (computer chips) not part of any computer system; or
 - (6) Any other computerized or electronic equipment or components; or
 - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in paragraph **a.** above
- due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times, including the year 2000 and beyond.
2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by the Insured or for the Insured to determine, rectify or test for, any potential or actual problems described in paragraph **1.** above.

H. INFRINGEMENT OF COPYRIGHT, PATENT, TRADEMARK OR TRADE SECRET

“Personal and advertising injury” arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your “advertisement” of copyright, trade dress or slogan.

VI. CONDITIONS

A. APPEALS

If you or any of your underlying insurers elect not to appeal a judgment in excess of the limits of liability afforded by the “underlying insurance”, we may elect to appeal. Our Limits of Insurance shall not be increased because of the appeal, except that we will make the appeal at our cost and expense.

B. ASSIGNMENT

Your interest in this policy may not be transferred to another, except by an endorsement issued by us which gives our consent. If you are bankrupt or insolvent or if you die, this policy shall cover your legal representative(s), but only while acting within the scope of their duties as such.

C. AUDIT OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during this policy period and within three (3) years after the final termination of this policy.

D. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this policy.

E. BANKRUPTCY OR INSOLVENCY OF UNDERLYING INSURER

For all purposes of this policy, if any “underlying insurance” is not available or collectible

because of:

1. The bankruptcy or insolvency of the underlying insurer(s) providing such "underlying insurance"; or
2. The inability or failure for any other reason of such underlying insurer(s) to comply with any of the obligations of its policy;

then this policy shall apply as if "underlying insurance" were available and collectible.

F. CANCELLATION OR NON-RENEWAL

1. The First Named Insured, as stated in Item 1. of the Declarations, may cancel this policy by mailing or delivering to us this policy or written notice of cancellation, stating when thereafter the cancellation is to be effective.
2. We may cancel or non-renew this policy by mailing or delivering to the First Named Insured written notice at least:
 - a. 10 days before the effective date of cancellation, if we cancel for nonpayment of Premium as stated in Item 6. of the Declarations; or
 - b. 20 days before the effective date of cancellation or non-renewal, if we cancel for any other reason, or non-renew.
3. We will mail or deliver our notice to the First Named Insured's last mailing address known to us.
4. Notice of cancellation or non-renewal will state the effective date of cancellation or non-renewal and will be effective for all Insureds. The Policy Period will end on that date.
5. If this policy is canceled, we will send the First Named Insured any Premium refund due. If we cancel, return Premium will be pro rata, subject to a minimum premium earned by us of 25% of the Premium stated in Item 6. of the Declarations. If cancellation is at the request of the First Named Insured, return Premium will be computed at 90% of pro rata unless prohibited by law or statute. Any cancellation by the First Named Insured is subject to the Minimum Earned Premium stated in Item 6. of the Declarations.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

G. CHANGES

This policy (including the Declarations and any schedules and endorsements attached) contains all the agreements between you and us concerning this insurance. You are authorized to make changes in the terms of this policy, with our consent.

This policy's terms and conditions can be amended or waived only by written endorsement issued by us and made a part of this policy.

H. DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

1. You must see to it that we are notified as soon as possible of an "occurrence", "pollution condition" or "wrongful act" which may result in a claim or suit under this policy. To the extent possible notice should include:
 - a. How, when and where the "occurrence", "pollution condition" or "wrongful act" took place;
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any injury or damage arising out of the "occurrence", "pollution condition" or "wrongful act".
2. If a claim is made or suit is brought against any Insured that is likely to involve this policy, you must see to it that we receive prompt written notice of the claim or suit.

3. You and any other involved Insured must:
 - a. Immediately send us copies of any demands, notices, summons, or legal papers received in connection with the claim or suit;
 - b. Authorize us to obtain records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of the claim or suit;
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to any Insured because of injury or damage to which this policy may also apply;
4. You shall not make or authorize an admission of liability, attempt to settle, incur any expense, make any payment other than for first aid, or otherwise dispose of any claim or suit without our written consent.
5. You must see to it that we are notified promptly of any "occurrence", "pollution condition" or "wrongful act" which involves any of the following injuries or events:
 - a. Any brain damage;
 - b. Spinal cord injury with paralysis;
 - c. Severe burns resulting in disfigurement;
 - d. Amputations and/or multiple fractures;
 - e. Fatal injuries;
 - f. Permanent disabilities; sexual molestation and/or rape;
 - g. Massive internal injuries;
 - h. Any coverage issue which may trigger a reservation of rights or coverage declination; or
 - i. Any claim with an incurred exposure of \$250,000 or above.

You will also promptly advise us of the estimated amount of loss and of adjustment expenses in connection with each claim or loss and of any subsequent changes to those estimates.

I. INSPECTION AND SURVEYS

We have the right, but are not obligated, to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the Premiums to be charged. We do not:

1. Make safety inspections;
2. Undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public; or
3. Warrant that conditions are safe or healthful or comply with laws, regulations, codes or standards.

This condition applies not only to us but also to any rating service or similar organization that makes insurance inspections, surveys, reports or recommendations.

J. LEGAL ACTION AGAINST US

No person or organization has a right under this policy to:

1. Join us as a party or otherwise bring us into a suit asking for damages from you;
2. Sue us, unless all of the terms of this policy have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you obtained after trial. We will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of this policy. An agreed settlement means a settlement and release of liability signed by us, you, and the claimant or the claimant's legal representative.

K. MAINTENANCE OF UNDERLYING INSURANCE

The policy or policies referred to in the Declarations and Schedule of "Underlying Insurance" or renewals or replacements thereof not more restrictive in coverage shall be maintained in full effect during this policy period, except for any reduction in the aggregate limits solely by payment of claims and/or claims expense.

If such "underlying insurance" is not maintained in full effect by you, if there is any material change in the coverage of any "underlying insurance", or if any limits of liability of "underlying insurance" are:

1. Less than as stated in the Schedule of "Underlying Insurance";
2. Unavailable to you due to bankruptcy or insolvency of an underlying insurer; or

then the insurance afforded by this policy shall apply in the same manner as if such "underlying insurance" and limits of liability had been in effect, available, so maintained unchanged and collectible.

L. OTHER INSURANCE

If other insurance (whether such insurance is stated to be primary, contributing, excess or contingent) collectable or not, is available to you covering a loss also covered by this policy, other than a policy that is specifically written to apply in excess of this policy, the insurance afforded by this policy shall apply in excess of and shall not contribute with such other insurance.

However, if a written contract between you and an additional insured specifically requires that this insurance be primary, then this insurance will be primary to and noncontributing with other insurance maintained by the additional insured; however this primary and noncontributing coverage is limited to the amount of insurance required as specified in the contract.

M. PREMIUM

The First Named Insured is responsible for the payment of all Premiums. All other Insureds are contingently liable for payment of Premium if the First Named Insured fails to do so.

The Premium for this policy, as stated in Item 6. of the Declarations, is a flat Premium. It is not subject to an adjustment unless stated in the Declarations or an endorsement attached to this policy.

N. REPRESENTATIONS, FRAUD, OR CONCEALMENT

By accepting this policy, you agree that:

1. The statements in the Declarations, Schedule of "Underlying Insurance", and Application for this policy are accurate and complete;
2. Those statements are based upon representations you made to us;
3. This policy has been issued in reliance upon your representations; and

4. This policy is void in any case of fraud by you or if you intentionally conceal or misrepresent any material fact as it relates to this policy or any claim under this policy.

O. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, this policy applies:

1. As if each Insured were the only Insured;
2. Separately to each Insured against whom claim is made or suit brought.

P. SUBROGATION

In the event of any payment under this policy by us, we shall be subrogated to all of your rights of recovery against any person or organization, and you shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. You shall do nothing after loss to prejudice such rights.

The amount recovered as subrogation shall be apportioned in the inverse order of payment of the "ultimate net loss" to the extent of the actual payment. The expenses of all recovery proceedings shall be apportioned in the ratio of respective recoveries.

We have no duty to provide coverage under this policy unless you and any other involved insured have fully complied with the conditions of this policy.

However, if a written contract between you and an additional insured specifically requires it, we will waive any right of recovery we may have against that person or organization because of payments we make for injury or damage arising out of your work performed for that person or organization under such written contract, but only if the injury or damage does not result from the sole negligence of that person or organization.

Q. TITLES OR CAPTIONS OF POLICY PROVISIONS

The title or caption of the sections and paragraphs of this policy and any attached endorsements are solely for convenience or reference. They do not affect the provisions to which they relate.

R. SERVICE OF SUIT

It is agreed that service of process in any suit on this policy against us may be made upon the highest one in authority bearing the title of commissioner, director or superintendent of insurance of the state or commonwealth wherein this policy is delivered or issued. The one in authority bearing the title commissioner, director, or superintendent of insurance of the state or commonwealth where this policy is delivered is hereby authorized and directed to accept service of process on behalf of this Company in any such suit; provided such commissioner, director, or superintendent has a procedure for forwarding suits to insurance companies by registered or certified mail and agrees to abide by such procedure by mailing via certified mail all documents so served to Crum and Forster Specialty Insurance Company, Attention: Claims, 305 Madison Avenue, Morristown, NJ 07960.

It is further agreed that the Insured shall, by registered mail, send to Crum and Forster Specialty Insurance Company, Attention: Claims, 305 Madison Avenue, Morristown, NJ 07962 a copy of all documents relating to the service of process and suit as the Insured has delivered to the highest one in authority of the insurance department of the state in which the suit has been instituted.