

CONTRACTOR AGREEMENT

THIS AGREEMENT, entered into this 7th day of February 2017, by and between CITY OF ALAMEDA, a municipal corporation (hereinafter referred to as "City"), and MCGUIRE AND HESTER, a California corporation whose address is 9009 RAILROAD AVENUE, OAKLAND, CALIFORNIA 94603, (hereinafter referred to as "Contractor"), in reference to the following:

RECITALS:

- A. 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 sanitary sewer pump station renovation services. On February 7, 2017, the City Council awarded a contract to McGuire and Hester. Project Plans and Specifications for Group 3 – Sewer Pump Station Renovations for Reliability and Safety Improvements, No. P.W. 03-14-11 were posted on November 16, 2016 and after a bidding period of 30 days, bids were opened on December 15, 2016. The City received three bids and chose the lowest responsive, responsible bidder per Administrative Order No. 5.
- C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. City and Provider desire to enter into an agreement for Group 3 – Sewer Pump Station Renovations for Reliability and Safety Improvements, No. P.W. 03-14-11 (see Exhibit A for scope of work).

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The Contractor shall have two hundred and twenty (220) consecutive working days from the date the work is to commence pursuant to the Notice to Proceed to diligently prosecute the work to completion.

2. **SERVICES TO BE PERFORMED:**

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with Specifications, Special Provisions and Plans, which Specifications, Special Provisions and Plans are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein. The contractor acknowledges that the work plan included in Exhibit "A" is tentative and does not commit the City to request Contractor to perform all tasks included therein.

3. COMPENSATION TO CONTRACTOR:

Contractor shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Contractor's bid, which is attached hereto as Exhibit "A" and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the City, with checks drawn on the treasury of said City, to be taken from Fund 9100817.

Payment will be made by the City in the following manner: On the first day of each month, Contractor shall submit a written estimate of the total amount of work done the previous month. However, the City reserves the right to adjust budget within and between tasks. Pricing and accounting of charges are to be according to the bid packet pricing, unless mutually agreed to in writing.

Payment shall be made for 95% of the value of the work completed as determined by the City. The City shall retain 5% of the value of the work as partial security for the completion of the work by Contractor. Retained amounts shall be paid to Contractor within sixty days of acceptance by the City of the project. Payment shall not be construed as acceptance of defective work. No interest will be paid to Contractor on retained funds.

Total compensation for work is \$3,099,132 with a 15 percent contingency in the amount of \$464,870 for a total not to exceed of \$3,564,002. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

Prompt Payment Of Withheld Funds To Subcontractors: The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

4. TIME IS OF THE ESSENCE:

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

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in paragraph 1 above, damage will be sustained by the City, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay. It is

therefore agreed that the Contractor will pay to the City the sum of \$1,550 dollars (\$1,550) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

It is further agreed that in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if City decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge the Contractor, his or her heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which accrue during the period of such extensions.

The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the City, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that the Contractor shall, within one (1) day from the beginning of such delay, notify the City in writing of the causes of delay. The City shall ascertain the facts and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

5. STANDARD OF CARE:

Contractor agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals 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 nor have any contractual relationship with City.

6. INDEPENDENT PARTIES:

Contractor hereby declares that it is engaged as an independent business and it agrees to perform its services as an independent contractor. The manner and means of conducting the work are under the control of Contractor, 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 Contractor's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Contractor, 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 fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Contractor 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. Contractor shall indemnify, defend, and hold City

harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

8. NON-DISCRIMINATION:

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

Contractor shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Contractor's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor. However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

10. INSURANCE:

On or before the commencement of the terms of this Agreement, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C and D. Such certificates, which do not limit Contractor'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 fourteen (14) days' advance written notice to the City of Alameda, "Attention: Risk Manager."

It is agreed that Contractor 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 that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Contractor shall maintain the following insurance coverage:

- (1) Workers' Compensation:
Statutory coverage as required by the State of California.
- (2) Liability:
Commercial general liability coverage in the following minimum limits:
Bodily Injury: \$2,000,000 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 aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(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

(4) Pollution Prevention:

Legal liability required for hazardous materials excavation in the amount of 2,000,000 each occurrence.

B. SUBROGATION WAIVER:

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor 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.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation 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.

E. SUFFICIENCY OF INSURANCE:

Contractor shall furnish the following bonds from a bonding company acceptable to the City Attorney. Faithful Performance Bond and Labor and Material Bond are only required for work over \$25,000. Therefore, those estimates that are under \$25,000 will not need to budget for the bond premiums and those estimates over \$25,000 will need to be sure to budget for the bond premiums.

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

11. BONDS:

Contractor shall furnish the following bonds from a bonding company acceptable to the City Attorney:

A. Faithful Performance:

A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this contract, and

B. Labor and Materials:

A bond for labor and materials in the amount of 100% of the total contract price.

12. PROHIBITION AGAINST TRANSFERS:

Contractor 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 City. 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 by Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. SUBCONTRACTOR APPROVAL:

Unless prior written consent from City is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of City, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. PERMITS AND LICENSES:

Contractor, 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 services hereunder.

15. REPORTS:

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

No report, information nor other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by City.

Contractor shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

16. RECORDS:

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, 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 for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by 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 contract or failure to act in good faith, then Contractor shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to City shall be addressed to City at:

City of Alameda
Public Works Department
950 West Mall Square
Alameda, CA 94501
ATTENTION: Erin Smith, Public Works Coordinator
Ph: (510) 747-7938 / Fax: (510) 747-769-6030

All notices, demands, requests, or approvals from City to Contractor shall be addressed to Contractor at:

McGuire and Hester
9009 Railroad Avenue
Oakland, CA 94603
ATTENTION: Mike Hester, President
Ph: (510) 632-7676
Email: mhester@mcguireandhester.com

18. LAWS TO BE OBSERVED:

The Contractor shall keep himself fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

19. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE AND PREVAILING WAGE REQUIREMENTS ON PUBLIC WORKS PROJECTS:

Effective January 1, 2015, no Contractor or Subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions from this requirement for bid purposed only under Labor code Section 1771.1(a)). Register at <https://efiling.dir.ca.gov/PWCR>

No Contractor or Subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Prime Contractor is required to post job site notices prescribed by regulations. See 8 Calif. Code Regulation §16451(d).

Effective April 1, 2015, All Contractors and Subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin>

20. HOURS OF LABOR:

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that the employees' compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

The Contractor shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

21. APPRENTICES:

Attention is directed to the provisions in sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him on contracts greater than \$30,000 or 20 working days. The Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Section 1777.5 requires the Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project, and which administers the apprenticeship program in that trade, for a certificate of approval, if they have not previously applied and are covered by the local apprenticeship standards.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if: (1) the Contractor employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions; or (2) if the Contractor is not a signatory to an apprenticeship fund and if the funds administrator is unable to accept Contractor' required contribution. The Contractor or subcontractor shall pay a like amount to the California Apprenticeship Council.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

22. LABOR DISCRIMINATION:

No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, religion, age, national origin, sexual orientation, or physical disability of such persons and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of the provisions of the Labor Code, and, in particular, Section 1735.

23. REGISTRATION OF CONTRACTORS:

Before submitting bids, contractors shall be licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professional Code of the State of California.

24. URBAN RUNOFF MANAGEMENT:

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

- a. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season (October 15), on site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site).
- b. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.
- c. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed and the wash water shall be collected and disposed of offsite in an appropriate location.
- d. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.

- e. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each workday. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that the City and County of Alameda County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations are intended to be used in conjunction with the State's Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the contractor, pursuant to Cal. Water Code §13385.

25. COMPLIANCE WITH MARSH CRUST ORDINANCE:

Contractor shall perform all excavation work in compliance with the City's Marsh Crust Ordinance as set forth at Section 13-56 of the Municipal Code. Prior to performing any excavation work, Contractor shall verify with the Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Contractor shall apply for and obtain permits from Building Services on projects deemed to be subject to the Marsh Crust Ordinance.

26. PURCHASES OF MINED MATERIALS REQUIREMENT:

Contractor shall ensure that all purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Contractor shall submit a report to City which lists the intended suppliers for the above materials and demonstrates that the suppliers are in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation's Office of Mine Reclamation (OMR) and can be viewed at: www.conservation.ca.gov/OMR/ab_3098_list/index.htm. Note that the list changes periodically and should be reviewed accordingly.

27. TERMINATION:

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

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

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 Contractor as provided herein. Upon termination of this Agreement, 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.

28. COMPLIANCES:

Contractor shall comply with all applicable laws, state, federal, and all ordinances, rules and regulations enacted or issued by City.

29. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting 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.

30. ADVERTISEMENT:

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

31. WAIVER:

A waiver by 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.

32. INTEGRATED CONTRACT:

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 City and Contractor.

33. INSERTED PROVISIONS:

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

34. 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.

Signatures on next page

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

MCGUIRE AND HESTER
A California Corporation



Mike Hester
President



Brock Grunt
Secretary

CITY OF ALAMEDA
A Municipal Corporation

Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL



Liam Garland
Acting Public Works Director

APPROVED AS TO FORM:
City Attorney



Andrico Penick
Assistant City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Alameda)

On 12/22/2016 before me, Shawna Kay Olgin, Notary Public

Date Here Insert Name and Title of the Officer

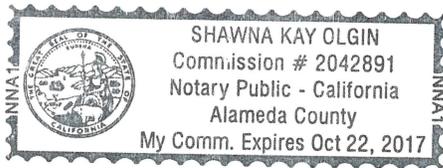
personally appeared Michael R. Hester and Brock N. Grunt

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/~~ they executed the same in ~~his/her/~~ their authorized capacity(ies), and that by ~~his/her/~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Contract Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael R. Hester

Signer's Name: Brock N. Grunt

Corporate Officer -- Title(s): President

Corporate Officer -- Title(s): Secretary

Partner -- Limited General

Partner -- Limited General

Individual Attorney in Fact

Individual Attorney in Fact

Trustee Guardian or Conservator

Trustee Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: McGuire and Hester

Signer Is Representing: McGuire and Hester

EXHIBIT "A"

SECTION XVI. BIDDER'S PROPOSAL

Specifications and Special Provisions

No. 03-14-11

Filed:

Group 3 - Sewer Pump Station Renovations for Reliability and Safety Improvements Alameda, California

Proposal to the COUNCIL of the CITY OF ALAMEDA:

The undersigned declares that he has carefully examined the location of the proposed work and the Plans, Specifications, and Special Provisions therefore, referred to herein, and hereby proposes to furnish all labor, materials, machinery, tools and equipment required to perform the work, and to do all the said work, in accordance with said Plans, Specifications and Special Provisions for the unit prices set forth in the following schedule:

Bid Item No.	Description	Est. Qty.	Unit	Unit Price	Total Price
1	Mobilization and Demobilization	1	LS	44,200-	44,200-
2	Bollards	12	EA	\$ 900.00	\$10,800.00
Sheffield-Cumberland Pump Station					
3	Sheffield-Cumberland Temporary Facilities and Bypass Pumping	1	LS	\$5,200.00	\$5,200.00
4	Sheffield-Cumberland Demolition and Abandonment	1	LS	6,600.00	6,600.00
5	Sheffield-Cumberland Shoring of Open Excavation	1	LS	135,000-	135,000-
6	Sheffield-Cumberland Submersible Pump, Rail, and Accessories	2	EA	25,000	50,000
7	Sheffield-Cumberland Pump Discharge Piping, Fittings, and Valves	1	LS	14,000	14,000
8	Sheffield-Cumberland New Wetwell	1	LS	125,000 (B) 125,000-	125,000-
9	Sheffield-Cumberland Wetwell Coating System	1	LS	12,000	12,000
10	Sheffield-Cumberland 8" Gravity Sewer Main	67	LF	600	40,200
11	Sheffield-Cumberland 6" Gravity Sewer Overflow	1	LS	5,000	5,000

Bid Item No.	Description	Est. Qty.	Unit	Unit Price	Total Price
12	Sheffield-Cumberland Modify Invert of Existing Manhole	2	EA	1,000	2,000
13	Sheffield-Cumberland Concrete Work	1	LS	7,100	7,100
14	Sheffield-Cumberland Electrical Control Panel	1	LS	5,000-	5,000
15	Sheffield-Cumberland Service Pedestal	1	LS	7,800	7,800
16	Sheffield-Cumberland SCADA Pole	1	LS	7,200	7,200
17	Sheffield-Cumberland Water Service, Hose Bib, and Enclosure	1	LS	2,500	2,500
18	Sheffield-Cumberland Miscellaneous Electrical Work, Wiring and Sensors	1	LS	52,000	52,000
19	Sheffield-Cumberland Site Restoration, Landscaping, and Cleanup	1	LS	7,500	7,500
Seaview 1 Pump Station					
20	Seaview 1 Temporary Facilities and Bypass Pumping	1	LS	22,000	22,000
21	Seaview 1 Demolition	1	LS	6,800	6,800
22	Seaview 1 Shoring of Open Excavation	1	LS	100	100
23	Seaview 1 Submersible Pump, Rail, and Accessories	2	EA	20,000	40,000
24	Seaview 1 Pump Discharge Piping, Fittings, and Valves	1	LS	20,000	20,000
25	Seaview 1 Top Slab and Access Hatch	1	LS	7,400	7,400
26	Seaview 1 Wetwell Rehabilitation	1	LS	22,000	22,000
27	Seaview 1 Concrete Work	1	LS	6,100 -	6,100
28	Seaview 1 Hose Bib Enclosure	1	LS	2,000 -	2,000
29	Seaview 1 Electrical Control Panel	1	LS	3,500 -	3,500 -
30	Seaview 1 Service Pedestal	1	LS	7,800 -	7,800
31	Seaview 1 Miscellaneous Electrical Work, Wiring and Sensors	1	LS	43,000 -	43,000 -
32	Seaview 1 Site Restoration, Landscaping, and Cleanup	1	LS	11,000	11,000
Seaview 2 Pump Station					
33	Seaview 2 Temporary Facilities and Bypass Pumping	1	LS	29,000	29,000
34	Seaview 2 Demolition	1	LS	6,600	6,600
35	Seaview 2 Shoring of Open Excavation	1	LS	500 -	500
36	Seaview 2 Submersible Pump, Rail, and Accessories	2	EA	20,000 -	40,000 -
37	Seaview 2 Pump Discharge Piping, Fittings, and Valves	1	LS	22,000 -	22,000 -
38	Seaview 2 Top Slab and Access Hatch	1	LS	7,200	7,200
39	Seaview 2 Wetwell Rehabilitation	1	LS	16,000	16,000
40	Seaview 2 4" Force Main	1	LS	15,000	15,000
41	Seaview 2 Concrete Work	1	LS	7,200	7,200
42	Seaview 2 Electrical Control Panel	1	LS	4,000 -	4,000
43	Seaview 2 Service Pedestal	1	LS	7,800	7,800

Bid Item No.	Description	Est. Qty.	Unit	Unit Price	Total Price
44	Seaview 2 Water Service, Hose Bib, and Enclosure	1	LS	2,000-	2,000-
45	Seaview 2 Decorative Rock Surface	300	SF	10-	3,000-
46	Seaview 2 Miscellaneous Electrical Work, Wiring and Sensors	1	LS	50,000-	50,000-
⁴⁷ 46	Seaview 2 Site Restoration, Landscaping, and Cleanup	1	LS	24,000-	24,000-
Eastshore-Meyers Pump Station					
48	Eastshore-Meyers Temporary Facilities and Bypass Pumping	1	LS	72,000-	72,000-
49	Eastshore-Meyers Demolition and Abandonment	1	LS	7,000-	7,000-
50	Eastshore-Meyers Shoring of Open Excavation	1	LS	80,000-	80,000-
51	Eastshore-Meyers Submersible Pump, Rail, and Accessories	2	EA	23,000-	46,000-
52	Eastshore-Meyers Pump Discharge Piping, Fittings, and Valves	1	LS	17,000-	17,000-
53	Eastshore-Meyers New Wetwell	1	LS	59,000-	59,000-
54	Eastshore-Meyers Wetwell Coating System	1	LS	3,900-	3,900-
55	Eastshore-Meyers 8" Gravity Sewer Main	957	LF	232-	222,024
56	Eastshore-Meyers 10" Gravity Sewer Main	347	LF	240-	83,280-
57	Eastshore-Meyers Replace Existing 4" Sewer Laterals	1120	LF	238-	266,560-
58	Eastshore-Meyers Install 4" 2-way Cleanout	40	EA	600-	24,000-
59	Eastshore-Meyers 4" Force Main	220	LF	206-	45,320-
60	Eastshore-Meyers New Manhole	2	EA	11,000-	22,000-
61	Eastshore-Meyers Modify Invert of Existing Manhole	4	EA	500-	2,000-
62	Eastshore-Meyers Replace Existing Manhole Frame and Lid	4	EA	950	3,800
63	Eastshore-Meyers Concrete Work	1	LS	8,500-	8,500-
64	Eastshore-Meyers Electrical Control Panel	1	LS	82,000-	82,000
65	Eastshore-Meyers Service Pedestal	1	LS	7,800-	7,800-
66	Eastshore-Meyers Fence and Gates	1	LS	10,000-	10,000-
67	Eastshore-Meyers Water Service, Hose Bib, and Enclosure	1	LS	2,000-	2,000-
68	Eastshore-Meyers Miscellaneous Electrical Work, Wiring and Sensors	1	LS	50,000-	50,000-
69	Eastshore-Meyers Site Restoration, Landscaping, and Cleanup	1	LS	35,000-	35,000-
Bayview Pump Station					
70	Bayview Temporary Facilities and	1	LS	15,000-	15,000-

2

Bid Item No.	Description	Est. Qty.	Unit	Unit Price	Total Price
	Bypass Pumping				
71	Bayview Demolition and Abandonment	1	LS	12,000-	12,000-
72	Bayview Shoring of Open Excavation	1	LS	250-	250-
73	Bayview Submersible Pump, Rail, and Accessories	2	EA	20,000-	40,000-
74	Bayview Pump Discharge Piping, Fittings, and Valves	1	LS	22,000-	22,000-
75	Bayview Wetwell Top Slab and Access Hatch	1	LS	8,300-	8,300-
76	Bayview Wetwell Rehabilitation	1	LS	22,000-	22,000-
77	Bayview 4" Force Main	1	LS	19,000-	19,000-
78	Bayview Modify Invert of Existing Manhole	1	EA	500-	500-
79	Bayview Concrete Work	1	LS	9,000-	9,000-
80	Bayview Electrical Control Panel	1	LS	82,000-	82,000-
81	Bayview Service Pedestal	1	LS	7,500-	7,500-
82	Bayview SCADA Pole	1	LS	8,400-	8,400-
83	Bayview Water Service, Hose Bib, and Enclosure	1	LS	2,000-	2,000-
84	Bayview Wood Wetwell Cover	1	LS	7,000-	7,000-
85	Bayview Miscellaneous Electrical Work, Wiring and Sensors	1	LS	50,000-	50,000-
86	Bayview Site Restoration, Landscaping, and Cleanup	1	LS	10,000-	10,000-
Sand Beach Pump Station					
87	Sand Beach Temporary Facilities and Bypass Pumping	1	LS	16,000-	16,000-
88	Sand Beach Demolition and Abandonment	1	LS	8,500-	8,500-
89	Sand Beach Shoring of Open Excavation	1	LS	250-	250-
90	Sand Beach Submersible Pump, Rail, and Accessories	2	EA	20,000-	40,000-
91	Sand Beach Pump Discharge Piping, Fittings, and Valves	1	LS	22,000-	22,000-
92	Sand Beach Top Slab and Access Hatch	1	LS	8,400-	8,400-
93	Sand Beach Wetwell Rehabilitation	1	LS	22,000-	22,000-
94	Sand Beach 4" Force Main	1	LS	22,000-	22,000-
95	Sand Beach Modify Invert of Existing Manhole	1	EA	600-	600-
96	Sand Beach Concrete Work	1	LS	7,400-	7,400-
97	Sand Beach Electrical Control Panel	1	LS	76,000-	76,000-
98	Sand Beach Service Pedestal	1	LS	8,400-	8,400-
99	Sand Beach SCADA Pole	1	LS	7,200-	7,200-
100	Sand Beach Water Service, Hose Bib, and Enclosure	1	LS	2,000-	2,000-
101	Sand Beach Gravel Surface	36	SF	18-	648-
102	Sand Beach Miscellaneous Electrical	1	LS	45,000-	45,000-

Bid Item No.	Description	Est. Qty.	Unit	Unit Price	Total Price
	Work, Wiring and Sensors				
103	Sand Beach Site Restoration, Landscaping, and Cleanup	1	LS	8,800-	8,800-
Triumph-Independence Pump Station					
104	Triumph-Independence Temporary Facilities and Bypass Pumping	1	LS	25,000-	25,000-
105	Triumph-Independence Demolition and Abandonment	1	LS	9,000-	9,000-
106	Triumph-Independence Shoring of Open Excavation	1	LS	500-	500-
107	Triumph-Independence Submersible Pump, Rail, and Accessories	2	EA	20,000-	40,000-
108	Triumph-Independence Pump Discharge Piping, Fittings, and Valves	1	LS	22,000-	22,000-
109	Triumph-Independence Wetwell Riser, Top Slab, and Access Hatch	1	LS	19,000-	19,000-
110	Triumph-Independence Wetwell Rehabilitation	1	LS	28,000-	28,000-
111	Triumph-Independence 4" Force Main	1	LS	12,000-	12,000-
112	Triumph-Independence Modify Invert of Existing Manhole	1	EA	600-	600-
113	Triumph-Independence Concrete Work	1	LS	6,400-	6,400-
114	Triumph-Independence Electrical Control Panel	1	LS	76,000-	76,000-
115	Triumph-Independence Service Pedestal	1	LS	8,400	8,400-
116	Triumph-Independence SCADA Pole	1	LS	7,200-	7,200-
117	Triumph-Independence Water Service, Hose Bib, and Enclosure	1	LS	2,000-	2,000-
118	Triumph-Independence Fence	1	LS	5,700-	5,700
119	Triumph-Independence Gravel Surface	145	SF	20-	2,900-
120	Triumph-Independence Miscellaneous Electrical Work, Wiring and Sensors	1	LS	46,000-	46,000-
121	Triumph-Independence Site Restoration, Landscaping, and Cleanup	1	LS	11,000-	11,000-
Lift Station #6 Pump Station					
122	Lift Station #6 Control Modifications	1	LS	26,000-	26,000-
Grand Pump Station					
123	Grand Control Modifications	1	LS	27,000-	27,000-
TOTAL BID					3,099,132 3,099,132

Amount of Time Required to Commence
 Work After Receipt of Work Order: 10 Days

The undersigned agrees to execute the contract required in said Specifications, to the satisfaction of the Council of the City of Alameda, with the necessary bonds, if any be required, within ten days, not including Sundays or legal holidays, after receiving notice that the contract has been awarded and is ready for signature; and further agrees that, in case of his default in any of the foregoing provisions, the proceeds of any check which may accompany his bid in lieu of a bid bond shall become the property of the City of Alameda as agreed and liquidated damages.

Firm Name (Please Print) McGuire and Hester

Signature of Person on Behalf of Firm 
Bruce Daseking, Vice President

Business Address 9009 Railroad Avenue

Oakland, CA

Dated: 12/15/16

Zip Code 94603

Name	Title	Address
(Of Officers or Partners)		

SEE ATTACHED

Incorporated under the laws of the State of California

Contractor's License No. 95879 Expiration Date: 11/30/17

The signature above certifies that the foregoing information given on this document is true and correct under penalty of perjury. (Section 7028.15 California Business and Professionals Code.)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/11/2017

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 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 RC Fischer Co 1301 Ygnacio Valley Rd #100 Walnut Creek CA 94596	CONTACT NAME: Amy Heckendorn PHONE (A/C, No, Ext): 925-627-5471 E-MAIL ADDRESS: amyh@rcfischer.com FAX (A/C, No): 925-932-0962													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Executive Risk Indemnity Inc</td> <td>35181</td> </tr> <tr> <td>INSURER B : Federal Insurance Co</td> <td>20281</td> </tr> <tr> <td>INSURER C : American Guarantee & Liability</td> <td></td> </tr> <tr> <td>INSURER D : Chubb Indemnity Ins Co</td> <td>12777</td> </tr> <tr> <td>INSURER E : Homeland Insurance Co of NY</td> <td>34452</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Executive Risk Indemnity Inc	35181	INSURER B : Federal Insurance Co	20281	INSURER C : American Guarantee & Liability		INSURER D : Chubb Indemnity Ins Co	12777	INSURER E : Homeland Insurance Co of NY	34452	INSURER F :
INSURER(S) AFFORDING COVERAGE	NAIC #													
INSURER A : Executive Risk Indemnity Inc	35181													
INSURER B : Federal Insurance Co	20281													
INSURER C : American Guarantee & Liability														
INSURER D : Chubb Indemnity Ins Co	12777													
INSURER E : Homeland Insurance Co of NY	34452													
INSURER F :														
INSURED McGuire and Hester 9009 Railroad Avenue Oakland CA 94603-1245	CERTIFICATE NUMBER: MCGUI-3													

COVERAGES CERTIFICATE NUMBER: 910122752 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 <input checked="" type="checkbox"/> Contract Liab <input checked="" type="checkbox"/> XCU GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: GL Ded \$10K	Y	Y	54303064	3/31/2016	3/31/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		Y	54303063	3/31/2016	3/31/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			AUC019194400	3/31/2016	3/31/2017	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	54303065	4/2/2016	4/2/2017	<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
E	Pollution Liability			7930037000000	8/23/2015	8/23/2017	Limit 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: M&H Job 4062 Group 3 Sewer Pump Station. City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers are named as additional insured per 100225080715. Insurance is primary per 100224610715. Waiver of subrogation applies per CA04441013 & 100218000609. 30 day notice of cancellation per 100224940715 & 160203040511.

CITY OF ALAMEDA
Risk Management

CERTIFICATE HOLDER

City of Alameda
2263 Santa Clara Avenue
Alameda CA 94501

Laetitia Akil, City Risk Manager
Date: 1-12-17

CANCELLATION

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
[Signature]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. **SECTION II – WHO IS AN INSURED** is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an insured on this Coverage Part, but:
 - a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the insured by this endorsement is limited as follows:
 - a. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
 - b. The insurance provided to the insured does not apply to damages, loss, cost or expense arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - (2) Supervisory, inspection, architectural or engineering activities.
- c. The insurance provided to the insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that insured, and then the insurance provided to the insured applies only to such "bodily injury" or "property damage" that occurs before:
 - (1) The end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage; or
 - (2) The end of the policy period;

whichever is earlier.
3. The insurance provided to the insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the insured which covers that person or organization as a named insured for such loss, and we will not share with that other insurance. But the insurance provided to the insured by this endorsement still is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when that person or organization is an additional insured under such other insurance.
4. As a condition of coverage provided to the insured by this endorsement:
 - a. The insured must give us written notice as soon as practicable of an "occurrence" or an

CITY OF ALAMEDA
Risk Management

Date 1-12-17
Lucretia Akil, City Risk Manager

offense which may result in a claim. To the extent possible, such notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against the insured, the insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

The insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. The insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d. The insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the insured by this endorsement is primary to other insurance available to the insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to **SECTION V – DEFINITIONS:**

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY INSURANCE FOR SCHEDULED ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Additional Insured:

Location Of Covered Operations:

Where required by written contract.

Where required by written contract.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect only to the Additional Insured and at the Location Of Covered Operations shown in the Schedule, the following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **4. Other Insurance** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to the Additional Insured with respect to the Location Of Covered Operations shown in the Schedule under this policy provided that:

- (1) The Additional Insured is a named insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the Additional Insured.

CITY OF ALAMEDA
 Risk Management

 Date 1-12-17
 Lucretia Akil, City Risk Manager

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p>Named Insured: McGuire and Hester</p> <p>Endorsement Effective Date: 3/31/16</p>

SCHEDULE

<p>Name(s) Of Person(s) Or Organization(s):</p> <p>Where required by written contract.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

CITY OF ALAMEDA
 Risk Management

 Date 1-12-17
 Lucretia Akil, City Risk Manager

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARLIER NOTICE OF CANCELLATION OR NONRENEWAL PROVIDED BY US

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
TRUCKERS COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

A. Under the **Cancellation** condition of the Common Policy Conditions, the time period is amended as follows:

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

1. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
2. 30 days before the effective date of cancellation if we cancel for any other reason.

B. Under the Common Policy Conditions, the following condition is added:

WHEN WE DO NOT RENEW

When we do not renew this policy, we will mail or deliver to the first Named Insured written notice of the non-renewal at least 30 days before the expiration date. If notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice.

CITY OF ALAMEDA
Risk Management

Date 1-12-17
Lucretia Akil, City Risk Manager

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR NON-RENEWAL TO SPECIFIED PERSONS OR ORGANIZATIONS

This endorsement modifies the following:

COMMON POLICY CONDITIONS

SCHEDULE

Name(s) and Address(es):

All persons or organization as on file.

The following Condition is added:

Notice Of Cancellation Or Non-Renewal To Specified Persons Or Organizations

1. If we cancel or non-renew this policy for any reason other than non-payment, we will deliver notice of the cancellation or non-renewal to any Person(s) or Organization(s) shown in the Schedule 60 days prior to the effective date of cancellation or non-renewal.
2. If we cancel this policy for non-payment, we will deliver notice of the cancellation to any Person(s) or Organization(s) shown in the Schedule 10 days prior to the effective date of cancellation.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. Any failure by us to notify such person(s) or organization(s) will not invalidate such cancellation or non-renewal with respect to any other person(s) or organization(s).

CITY OF ALAMEDA
Risk Management

Date 1-12-17
Lucretia Akil, City Risk Manager

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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 shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay damages that the insured becomes legally obligated to pay for "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages for the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages for "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" arising out of an act that:

- (1) Is expected or intended from the standpoint of the insured; or
- (2) Would be expected or intended from the standpoint of a reasonable person in the circumstances of the insured;

*ok
1-12-17*

to cause "bodily injury" or "property damage", even if the actual "bodily injury" or "property damage" is of a different degree or type than intended or expected.

This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of "waste";

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as "waste" by or for:

- (i) Any insured; or

- (ii) Any person or organization for whom you may be legally responsible; or

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured 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 effects of, "pollutants".

However, this paragraph does not apply to liability for damages for "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to an insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

j. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

k. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

l. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

m. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

n. Personal And Advertising Injury

"Bodily injury" arising out of "advertising injury" or "personal injury".

o. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through m. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay damages that the insured becomes legally obligated to pay for "advertising injury" or "personal injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "advertising injury" or "personal injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "advertising injury" or "personal injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Advertising injury" or "personal injury" arising out of an offense committed by or on behalf of the insured, that:

- (1) Is intended by such insured; or
- (2) Would be expected from the standpoint of a reasonable person in the circumstances of such insured; to cause injury.

b. Publications With Knowledge Of Falsity

"Advertising injury" or "personal injury" arising out of any electronic, oral, written or other publication of content or material by or with the consent of the insured:

- (1) With knowledge of its falsity; or
- (2) If a reasonable person in the circumstances of such insured would have known such content or material to be false.

c. Prior Offenses

"Advertising injury" or "personal injury" arising out of any offense first committed before the beginning of the policy period.

d. Crime Or Fraud

"Advertising injury" or "personal injury" arising out of any criminal or fraudulent conduct committed by or with the consent or knowledge of the insured.

e. Contracts

"Advertising injury" or "personal injury" for which the insured is obligated to pay damages by reason of assumption of liability in a contract or agreement. This exclusion does not apply to the liability for damages:

- (1) That such insured would have in the absence of such contract or agreement; or
- (2) Assumed in a written contract or agreement that is an "insured contract", provided the "advertising injury" or "personal injury" to which this insurance applies is caused by an offense first committed after the execution of such contract or agreement.

f. Breach Of Contract

"Advertising injury" or "personal injury" arising out of breach of contract.

g. Failure To Conform To Representations Or Warranties

"Advertising injury" or "personal injury" arising out of the failure of goods, products or services to conform with any electronic, oral, written or other representation or warranty of durability, fitness, performance, quality or use.

h. Wrong Description Of Prices

"Advertising injury" or "personal injury" arising out of the wrong description of the price of goods, products or services.

i. Media Type Businesses

"Advertising injury" or "personal injury" arising out of an offense committed by or on behalf of an insured whose business is advertising, broadcasting, cablecasting, publishing, telecasting or telemarketing.

This exclusion does not apply to "personal injury" caused by an offense described in Paragraphs 21. a., b. and c. of the definition of "personal injury" under the Definitions Section.

j. Internet Activities

"Advertising injury" or "personal injury" arising out of:

- (1) Controlling, creating, designing or developing of another's Internet site;
- (2) Controlling, creating, designing, developing, determining or providing the content or material of another's Internet site;
- (3) Controlling, facilitating or providing, or failing to control, facilitate or provide, access to the Internet or another's Internet site; or
- (4) Publication of content or material on or from the Internet, other than material developed by you to or at your direction.

k. Continuing Offenses

"Advertising injury" or "personal injury" that arises out of that part of an offense that continues or resumes after the later of the end of the policy period of:

- (1) This insurance; or
- (2) A subsequent, continuous renewal or replacement of this insurance, that:
 - (a) Is issued to you by us or by an affiliate of ours;
 - (b) Remains in force while the offense continues; and
 - (c) Would otherwise apply to "advertising injury" and "personal injury".

l. Pollution

"Advertising injury" or "personal injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

m. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured 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
- (2) 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 effects of, "pollutants".

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

COVERAGE FORM EXCLUSIONS

The following exclusions apply to all Coverages in this Coverage Form and all endorsements attached to it.

1. Asbestos, Silica or Similar Compounds, Including Mixed Dust

a. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of:

- (1) "Asbestos";
- (2) "Silica"; or
- (3) "Mixed dust".

b. This insurance does not apply to any damages, loss, cost or expense arising, in whole or in part, out of any:

- (1) Demand, order, request or regulatory or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess; or
- (2) Claim or proceeding by or on behalf of a governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing;

the effects of "asbestos", "silica" or "mixed dust".

2. Employment-Related Practices

This insurance does not apply to any damages, loss, cost or expense sustained at any time by:

a. Any person, whether or not sustained in the course of employment by any insured, arising out of any employment-related act, omission, policy, practice or representation directed at such person, occurring in whole or in part at any time, including any:

- (1) Arrest, detention or imprisonment;
- (2) Breach of any express or implied covenant;
- (3) Coercion, criticism, humiliation, prosecution or retaliation;
- (4) Defamation or disparagement;
- (5) Demotion, discipline, evaluation or reassignment;
- (6) Discrimination, harassment or segregation;
- (7) (a) Eviction; or
(b) Invasion or other violation of any right of occupancy;
- (8) Failure or refusal to advance, compensate, employ or promote;
- (9) Invasion or other violation of any right of privacy or publicity;
- (10) Termination of employment; or
- (11) Other employment-related act, omission, policy, practice, representation or relationship in connection with any insured at any time.

b. The brother, child, parent, sister or spouse of such person at whom any employment-related act, omission, policy, practice or representation is directed, as described in paragraph a. above, as a consequence thereof.

This exclusion applies:

- i. Whether the insured may be liable as an employer or in any other capacity; and
- ii. To any obligation to share damages with or repay someone else who must pay damages because of any of the foregoing.

3. Enhancement, Maintenance or Prevention Expenses

This insurance does not apply to any loss, cost or expense incurred by you or others for any:

- a. Enhancement or maintenance of any property; or
- b. Prevention of any injury or damage to any:
 - (1) Person or organization; or
 - (2) Property you own, rent or occupy.

4. Fungi or Bacteria

This insurance does not apply to:

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of "fungi" or bacteria.
- b. Any damages, loss, cost or expense arising out of any:
 - (1) Demand, order, request or regulatory or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess; or
 - (2) Claim or proceeding by or on behalf of a governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing;

the effects of "fungi" or bacteria.

5. Information Distribution Laws

This insurance does not apply to any damages, loss, cost or expense arising out of any actual or alleged violation of:

- a. The United States of America CAN-SPAM Act of 2003 or any law amendatory thereof;
- b. The United States of America Telephone Consumer Protection Act (TCPA) of 1991 or any law amendatory thereof; or
- c. Any other ordinance, regulation or statute relating to communicating, distribution, publication, sending or transmitting of content, information or material.

6. Intellectual Property Laws and Rights

This insurance does not apply to any damages, loss, cost or expense arising out of, giving rise to or in any way related to any actual or alleged:

- a. Assertion; or
- b. Infringement or violation;

by any person or organization (including any insured) of any "intellectual property law or right", regardless of whether this insurance would otherwise apply to all or part of any such actual or alleged injury or damage in the absence of any such actual or alleged assertion, infringement or violation.

This exclusion applies, unless such injury:

- (1) Is caused by an offense described in the definition of "advertising injury"; and

- (2) Does not arise out of, give rise to, or in any way relate to any actual or alleged assertion, infringement or violation of any "intellectual property law or right", other than one described in the definition of "advertising injury".

7. Lead

- a. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of "lead".
- b. This insurance does not apply to any damages, loss, cost or expense arising, in whole or in part, out of any:
 - (1) Demand, order, request or regulatory or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess; or
 - (2) Claim or proceeding by or on behalf of a governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing;

the effects of "lead".

8. War

This insurance does not apply to any damages, loss, cost or expense, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
5. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury", "advertising injury" or "personal injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages for the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and

- (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

No person or organization is an insured with respect to the:

- a. Ownership, maintenance or use of any assets; or
- b. Conduct of any person or organization whose assets, business or organization;

you acquire, either directly or indirectly, for any:

- a. "Bodily injury" or "property damage" that occurred; or
- b. "Advertising injury" or "personal injury" arising out of an offense first committed;

in whole or in part, before you, directly or indirectly, acquired such assets, business or organization.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C; and
 - b. Damages under Coverage A, except damages for "bodily injury" or "property damage" included in the "products-completed operations hazard".
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages for "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. The Personal and Advertising Injury Aggregate Limit is the most we will pay for the sum of damages under Coverage B.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C
 for all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages for "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured for injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

- (1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

- (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft.

- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** 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.

- (3) 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:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

- (b) The total of all deductible and self-insured amounts under all that other insurance.

- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. We may audit your books and records as they relate to this insurance at any time during the term of this policy and up to three years afterwards.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.



8. Transfer Or Waiver Of Rights Of Recovery Against Others To Us

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this Coverage Part have not been waived, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

This condition does not apply to Coverage C.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means an electronic, oral, written or other notice, about goods, products or services, designed for the specific purpose of attracting the general public or a specific market segment to use such goods, products or services.

"Advertisement" does not include any e-mail address, Internet domain name or other electronic address or metalanguage.

2. "Advertising injury" means injury, other than "bodily injury", "property damage" or "personal injury", sustained by a person or organization and caused by an offense of infringing, in that particular part of your "advertisement" about your goods, products or services, upon their:

- a. Copyrighted "advertisement"; or
- b. Registered collective mark, registered service mark or other registered trademarked name, slogan, symbol or title.

3. "Asbestos" means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or "waste".

4. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease;

CITY OF ALAMEDA
 Risk Management

 Date 1-12-17
 Lucretia Akil, City Risk Manager

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease that caused it.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Advertising injury" or "personal injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

7. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
8. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
9. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

13. "Intellectual property law or right" means any:
- Certification mark, copyright, patent or trademark (including collective or service marks);
 - Right to, or judicial or statutory law recognizing an interest in, any trade secret or confidential or proprietary non-personal information;
 - Other right to, or judicial or statutory law recognizing an interest in, any expression, idea, likeness, name, slogan, style of doing business, symbol, title, trade dress or other intellectual property; or
 - Other judicial or statutory law concerning piracy, unfair competition or other similar practices.
14. "Lead" means the element lead in any form, including its presence or use in any alloy, by-product, compound or other material or "waste".
15. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
16. "Loading or unloading" means the handling of property:
- After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - While it is in or on an aircraft, watercraft or "auto"; or
 - While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
17. "Mixed dust" means any combination or mixture of "asbestos" or "silica" and any other dust, fibers or particles, in any form, including any presence or use in any alloy, by-product, compound or other material or "waste".
18. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - Vehicles maintained for use solely on or next to premises you own or rent;
 - Vehicles that travel on crawler treads;
 - Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

- Power cranes, shovels, loaders, diggers or drills; or
 - Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- Equipment designed primarily for:
 - Snow removal;
 - Road maintenance, but not construction or resurfacing; or
 - Street cleaning;
- Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

19. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
20. "Personal and advertising injury" means:
- "Advertising injury"; or
 - "Personal injury".
21. "Personal injury" means injury, other than "bodily injury", "property damage" or "advertising injury", caused by an offense of:

- a. False arrest, false detention or other false imprisonment;
- b. Malicious prosecution;
- c. Wrongful entry into, wrongful eviction of a person from or other violation of a person's right of private occupancy of a dwelling, premises or room that such person occupies, if committed by or on behalf of its landlord, lessor or owner; or
- d. Electronic, oral, written or other publication of material that:

- (1) Libels or slanders a person or organization (which does not include disparagement of goods, products, property or services); or

- (2) Violates a person's right of privacy.

22. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and "waste".

23. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or

- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.

- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

24. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

25. "Silica" means silica in any form (including silicates or other similar silicon compounds), including its presence or use in any alloy, by-product, compound or other material or "waste".

26. "Suit" means a civil proceeding in which damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

27. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

28. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
29. "Waste" includes material to be recycled, reconditioned or reclaimed.
30. "Your product":
- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
 - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
31. "Your work":
- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
 - (2) The providing of or failure to provide warnings or instructions.